

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 123

H.P. 91

House of Representatives, January 17, 2017

An Act To Recodify and Revise the Maine Probate Code

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to Resolve 2015, chapter 73, section 1.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 18-A MRSA**, as amended, is repealed.

4 **Sec. A-2. 18-C MRSA** is enacted to read:

5 **TITLE 18-C**

6 **PROBATE CODE**

7 **ARTICLE 1**

8 **GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION**

9 **PART 1**

10 **SHORT TITLE, CONSTRUCTION AND GENERAL PROVISIONS**

11 **§1-101. Short title**

12 This Title may be known and cited as "the Maine Uniform Probate Code."

13 **§1-102. Purposes; rule of construction**

14 **1. Liberal construction.** This Code must be liberally construed and applied to
15 promote its underlying purposes and policies.

16 **2. Purposes and policies.** The underlying purposes and policies of this Code are to:

17 A. Simplify and clarify the law concerning the affairs of decedents, missing persons,
18 protected persons, minors and incapacitated persons;

19 B. Discover and make effective the intent of a decedent in the distribution of the
20 decedent's property;

21 C. Promote a speedy and efficient system for liquidating the estate of the decedent
22 and making distribution to the decedent's successors;

23 D. Facilitate use and enforcement of certain trusts; and

24 E. Make uniform the law among the various jurisdictions.

25 **§1-103. Supplementary general principles of law applicable**

26 Unless displaced by the provisions of this Code, the principles of law and equity
27 supplement its provisions.

1 **§1-104. Construction against implied repeal**

2 This Code is a general act intended to provide unified coverage of its subject matter
3 and no part of it may be considered impliedly repealed by subsequent legislation if it can
4 reasonably be avoided.

5 **§1-105. Effect of fraud and evasion**

6 Whenever fraud has been perpetrated in connection with any proceeding or in any
7 statement filed under this Code or if fraud is used to avoid or circumvent the provisions
8 or purposes of this Code, any person injured by the fraud may obtain appropriate relief
9 against the perpetrator of the fraud or restitution from any person, other than a bona fide
10 purchaser, benefiting from the fraud, whether innocent or not. A proceeding must be
11 commenced within 2 years after the discovery of the fraud, but a proceeding may not be
12 brought against a person who is not a perpetrator of the fraud later than 6 years after the
13 time of commission of the fraud. This section has no bearing on remedies relating to
14 fraud practiced on a decedent during the decedent's lifetime that affects the succession of
15 the decedent's estate.

16 **§1-106. Evidence as to death or status**

17 In proceedings under this Code, the rules of evidence in courts of general jurisdiction,
18 including any relating to simultaneous deaths, are applicable unless specifically displaced
19 by the Code or by rules adopted under section 1-304. In addition, notwithstanding Title
20 22, section 2707, the following provisions relating to determination of death and status
21 are applicable.

22 **1. Application of Uniform Determination of Death Act.** Death occurs when an
23 individual is determined to be dead under the Uniform Determination of Death Act.

24 **2. Death certificate as prima facie evidence.** A certified or authenticated copy of a
25 death certificate purporting to be issued by an official or agency of the place where the
26 death purportedly occurred is prima facie evidence of the fact, place, date and time of
27 death and the identity of the decedent.

28 **3. Government record as prima facie evidence.** A certified or authenticated copy
29 of any record or report of a governmental agency, domestic or foreign, asserting that a
30 person is missing, detained, dead or alive is prima facie evidence of the status and of the
31 dates, circumstances and places disclosed by the record or report.

32 **4. Absence of record; clear and convincing evidence required.** In the absence of
33 prima facie evidence of death under subsection 2 or 3, the fact of death may be
34 established by clear and convincing evidence, including circumstantial evidence.

35 **5. Presumption of death after 5-year absence.** An individual whose death is not
36 established under subsections 1 to 4, who is absent for a continuous period of 5 years,
37 during which the individual has not been heard from, and whose absence is not
38 satisfactorily explained after diligent search or inquiry is presumed to be dead. Death is
39 presumed to have occurred at the end of the period unless there is sufficient evidence for
40 determining that death occurred earlier.

1 **6. Document as evidence of time of death.** In the absence of evidence disputing
2 the time of death stated on a document described in subsection 2 or 3, a document
3 described in subsection 2 or 3 that states a time of death 120 hours or more after the time
4 of death of another individual, however the time of death of the other individual is
5 determined, establishes by clear and convincing evidence that the individual survived the
6 other individual by 120 hours.

7 **§1-107. Acts by holder of general power**

8 For the purpose of granting consent or approval with regard to the acts or accounts of
9 a personal representative or trustee, including relief from liability or penalty for failure to
10 post bond or to perform other duties, and for purposes of consenting to modification or
11 termination of a trust or to deviation from its terms, the sole holder or all co-holders of a
12 presently exercisable general power of appointment, including one in the form of a power
13 of amendment or revocation, are deemed to act for beneficiaries to the extent their
14 interests, as objects, takers in default or otherwise, are subject to the power.

15 **§1-108. Cost-of-living adjustment of certain dollar amounts**

16 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
17 following terms have the following meanings.

18 A. "Consumer Price Index" means the Consumer Price Index, Annual Average, for
19 All Urban Consumers, CPI-U: U.S. City Average, All items, reported by the United
20 States Department of Labor, Bureau of Labor Statistics, or its successor or, if the
21 index is discontinued, an equivalent index reported by a federal authority or, if no
22 such index is reported, "Consumer Price Index" means a comparable index chosen by
23 the Bureau of Labor Statistics.

24 B. "Reference base index" means the Consumer Price Index for calendar year 2017.

25 **2. Automatic adjustment of amounts for inflation.** The dollar amounts stated in
26 sections 2-102, 2-402, 2-403 and 2-405 apply to the estate of a decedent who died in or
27 after 2017, but for the estate of a decedent who died after 2018, these dollar amounts
28 must be increased or decreased if the Consumer Price Index for the calendar year
29 immediately preceding the year of death exceeds or is less than the reference base index.
30 The amount of any increase or decrease is computed by multiplying each dollar amount
31 by the percentage by which the Consumer Price Index for the calendar year immediately
32 preceding the year of death exceeds or is less than the reference base index. If any
33 increase or decrease produced by the computation is not a multiple of \$100, the increase
34 or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of
35 \$100, but for the purpose of section 2-405, the periodic installment amount is the lump-
36 sum amount divided by 12. If the Consumer Price Index for 2018 is changed by the
37 United States Department of Labor, Bureau of Labor Statistics, the reference base index
38 must be revised using the rebasing factor reported by the Bureau of Labor Statistics or
39 other comparable data if a rebasing factor is not reported.

1 **§1-109. Transfer for value**

2 Any recorded instrument described in this Code on which the register of deeds notes
3 by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence
4 that the transfer was made for value.

5 **§1-110. Powers of fiduciaries relating to compliance with environmental laws**

6 **1. Fiduciary powers to comply with environmental law.** From the inception of
7 the trust or estate, a fiduciary has the following powers, without court authorization,
8 which the fiduciary may use in the fiduciary's sole discretion to comply with
9 environmental law:

10 A. To inspect and monitor property held by the fiduciary, including interests in sole
11 proprietorships, partnerships or corporations and any assets owned by any such
12 business enterprise, for the purpose of determining compliance with environmental
13 law affecting the property and to respond to any actual or threatened violation of any
14 environmental law affecting the property held by the fiduciary;

15 B. To take, on behalf of the trust or estate, any action necessary to prevent, abate or
16 otherwise remedy any actual or threatened violation of any environmental law
17 affecting property held by the fiduciary, either before or after the initiation of an
18 enforcement action by any governmental body;

19 C. To refuse to accept property if the fiduciary determines that any property to be
20 donated to the trust or estate either is contaminated by any hazardous substance or is
21 being used or has been used for any activity directly or indirectly involving any
22 hazardous substance that could result in liability to the trust or estate or otherwise
23 impair the value of the assets held in the trust or estate. This paragraph does not
24 apply to property in the trust or estate at its inception;

25 D. To settle or compromise at any time any claims against the trust or estate that may
26 be asserted by any governmental body or private party involving the alleged violation
27 of any environmental law affecting property held in trust or in an estate;

28 E. To disclaim any power granted by any document, statute or rule of law that, in the
29 sole discretion of the fiduciary, may cause the fiduciary to incur personal liability
30 under any environmental law; and

31 F. To decline to serve or to resign as a fiduciary if the fiduciary reasonably believes
32 that there is or may be a conflict of interest between the fiduciary's fiduciary capacity
33 and the fiduciary's individual capacity because of potential claims or liabilities that
34 may be asserted against the fiduciary on behalf of the trust or estate because of the
35 type or condition of assets held in the trust or estate.

36 **2. Definitions.** For purposes of this section, "environmental law" means any federal,
37 state or local law, rule, regulation or ordinance relating to protection of the environment
38 or human health. For purposes of this section, "hazardous substance" has the meaning set
39 forth in Title 38, section 1362, subsection 1.

40 **3. Costs assessed to trust or estate.** The fiduciary may charge the cost of any
41 inspection, review, abatement, response, cleanup or remedial action authorized in this

1 section against the income or principal of the trust or estate. A fiduciary is not personally
2 liable to any beneficiary or other party for any decrease in value of assets in trust or in an
3 estate by reason of the fiduciary's compliance with any environmental law, specifically
4 including any reporting requirement under the law. Neither the acceptance by the
5 fiduciary of property nor a failure by the fiduciary to inspect property creates an inference
6 as to whether there is or may be any liability under any environmental law with respect to
7 the property.

8 **4. Compliance with environmental law not a conflict of interest.** The exercise by
9 a fiduciary of any of the powers granted in this section does not constitute a transaction
10 that is affected by a substantial conflict of interest on the part of the fiduciary.

11 **5. Application and effective date.** This section applies to all trusts and estates in
12 existence on and created after July 1, 1994.

13 **§1-111. Guardian ad litem**

14 **1. Appointment order.** In any proceeding under this Code for which the court may
15 appoint a guardian ad litem for a child involved in the proceeding, at the time of the
16 appointment, the court shall specify the guardian ad litem's length of appointment, duties
17 and fee arrangements.

18 **2. Qualifications.** A guardian ad litem appointed on or after October 1, 2005 must
19 meet the qualifications established by the Supreme Judicial Court.

20 **3. Release of information and access to child.** If, in order to perform the guardian
21 ad litem's duties, the guardian ad litem needs information concerning the child or parents,
22 the court may order the parents to sign an authorization form allowing the release of the
23 necessary information. The guardian ad litem must be allowed access to the child by
24 caretakers of the child, whether the caretakers are individuals, authorized agencies or
25 child care providers.

26 **4. Best interest of the child.** The guardian ad litem shall use the standard of the best
27 interest of the child as set forth in Title 19-A, section 1653, subsection 3. The guardian
28 ad litem shall make the wishes of the child known to the court if the child has expressed
29 them, regardless of the recommendation of the guardian ad litem.

30 **5. Written report; admissibility.** If required by the court, the guardian ad litem
31 shall make a final written report to the parties and the court reasonably in advance of a
32 hearing. The report is admissible as evidence and subject to cross-examination and
33 rebuttal, whether or not objected to by a party.

34 **6. Quasi-judicial immunity.** A person appointed by the court as a guardian ad litem
35 acts as the court's agent and is entitled to quasi-judicial immunity for acts performed
36 within the scope of the duties of the guardian ad litem.

37 **7. Notice of other proceedings.** A guardian ad litem must be given notice of all
38 civil or criminal hearings and proceedings, including, but not limited to, grand juries, in
39 which the child is a party or a witness. The guardian ad litem shall protect the best

1 interest of the child in those hearings and proceedings, unless otherwise ordered by the
2 court.

3 **PART 2**

4 **DEFINITIONS**

5 **§1-201. Definitions**

6 As used in this Code, unless the context otherwise indicates, the following terms have
7 the following meanings.

8 **1. Agent.** "Agent" includes an attorney-in-fact under a durable or nondurable power
9 of attorney, an individual authorized to make decisions concerning another's health care
10 and an individual authorized to make decisions for another under the Uniform Health
11 Care Decisions Act.

12 **2. Application.** "Application" means a written request to the register for an order of
13 informal probate or appointment under Article 3, Part 3.

14 **3. Beneficiary.** "Beneficiary," as it relates to a trust beneficiary, includes a person
15 who has any present or future interest, vested or contingent, and also includes the owner
16 of an interest by assignment or other transfer; as it relates to a charitable trust, includes
17 any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary
18 designation, refers to a beneficiary of an insurance or annuity policy, of an account with
19 POD designation, of a security registered in beneficiary form, TOD, or of a pension,
20 profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death;
21 and, as it relates to a beneficiary designated in a governing instrument, includes a grantee
22 of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a
23 donee, appointee or taker in default of a power of appointment and a person in whose
24 favor a power of attorney or a power held in any individual, fiduciary or representative
25 capacity is exercised.

26 **4. Beneficiary designation.** "Beneficiary designation" means a governing
27 instrument naming a beneficiary of an insurance or annuity policy, of an account with
28 POD designation, of a security registered in beneficiary form, TOD, or of a pension,
29 profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death.

30 **5. Child.** "Child" includes any individual entitled to take as a child under this Code
31 by intestate succession from the parent whose relationship is involved and excludes any
32 person who has no other relationship to the parent than as a stepchild, a foster child, a
33 grandchild or any more remote descendant.

34 **6. Claims.** "Claims," in respect to estates of decedents and protected persons,
35 includes liabilities of the decedent or protected person whether arising in contract, in tort
36 or otherwise, and liabilities of the estate that arise at or after the death of the decedent or
37 after the appointment of a conservator, including funeral expenses and expenses of
38 administration. "Claims" does not include estate or inheritance taxes, or demands or
39 disputes regarding title of a decedent or protected person to specific assets alleged to be
40 included in the estate.

1 **7. Conservator.** "Conservator" means a person who is appointed by a court to
2 manage the estate of a protected person. "Conservator" includes a limited conservator.

3 **8. Court.** "Court" means any one of the several courts of probate of this State
4 established as provided in Title 4, sections 201 and 202.

5 **9. Descendant.** "Descendant," as it relates to an individual, means all of the
6 individual's descendants of all generations. The relationship of parent and child at each
7 generation is determined by the definition of "parent" and "child" contained in this Code.

8 **10. Devise.** "Devise" when used as a noun means a testamentary disposition of real
9 or personal property and when used as a verb means to dispose of real or personal
10 property by will.

11 **11. Devisee.** "Devisee" means any person designated in a will to receive a devise.
12 For the purposes of Article 3, in the case of a devise to an existing trust or trustee, or to a
13 trustee or trust described by will, "devisee" includes the trust or trustee but not the
14 beneficiaries.

15 **12. Disability.** "Disability" means cause for a protective order as described by
16 section 5-401.

17 **13. Distributee.** "Distributee" means any person who has received property of a
18 decedent from the personal representative other than as creditor or purchaser. A
19 testamentary trustee is a distributee only to the extent of the distributed assets or
20 increment of distributed assets remaining in the trustee's possession. A beneficiary of a
21 testamentary trust to whom the trustee has distributed property received from a personal
22 representative is a distributee of the personal representative. For purposes of this
23 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will,
24 to the extent of the devised assets.

25 **14. Domestic partner.** "Domestic partner" means one of 2 unmarried adults who
26 are domiciled together under long-term arrangements that evidence a commitment to
27 remain responsible indefinitely for each other's welfare.

28 **15. Estate.** "Estate" includes the property of the decedent, trust or other person
29 whose affairs are subject to this Code as originally constituted and as it exists from time
30 to time during administration.

31 **16. Exempt property.** "Exempt property" means that property of a decedent's estate
32 that is described in section 2-403.

33 **17. Fiduciary.** "Fiduciary" includes a personal representative, guardian, conservator
34 and trustee.

35 **18. Foreign personal representative.** "Foreign personal representative" means a
36 personal representative appointed by another jurisdiction.

1 **19. Formal proceedings.** "Formal proceedings" means proceedings within the
2 exclusive jurisdiction of the court conducted before a judge with notice to interested
3 persons.

4 **20. General personal representative.** "General personal representative" means a
5 personal representative other than a special administrator.

6 **21. Governing instrument.** "Governing instrument" means a deed, will, trust or
7 insurance or annuity policy; account with POD designation; security registered in
8 beneficiary form, TOD; transfer on death deed, TOD; pension, profit-sharing, retirement
9 or similar benefit plan; instrument creating or exercising a power of appointment or a
10 power of attorney; or dispositive, appointive or nominative instrument of any similar
11 type.

12 **22. Guardian.** "Guardian" means a person who has qualified as a guardian of a
13 minor or incapacitated person pursuant to appointment by a parent or spouse or by the
14 court. "Guardian" includes a limited, an emergency and a temporary substitute guardian
15 but not a guardian ad litem.

16 **23. Heirs.** "Heirs," except as provided in section 2-711, means those persons,
17 including the surviving spouse, who are entitled under the statutes of intestate succession
18 to the property of a decedent.

19 **24. Incapacitated person.** "Incapacitated person" means an individual who, for
20 reasons other than being a minor, is unable to receive and evaluate information or make
21 or communicate informed decisions to such an extent that the individual lacks the ability
22 to meet essential requirements for physical health, safety or self-care, even with
23 reasonably available appropriate technological assistance.

24 **25. Informal proceedings.** "Informal proceedings" means proceedings conducted
25 without notice to interested persons by an officer of the Court acting as a register for
26 probate of a will or appointment of a personal representative.

27 **26. Interested person.** "Interested person" includes heirs, devisees, children,
28 spouses, domestic partners, creditors, beneficiaries and any others having a property right
29 in or claim against a trust estate or the estate of a decedent, ward or protected person.
30 "Interested person" also includes persons having priority for appointment as personal
31 representative and other fiduciaries representing interested persons. In any proceeding or
32 hearing under Article 5 affecting a trust estate or estate, when the ward or protected
33 person has received benefits from the United States Department of Veterans Affairs
34 within 3 years, "interested person" includes the Secretary of Veterans Affairs. The
35 definition of "interested person" as it relates to particular persons may vary from time to
36 time and must be determined according to the particular purposes of, and matter involved
37 in, any proceeding.

38 **27. Issue.** "Issue," as it relates to a person, means a descendant of that person.

39 **28. Joint tenants with the right of survivorship.** "Joint tenants with the right of
40 survivorship" includes co-owners of property held under circumstances that entitle one or

1 more to the whole of the property on the death of the other or others, but excludes forms
2 of co-ownership registration in which the underlying ownership of each party is in
3 proportion to that party's contribution.

4 **29. Judge.** "Judge" means the judge of a court.

5 **30. Lease.** "Lease" includes an oil, gas or other mineral lease.

6 **31. Letters.** "Letters" includes letters of authority, letters testamentary, letters of
7 guardianship, letters of administration and letters of conservatorship.

8 **32. Minor.** "Minor" means an unemancipated individual who has not attained 18
9 years of age.

10 **33. Mortgage.** "Mortgage" means any conveyance, agreement or arrangement in
11 which property is encumbered or used as security.

12 **34. Nonresident decedent.** "Nonresident decedent" means a decedent who was
13 domiciled in another jurisdiction at the time of death.

14 **35. Oath.** "Oath" means an oath or affirmation.

15 **36. Organization.** "Organization" includes a corporation, government or
16 governmental subdivision or agency, business trust, estate, trust, partnership, joint
17 venture, association or any other legal or commercial entity.

18 **37. Parent.** "Parent" includes any person entitled to take, or who would be entitled
19 to take if a child died without a will, as a parent under this Code by intestate succession
20 from the child whose relationship is in question and excludes any person who has no
21 other relationship to the child than as a stepparent, foster parent or grandparent.

22 **38. Payor.** "Payor" means a trustee, insurer, business entity, employer, government,
23 governmental agency or subdivision or any other person authorized or obligated by law
24 or a governing instrument to make payments.

25 **39. Person.** "Person" means an individual or an organization.

26 **40. Personal representative.** "Personal representative" includes an executor,
27 administrator, successor personal representative, special administrator and a person who
28 performs substantially the same function under the appropriate governing law.

29 **41. Petition.** "Petition" means a written request to the court for an order after notice.

30 **42. POD designation.** "POD designation" has the same meaning as in section
31 6-201, subsection 8.

32 **43. Proceeding.** "Proceeding" includes any civil action in any court of competent
33 jurisdiction.

34 **44. Property.** "Property" means anything that may be the subject of ownership and
35 includes both real and personal property or any interest therein.

1 **45. Protected person.** "Protected person" means a minor or other individual for
2 whom a conservator has been appointed or other protective order has been made.

3 **46. Protective proceeding.** "Protective proceeding" means a proceeding under
4 Article 5, Part 5.

5 **47. Record.** "Record" means information that is inscribed on a tangible medium or
6 that is stored in an electronic or other medium and is retrievable in perceivable form.

7 **48. Register.** "Register" means the official of the court elected or appointed as
8 provided in section 1-501 or any other person performing the functions of register as
9 provided in Part 5.

10 **49. Registered domestic partners.** "Registered domestic partners" means domestic
11 partners who are registered in accordance with Title 22, section 2710.

12 **50. Security.** "Security" includes any note, stock, treasury stock, bond, debenture,
13 evidence of indebtedness, certificate of interest or participation in an oil, gas or mining
14 title or lease or in payments out of production under such a title or lease, collateral trust
15 certificate, transferable share, voting trust certificate or, in general, any interest or
16 instrument commonly known as a security, or any certificate of interest or participation,
17 any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or
18 right to subscribe to or purchase, any such security.

19 **51. Settlement.** "Settlement," in reference to a decedent's estate, includes the full
20 process of administration, distribution and closing.

21 **52. Sign.** "Sign" means with present intent to authenticate or adopt a record other
22 than a will:

23 A. To execute or adopt a tangible symbol; or

24 B. To attach to or logically associate with the record an electronic symbol, sound or
25 process.

26 **53. Special administrator.** "Special administrator" means a personal representative
27 as described by sections 3-614 to 3-618.

28 **54. Spouse.** "Spouse" means an individual who is lawfully married and includes
29 registered domestic partners and individuals who are in a legal union that was validly
30 formed in any state or jurisdiction and that provides substantially the same rights, benefits
31 and responsibilities as a marriage.

32 **55. State.** "State" means a state of the United States, the District of Columbia, the
33 Commonwealth of Puerto Rico or any territory or insular possession subject to the
34 jurisdiction of the United States.

35 **56. Successor personal representative.** "Successor personal representative" means
36 a personal representative, other than a special administrator, who is appointed to succeed
37 a previously appointed personal representative.

1 **1. Domiciled in the State.** The affairs and estates of decedents, missing persons and
2 persons to be protected who are domiciled in this State;

3 **2. Nonresidents.** The property of nonresidents located in this State or property
4 coming into the control of a fiduciary who is subject to the laws of this State;

5 **3. Persons without capacity.** Incapacitated persons and minors in this State;

6 **4. Survivorship.** Survivorship and related accounts in this State; and

7 **5. Trusts.** Trusts subject to administration in this State.

8 **§1-302. Subject matter jurisdiction**

9 **1. Subject matter jurisdiction.** To the full extent permitted by the laws of the State,
10 the court has jurisdiction over all subject matter relating to:

11 **A.** The estates of decedents, including the construction of wills and determination of
12 heirs and successors of decedents, and estates of protected persons;

13 **B.** The protection of minors and incapacitated persons; and

14 **C.** Trusts.

15 **2. Court authority.** The court has full power to make orders, judgments and
16 decrees and take all other action necessary and proper to administer justice in the matters
17 that come before it.

18 **3. Protective and guardianship proceedings.** The court has jurisdiction over
19 protective proceedings and guardianship proceedings.

20 **4. Consolidation.** If both guardianship and protective proceedings as to the same
21 person are commenced or pending in the same court, the proceedings may be
22 consolidated.

23 **§1-303. Venue; multiple proceedings; transfer**

24 **1. Court where proceeding first commenced.** If a proceeding under this Code
25 could be maintained in more than one court in this State, the court in which the
26 proceeding is first commenced has the exclusive right to proceed.

27 **2. Multiple proceedings.** If proceedings concerning the same estate, protected
28 person, ward or trust are commenced in more than one court of this State, the court in
29 which the proceeding was first commenced shall continue to hear the matter, and the
30 other courts shall hold the matter in abeyance until the question of venue is decided. If
31 the ruling court determines that venue is properly in another court, it shall transfer the
32 proceeding to the other court.

33 **3. Transfer in the interest of justice.** If a court finds that in the interest of justice a
34 proceeding or a file should be located in another court of this State, the court making the
35 finding may transfer the proceeding or file to the other court.

1 **§1-304. Rule-making power**

2 **1. Rules.** The Supreme Judicial Court may prescribe by general rules the forms,
3 practice and procedure, including rules of evidence, to be followed in all proceedings
4 under this Code and all appeals from such proceedings. The rules must be consistent with
5 the provisions of this Code and may not abridge, enlarge or modify any substantive right.

6 **2. Laws inconsistent with rules.** After the effective date of the rules adopted or
7 amended under subsection 1, all laws in conflict with those rules are of no further force or
8 effect, except that in the event of a conflict with a provision of this Code, the Code
9 provision prevails.

10 **§1-305. Records and certified copies; judicial supervision**

11 The register shall maintain records and files and provide copies of documents as
12 provided in sections 1-501 to 1-511 and further records and copies as the Supreme
13 Judicial Court may by rule provide. The register is subject to the supervision and
14 authority of the judge of the court in which the register serves.

15 **§1-306. No jury trial; removal**

16 **1. No jury trial.** In any proceeding under this Code, the court shall sit without a
17 jury.

18 **2. Removal to Superior Court for jury trial.** Upon timely demand by any party,
19 any proceeding not within the exclusive jurisdiction of the court may be removed for trial
20 to the Superior Court under the procedures the Supreme Judicial Court provides by rule.

21 **§1-307. Register; powers**

22 The register has the power to probate wills, appoint personal representatives as
23 provided in sections 3-302 and 3-307 and perform other duties set out in this Code. The
24 acts and orders that may be performed by the register under this Code may also be
25 performed by a judge of the court or by a deputy register appointed under the provisions
26 of section 1-506.

27 **§1-308. Appeals**

28 Appeals from all final judgments, orders and decrees of the court may be taken to the
29 Supreme Judicial Court, sitting as the law court, as in other civil actions.

30 **§1-309. Judges**

31 A judge of the court must be chosen and shall serve as provided in Title 4, sections
32 301 to 312.

33 **§1-310. Oath or affirmation on filed documents**

34 Except as otherwise specifically provided in this Code or by rule, every document
35 filed with the court under this Code, including applications, petitions and demands for
36 notice, is deemed to include an oath, affirmation or statement to the effect that its

1 representations are true as far as the person executing or filing it knows or is informed.
2 Deliberate falsification may subject the person executing or filing the document to
3 penalties for perjury.

4 **PART 4**

5 **NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND**
6 **OTHER MATTERS**

7 **§1-401. Notice**

8 Whenever notice of any proceeding or any hearing is required under this Code, it
9 must be given to any interested person in the manner the Supreme Judicial Court provides
10 by rule. Each notice must include notification of any right to contest or appeal and may
11 be proved by the filing of an affidavit of notice.

12 **§1-402. Notice; waiver**

13 A person, including a guardian ad litem, conservator or other fiduciary, may waive
14 notice in the manner the Supreme Judicial Court provides by rule.

15 **§1-403. Pleadings; when parties bound by others; notice**

16 In formal proceedings involving trusts or estates of decedents, minors, protected
17 persons or incapacitated persons, and in judicially supervised settlements, the following
18 provisions apply.

19 **1. Pleadings.** Interests to be affected must be described in pleadings that give
20 reasonable information to owners by name or class, by reference to the instrument
21 creating the interests or in some other appropriate manner.

22 **2. Orders binding another person.** A person is bound by an order binding another
23 person in the following cases.

24 A. An order binding the sole holder or all coholders of a power of revocation or a
25 presently exercisable general power of appointment, including one in the form of a
26 power of amendment, binds other persons to the extent their interests, as objects or
27 takers in default or otherwise, are subject to the power.

28 B. To the extent there is no conflict of interest between them or among persons
29 represented:

30 (1) An order binding a conservator binds the person whose estate the conservator
31 controls;

32 (2) An order binding a guardian binds the ward if no conservator of the ward's
33 estate has been appointed;

34 (3) An order binding a trustee binds beneficiaries of the trust in proceedings to
35 probate a will establishing or adding to a trust, in proceedings to review the acts
36 or accounts of a prior fiduciary and in proceedings involving creditors or other
37 3rd parties;

1 commissioners at the next meeting for approval. After the bond is approved, the county
2 commissioners shall retain a copy of the bond and deliver the original bond to the
3 register, who shall deliver the original bond to the treasurer of the county within 10 days
4 after the bond's approval. Surety and fidelity insurance coverage provided by a public
5 sector self-funded risk pool organized pursuant to Title 30-A, section 2253 in the sum
6 ordered by the commissioners is deemed to comply with the requirements of this section.

7 **3. Vacancies.** Vacancies caused by death, resignation, removal from the county,
8 permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other
9 reason must be filled as provided in the Constitution of Maine. In the case of a vacancy
10 in the term of a register who was nominated by primary election before the general
11 election, the register appointed by the Governor to fill the vacancy until a successor is
12 chosen at election must be enrolled in the same political party as the register whose term
13 is vacant. In making the appointment, the Governor shall choose from any
14 recommendations submitted to the Governor by the county committee of the political
15 party from which the appointment is to be made.

16 **4. Salary.** A register is entitled to receive an annual salary as established by the
17 register's county pursuant to Title 30-A, chapter 3. The salary of the register must be in
18 full compensation for the performance of all duties required of the register.

19 **5. Copies and fees.** Registers may make copies of wills, accounts, inventories,
20 petitions and decrees and furnish the copies to the persons requesting the copies and may
21 charge a reasonable fee for that service, which is considered a fee for the use of the
22 county. Fees for exemplified copies of the records of the probate of wills and the
23 granting of administrations, guardianships and conservatorships; fees for copies of
24 petitions and orders of notice for personal service; fees for appeal copies; and the
25 statutory fees for abstracts and copies of the waivers of wills and other copies required to
26 be recorded in the registry of deeds are considered official fees for the use of the county.
27 This subsection may not be construed to change or repeal any provisions of law requiring
28 the furnishing of certain copies without charge.

29 **§1-502. Condition of bond**

30 A register's bond is conditioned on the register's accounting, according to law, for all
31 fees received by or payable to the register by virtue of the office and the register's paying
32 the fees to the county treasurer by the 15th day of each month following the month in
33 which the fees were collected, as provided by law; the register's keeping, seasonably and
34 in good order, the records of the court; the register's making and keeping correct and
35 convenient indices of the records; and the register's faithfully discharging all other duties
36 of the office. If a register forfeits the register's bond, the register is disqualified from
37 holding office. The register's failure to complete the register's records for more than 6
38 months at any time, except in cases of sickness or extraordinary casualty, constitutes a
39 forfeiture.

40 **§1-503. Duties; records; binding of papers; facsimile signature**

41 **1. Duties.** Registers are responsible for the care and custody of all files, papers and
42 books belonging to the probate office and shall duly record all wills probated formally or

1 informally, letters of authority of a personal representative, guardianships or
2 conservatorships issued, bonds approved, accounts filed or allowed, all informal
3 applications and findings, all petitions, decrees, orders or judgments of the judge,
4 including all petitions, decrees or orders relating to adoptions and changes of names and
5 other matters, as the judge directs.

6 **2. Records.** Registers shall keep a docket of all probate cases and, under the
7 appropriate heading of each case, make entries of each motion, order, decree and
8 proceeding so that at all times the docket shows the exact condition of each case. A
9 register may act as an auditor of accounts when requested to do so by the judge, and the
10 judge's decision is final unless appealed in the same manner as other probate appeals.
11 The records may be attested by the volume, and it is considered to be a sufficient
12 attestation of those records when each volume bears the attest with the written signature
13 of the register or other person authorized by law to attest those records.

14 **3. Binding of papers.** A register may bind in volumes of convenient size original
15 inventories and accounts filed in the register's office and, when bound and indexed, those
16 inventories and accounts are deemed to be recorded in all cases in which the law requires
17 a record to be made and no further record is required.

18 **4. Facsimile signature.** A facsimile of the signature of the register or deputy
19 register imprinted at the register's or deputy register's direction upon any instrument,
20 certification or copy that is customarily certified by the register or deputy register or
21 recorded in the probate office has the same validity as the register's or deputy register's
22 signature.

23 **§1-504. Certification of wills; appointments of personal representatives; elective**
24 **share petitions involving real estate**

25 **1. Duty of register.** The register shall prepare and submit a certification in
26 accordance with subsection 2 within 30 days after the date on which:

27 A. A will has been proved or allowed;

28 B. An appointment of a personal representative has been made upon an assumption
29 of intestate status and the petition for appointment indicates that the decedent owned
30 real estate; or

31 C. A petition for an elective share has been filed and the will or the petition upon
32 which the appointment of a personal representative was granted indicates that the
33 decedent owned real estate.

34 **2. Certification.** When required by subsection 1, the register shall certify to the
35 register of deeds in the county where any affected real estate is situated a true copy of the
36 portion of the will that devises the real estate, an abstract of the appointment of the
37 personal representative or a true copy or abstract of the petition for an elective share.
38 Each certification must also include:

39 A. A description of the real estate derived from the probated will or the petition upon
40 which the appointment of the personal representative was made;

- 1 B. The name of the decedent;
- 2 C. The name or names of the devisees or heirs; and
- 3 D. In the case of a will, the date of allowance of the will and an indication whether
- 4 the will was probated formally or informally.

5 **3. Additional certification if will previously probated informally.** If a will was
6 informally probated and subsequently formally probated or denied probate in formal
7 proceedings, the register shall certify the formal probate or formal denial of probate to the
8 register of deeds to which the prior informally probated will was certified, setting forth
9 the date of the formal probate or denial. A register of deeds that receives a certification
10 pursuant to this subsection shall indicate on the certification the time of receipt and record
11 the certification in the same manner as a deed of real estate.

12 **§1-505. Notice to beneficiaries; furnishing of copies**

13 A register shall, within 30 days after a will is probated, notify by mail all
14 beneficiaries under the will that devises have been made to them, stating the name of the
15 testator and the name of the personal representative, if a personal representative has been
16 appointed at the time this notification is sent. Beneficiaries in a will may, upon
17 application to the register, be furnished with a copy of the probated will upon payment of
18 a fee of \$1 per page.

19 **§1-506. Deputy register of probate**

20 A register may appoint a deputy register for the county, subject to the requirements of
21 Title 30-A, section 501. The deputy register may perform any of the duties prescribed by
22 law to be performed by the register. The signature of the deputy register has the same
23 force and effect as the signature of the register. The deputy register shall give bond to the
24 county for the faithful discharge of the deputy register's duties in the same sum and in the
25 same manner as the register. The deputy register shall act as register in the event of a
26 vacancy or absence of the register, until the register resumes the register's duties or
27 another person is qualified as register. The deputy register is entitled to receive an annual
28 salary established by the register and approved by the county commissioners.

29 In the case of an absence of the register in a county where a deputy register has not
30 been appointed or in the case of a vacancy in the office of register due to death,
31 resignation or any other cause, the judge shall appoint a suitable person to act as register
32 pro tempore until the register resumes the duties of office or another person is qualified as
33 register. A register pro tempore must be sworn and, if the judge requires it, shall give
34 bond as in the case of the register.

35 **§1-507. Inspection of register's conduct of office**

36 A judge shall constantly inspect the conduct of the register with respect to the
37 register's records and duties and give information in writing of any breach of the register's
38 bond to the treasurer of the county, who shall bring a civil action. Any funds recovered
39 in the civil action must be applied toward the expenses of completing the records of the
40 register under the direction of the judge and the surplus, if any, must inure to the county.

1 If the funds are insufficient, the treasurer may recover the deficiency from the register in
2 a civil action.

3 **§1-508. Register incapable or neglects duties**

4 When a register is unable to perform or neglects the duties of the office, the judge
5 shall certify the register's inability or neglect to the county treasurer, the time of the
6 commencement and termination of the inability or neglect and the name of the person
7 who has performed the duties for that time period. The treasurer shall pay the person
8 named by the judge a salary in proportion to the time that the person has performed the
9 duties of the register and the amount must be deducted from the register's salary.

10 **§1-509. Records in case of vacancy**

11 When there is a vacancy in the office of register and the office's records are
12 incomplete, the records may be completed and certified by the person appointed to act as
13 register or by the register's successor.

14 **§1-510. Register or court employee; prohibited activities**

15 **1. Prohibited activities.** A register may not:

16 A. Be an attorney or counselor in or out of court in an action or matter pending in the
17 court of which the register is register or in an appeal in such action or matter;

18 B. Be an administrator, guardian, commissioner of insolvency, appraiser or divider
19 of an estate, in a case within the jurisdiction of the court of which the register is
20 register, except as provided in Title 4, section 307, or be in any manner interested in
21 the fees and emoluments arising from such an estate in that capacity; or

22 C. In violation of this section, commence or conduct, either personally or by agent or
23 clerk, any matter, petition, process or proceeding in the court of which the register is
24 register.

25 **2. Assistance in drafting.** Except as otherwise provided in this section, a register
26 may not draft or aid in drafting documents or paper that the register is by law required to
27 record in full or in part. A register may aid in drafting applications in informal
28 proceedings, petitions or sworn statements relating to the closing of decedents' estates
29 that have not been contested prior to closing, applications for change of name and
30 petitions for guardians of minors. A register or an employee of a court may not charge
31 fees or accept anything of value for assisting in the drafting of documents to be used or
32 filed in the court of which the person is the register or an employee.

33 **3. Penalties.** The following penalties apply to violations of this section.

34 A. A register who violates subsection 1 commits a Class E crime. Violation of
35 subsection 1 is a strict liability crime as defined in Title 17-A, section 34, subsection
36 4-A.

37 B. A register or employee of a court who violates subsection 2 is subject to a civil
38 penalty of not more than \$100, to be recovered by a complainant in a civil action for
39 the complainant's benefit or by civil action for the benefit of the county.

1 **§1-511. Fees for approved blanks and forms**

2 For all approved blanks, forms or schedule paper required in court proceedings, the
3 register shall charge fees, which must be set by the register and approved by the county
4 commissioners, so as to avoid incurring a loss to the county for such services. The
5 register shall pay such fees to the county treasurer for the use and benefit of the county.

6 **PART 6**
7 **COSTS AND FEES**

8 **§1-601. Costs in contested cases**

9 In contested probate cases and appeals, costs may be allowed to either party,
10 including reasonable witness fees, costs of depositions, hospital records or medical
11 reports and attorney's fees, to be paid to either or both parties out of the estate in
12 controversy, as justice requires. In cases in which a will is contested on the grounds of
13 undue influence or mental capacity, attorney's fees and costs may not be allowed to a
14 party who unsuccessfully contests the will.

15 **§1-602. Filing and certification fees**

16 The person making the request shall pay the register the following fees for filing or
17 certifying documents.

18 **1. Certification.** For making and certifying to the register of deeds copies of devises
19 of real estate, abstracts of petitions for appointment of a personal representative or for an
20 elective share and any other document for which certification is required, the fee is \$15
21 plus the fee for recording as provided by Title 33, section 751, except as otherwise
22 expressly provided by law. The fee must be paid by the personal representative,
23 petitioner or other person filing the document to be certified when the copy of the devise,
24 abstract, petition for elective share or other document for which certification is required is
25 requested. The register of probate shall deliver the certified document to the register of
26 deeds together with the fee for recording as provided by Title 33, section 751.

27 **2. Filing.** For receiving and entering each petition or application for all estates,
28 testate and intestate, including foreign estates, and the filing of a notice by a domiciliary
29 foreign personal representative, except for the filing of a successor personal
30 representative, when the value of the estate is:

- 31 A. \$10,000 and under, the fee is \$20;
- 32 B. \$10,001 to \$20,000, the fee is \$40;
- 33 C. \$20,001 to \$30,000, the fee is \$60;
- 34 D. \$30,001 to \$40,000, the fee is \$75;
- 35 E. \$40,001 to \$50,000, the fee is \$95;
- 36 F. \$50,001 to \$75,000, the fee is \$125;
- 37 G. \$75,001 to \$100,000, the fee is \$190;

- 1 H. \$100,001 to \$150,000, the fee is \$250;
2 I. \$150,001 to \$200,000, the fee is \$325;
3 J. \$200,001 to \$250,000, the fee is \$375;
4 K. \$250,001 to \$300,000, the fee is \$450;
5 L. \$300,001 to \$400,000, the fee is \$500;
6 M. \$400,001 to \$500,000, the fee is \$575;
7 N. \$500,001 to \$750,000, the fee is \$625;
8 O. \$750,001 to \$1,000,000, the fee is \$700;
9 P. \$1,000,001 to \$1,500,000, the fee is \$750;
10 Q. \$1,500,001 to \$2,000,000, the fee is \$875; or
11 R. More than \$2,000,000, the fee is \$950, and continuing in steps of \$100 for every
12 increase in value of \$500,000 or part thereof above \$2,500,000.
13 For filing a will for no probate, there is no charge.
14 For filing a will to be probated and without an appointment, the fee is \$15.
15 **3. Copies of court records.** For making copies from the records of the court, the fee
16 is \$1 for each page.
17 **4. Certificate of appointment.** For each certificate, under seal of the court, of the
18 appointment and qualification of a personal representative, guardian, conservator or
19 trustee, the fee is \$5, and for each double certificate, the fee is \$10.
20 **5. Petition for appointment as guardian.** For filing a petition for appointment as
21 guardian, the fee is \$50.
22 **6. Application for involuntary hospitalization.** For filing an application for
23 involuntary hospitalization, the fee is \$10.
24 **7. Petition for guardian and conservator.** For filing a joined petition for guardian
25 and conservator, the fee is \$75.
26 **8. Petition for appointment of conservator.** For filing a petition for appointment
27 of conservator, the fee is \$50.
28 **9. Petition for elective share.** For filing a petition for elective share, the fee is \$120.
29 **10. Subsequent informal appointments.** For all other subsequent informal
30 appointments, the fee is \$25.
31 **11. Other formal proceeding.** For filing any other formal proceeding, the fee is
32 \$25.

1 **§1-603. Registers to account monthly for fees**

2 A register shall account for each calendar month under oath to the county treasurer
3 for all fees received by the register or payable to the register by virtue of the office,
4 specifying the items, and shall pay the whole amount for each calendar month to the
5 treasurer of the county not later than the 15th day of the following month.

6 **§1-604. Expenses of partition**

7 When a partition of real estate is made by order of a judge, the interested parties shall
8 pay the expenses in proportion to their interests. When expenses accrue prior to the
9 closing order or statement of the personal representative of the deceased owner of such
10 real estate, the personal representative may pay the expenses from the personal
11 representative's account. In case of neglect or refusal to pay of any person liable to pay
12 such expenses, the judge may issue a warrant of distress against that person for the
13 amount due and costs of process.

14 **§1-605. Compensation of court reporters**

15 Court reporters appointed under Title 4, sections 751 to 756 shall, if a transcript is
16 requested by the court or a party, file the original transcript with the court and receive the
17 same compensation as provided by law for temporary court reporters as well as mileage
18 at the rate of 10¢ a mile.

19 Transcripts furnished for the files of the court must be paid for by the county in
20 which the court or examination is held at the rate prescribed by the Supreme Judicial
21 Court, after the reporter's bill has been allowed by the judge of the court in which the
22 services were rendered. In probate matters, the personal representative, conservator or
23 guardian shall, in each case out of the estate handled by that personal representative,
24 conservator or guardian, pay to the register for the county the amount of the reporter's
25 fees, giving the fees the same priority as provided in section 3-815 for other costs and
26 expenses of administration, or as otherwise provided for in the case of insolvent estates.
27 If the estate assets are not sufficient, the court may order payment by the county.

28 **§1-606. Court reporters to furnish copies**

29 Court reporters shall furnish correct typewritten copies of the oral testimony taken at
30 any hearing or examination upon request by any person and payment of transcript rates
31 prescribed by the Supreme Judicial Court.

32 **§1-607. Surcharge for restoration, storage and preservation of records**

33 **1. Surcharge.** In addition to any other fees required by law, a register shall collect a
34 surcharge of \$10 per petition, application or complaint, except for name changes, filed in
35 the court.

36 **2. Nonlapsing account.** The surcharge imposed in subsection 1 must be transferred
37 to the county treasurer, who shall deposit it in a separate, nonlapsing account within 30
38 days of receipt. Money in the account is not available for use as general revenue of the
39 county. Interest earned on the account must be credited to the account.

1 **PART 8**

2 **PROBATE AND TRUST LAW ADVISORY COMMISSION**

3 **§1-801. Commission established**

4 The Probate and Trust Law Advisory Commission, established in Title 5, section
5 12004-I, subsection 73-B and referred to in this Part as "the commission," is created for
6 the purpose of conducting a continuing study of the probate and trust laws of the State.

7 **1. Membership.** The commission is composed of 10 members who have experience
8 in practicing probate and trust law or are knowledgeable about probate and trust law. The
9 membership of the commission must include:

10 A. Two Probate Court Judges, appointed by the Chief Justice of the Supreme
11 Judicial Court;

12 B. One Superior Court Justice, appointed by the Chief Justice of the Supreme
13 Judicial Court;

14 C. Five members of the trusts and estates law section of the Maine State Bar
15 Association, appointed by the Chief Justice of the Supreme Judicial Court;

16 D. One member representing the interests of older people, appointed by the
17 Governor; and

18 E. The Attorney General or the Attorney General's designee.

19 **2. Terms.** A member is appointed for a term of 3 years and may be reappointed.

20 **3. Vacancies.** In the event of the death or resignation of a member, the appointing
21 authority under subsection 1 shall appoint a qualified person for the remainder of the
22 term.

23 **§1-802. Consultants; experts**

24 Whenever it considers appropriate, the commission may seek the advice of
25 consultants or experts, including representatives of the legislative and executive branches,
26 in fields related to the commission's duties.

27 **§1-803. Duties**

28 **1. Examine, evaluate and recommend.** The commission shall:

29 A. Examine this Title and Title 18-B and draft amendments that the commission
30 considers advisable;

31 B. Evaluate the operation of this Title and Title 18-B and recommend amendments
32 based on the evaluation;

33 C. Examine current laws pertaining to probate and trust laws and recommend
34 changes based on the examination; and

1 D. Examine any other aspects of the State's probate and trust laws, including
2 substantive, procedural and administrative matters, that the commission considers
3 relevant.

4 **2. Propose changes.** The commission may propose to the Legislature, at the start of
5 each session, changes in the probate and trust laws and in related provisions that the
6 commission considers appropriate.

7 **§1-804. Organization**

8 The Chief Justice of the Supreme Judicial Court shall notify all members of the
9 commission of the time and place of the first meeting of the commission. At that time the
10 commission shall organize, elect a chair, vice-chair and secretary-treasurer from its
11 membership and adopt rules governing the administration of the commission and its
12 affairs. The commission shall maintain financial records as required by the State Auditor.

13 **§1-805. Federal funds**

14 The commission may accept federal funds on behalf of the State.

15 **Maine Uniform Probate Code Comment (§1-101)**

16 This section does not constitute a substantive change to Maine law.

17 **Maine Uniform Probate Code Comment (§1-106)**

18 There are no counterparts to subsections 1, 4 and 6 in former Title 18-A.

19 **Maine Uniform Probate Code Comment (§1-107)**

20 This section does not retain the former Title 18-A, section 1-108 reference to
21 registration of a trust, due to the enactment of the Maine Uniform Trust Code and repeal
22 of former Title 18-A provisions regarding trust registration.

23 **Maine Uniform Probate Code Comment (§1-108)**

24 Section 1-108 was added to make it unnecessary in the future for the Legislature to
25 continue to amend the Maine Uniform Probate Code periodically to adjust certain dollar
26 amounts for inflation. This section provides for an automatic adjustment of each of the
27 listed dollar amounts annually.

28 **Maine Uniform Probate Code Comment (§1-109)**

29 This section retains the provision of former Title 18-A, section 1-110 as a
30 nonuniform provision. Former Title 18-A, section 1-109 was repealed for consistency
31 with the Uniform Probate Code.

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Maine Uniform Probate Code Comment (§1-110)

The Uniform Probate Code has no provision concerning powers of fiduciaries relating to compliance with environmental law. This section retains the provisions of former Title 18-A, section 1-111 as a nonuniform provision.

Maine Uniform Probate Code Comment (§1-111)

The Uniform Probate Code has no provision concerning guardians ad litem. This section retains the provisions of former Title 18-A, section 1-112 as a nonuniform provision.

Maine Uniform Probate Code Comment (§1-201)

This section includes several definitions from former Title 18-A that do not appear in the Uniform Probate Code.

Maine Uniform Probate Code Comment (§1-302)

This section does not constitute a substantive change to Maine law.

ARTICLE 2

INTESTACY, WILLS AND DONATIVE TRANSFERS

PART 1

INTESTATE SUCCESSION

SUBPART 1

GENERAL PROVISIONS

§2-101. Intestate estate

1. Intestate succession. Any part of a decedent’s estate not effectively disposed of by will passes by intestate succession to the decedent’s heirs as prescribed in this Code, except as modified by the decedent’s will.

2. Will expressly excludes or limits. A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent’s intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the individual’s or member’s intestate share.

1 **§2-102. Share of spouse**

2 The intestate share of a decedent's surviving spouse is:

3 **1. No descendant or parent.** The entire intestate estate if:

4 A. No descendant or parent of the decedent survives the decedent; or

5 B. All of the decedent's surviving descendants are also descendants of the surviving
6 spouse and there is no other descendant of the surviving spouse who survives the
7 decedent;

8 **2. No descendant but parent survives.** The first \$300,000, plus 3/4 of any balance
9 of the intestate estate, if no descendant of the decedent survives the decedent, but a parent
10 of the decedent survives the decedent;

11 **3. Descendants of both decedent and spouse, just spouse.** The first \$100,000, plus
12 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are
13 also descendants of the surviving spouse and the surviving spouse has one or more
14 surviving descendants who are not descendants of the decedent; and

15 **4. Descendants of decedent, not spouse.** One-half of the intestate estate, if there
16 are surviving descendants one or more of whom are not descendants of the surviving
17 spouse.

18 **§2-103. Share of heirs other than surviving spouse**

19 **1. Share of heirs other than surviving spouse; order.** Any part of the intestate
20 estate not passing to a decedent's surviving spouse under section 2-102, or the entire
21 intestate estate if there is no surviving spouse, passes in the following order to the
22 individuals who survive the decedent:

23 A. To the decedent's descendants per capita at each generation;

24 B. If there is no surviving descendant, to the decedent's parents equally if both
25 survive or to the surviving parent if only one survives;

26 C. If there is no surviving descendant or parent, to the descendants of the decedent's
27 parents or either of them per capita at each generation;

28 D. If there is no surviving descendant, parent or descendant of a parent, but the
29 decedent is survived on both the paternal and maternal sides by one or more
30 grandparents or descendants of grandparents:

31 (1) Half to the decedent's paternal grandparents equally if both survive, to the
32 surviving paternal grandparent if only one survives or to the descendants of the
33 decedent's paternal grandparents or either of them if both are deceased, to be
34 distributed to the descendants per capita at each generation; and

35 (2) Half to the decedent's maternal grandparents equally if both survive, to the
36 surviving maternal grandparent if only one survives or to the descendants of the
37 decedent's maternal grandparents or either of them if both are deceased, to be
38 distributed to the descendants per capita at each generation;

1 E. If there is no surviving descendant, parent or descendant of a parent, but the
2 decedent is survived by one or more grandparents or descendants of grandparents on
3 the paternal but not the maternal side, or on the maternal but not the paternal side, to
4 the decedent's relatives on the side with one or more surviving members in the
5 manner described in paragraph D; and

6 F. If there is no surviving descendant, parent or descendant of a parent, grandparent
7 or descendant of a grandparent, but the decedent is survived by one or more great-
8 grandparents or descendants of great-grandparents, half of the estate passes to the
9 paternal great-grandparents who survive, or to the descendants of the paternal great-
10 grandparents if all are deceased, to be distributed per capita at each generation as
11 described in section 2-106; and the other half passes to the maternal relatives in the
12 same manner, but if there is no surviving great-grandparent or descendant of a great-
13 grandparent on either the paternal or maternal side, the entire estate passes to the
14 relatives on the other side in the same manner as the half.

15 **2. No takers under subsection 1.** If there is no taker under subsection 1, but the
16 decedent has:

17 A. One deceased spouse who has one or more descendants who survive the decedent,
18 the estate or part thereof passes to that spouse's descendants per capita at each
19 generation; or

20 B. More than one deceased spouse who has one or more descendants who survive
21 the decedent, an equal share of the estate or part thereof passes to each set of
22 descendants per capita at each generation.

23 **§2-104. Requirement of survival by 120 hours; individual in gestation**

24 **1. Applicable provisions.** For purposes of intestate succession, homestead
25 allowance and exempt property, and except as otherwise provided in subsection 2, the
26 provisions of this subsection apply.

27 A. An individual born before a decedent's death who fails to survive the decedent by
28 120 hours is deemed to have predeceased the decedent. If it is not established by
29 clear and convincing evidence that an individual born before the decedent's death
30 survived the decedent by 120 hours, the individual is deemed to have failed to survive
31 for the required period.

32 B. An individual in gestation at a decedent's death is deemed to be living at the
33 decedent's death if the individual lives 120 hours after birth. If it is not established
34 by clear and convincing evidence that an individual in gestation at the decedent's
35 death lived 120 hours after birth, the individual is deemed to have failed to survive
36 for the required period.

37 **2. Not applicable if results in escheat.** This section does not apply if its application
38 would cause the estate to pass to the State under section 2-105.

39 **§2-105. No taker**

40 If there is no taker under the provisions of this Article, the intestate estate passes to
41 the State, except that an amount of funds included in the estate up to the total amount of

1 restitution paid to the decedent pursuant to a court order for a crime of which the
2 decedent was the victim passes to the Elder Victims Restitution Fund established in Title
3 34-A, section 1214-A.

4 **§2-106. Per capita at each generation**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Deceased descendant," "deceased parent" or "deceased grandparent" means a
8 descendant, parent or grandparent, respectively, who either predeceased the decedent
9 or is deemed to have predeceased the decedent under section 2-104.

10 B. "Surviving descendant" means a descendant who neither predeceased the
11 decedent nor is deemed to have predeceased the decedent under section 2-104.

12 **2. Per capita at each generation; decedent's descendants.** If, under section 2-103,
13 subsection 1, paragraph A, a decedent's intestate estate or a part thereof passes per capita
14 at each generation to the decedent's descendants, the estate or part thereof is divided into
15 as many equal shares as there are:

16 A. Surviving descendants in the generation nearest to the decedent that contains one
17 or more surviving descendants; and

18 B. Deceased descendants in the same generation identified in paragraph A who left
19 surviving descendants, if any.

20 Each surviving descendant in the nearest generation is allocated one share. The
21 remaining shares, if any, are combined and then divided in the same manner among the
22 surviving descendants of the deceased descendants as if the surviving descendants who
23 were allocated a share and their surviving descendants had predeceased the decedent.

24 **3. Per capita at each generation; descendants of decedent's parents,**
25 **grandparents.** If, under section 2-103, subsection 1, paragraph C or D, a decedent's
26 intestate estate or a part thereof passes per capita at each generation to the descendants of
27 the decedent's deceased parents or either of them or to the descendants of the decedent's
28 deceased paternal or maternal grandparents or either of them, the estate or part thereof is
29 divided into as many equal shares as there are:

30 A. Surviving descendants in the generation nearest the deceased parents or either of
31 them, or the deceased grandparents or either of them, that contains one or more
32 surviving descendants; and

33 B. Deceased descendants in the same generation identified in paragraph A who left
34 surviving descendants, if any.

35 Each surviving descendant in the nearest generation is allocated one share. The
36 remaining shares, if any, are combined and then divided in the same manner among the
37 surviving descendants of the deceased descendants as if the surviving descendants who
38 were allocated a share and their surviving descendants had predeceased the decedent.

1 **§2-107. Kindred of half blood**

2 Relatives of the half blood inherit the same share they would inherit if they were of
3 the whole blood.

4 **§2-108. Advancements**

5 **1. Gifts treated as advancements.** If an individual dies intestate as to all or a
6 portion of that individual's estate, property the decedent gave during the decedent's
7 lifetime to an individual who, at the decedent's death, is an heir is treated as an
8 advancement against the heir's intestate share only if:

9 A. The decedent declared in a contemporaneous writing or the heir acknowledged in
10 writing that the gift is an advancement; or

11 B. The decedent's contemporaneous writing or the heir's written acknowledgment
12 otherwise indicates that the gift is to be taken into account in computing the division
13 and distribution of the decedent's intestate estate.

14 **2. Valuation of advanced property.** For purposes of subsection 1, property
15 advanced is valued as of the time the heir came into possession or enjoyment of the
16 property or as of the time of the decedent's death, whichever first occurs.

17 **3. Recipient's failure to survive decedent.** If the recipient of the property under
18 subsection 1 fails to survive the decedent, the property is not taken into account in
19 computing the division and distribution of the decedent's intestate estate, unless the
20 decedent's contemporaneous writing provides otherwise.

21 **§2-109. Debts to decedent**

22 A debt owed to the decedent is not charged against the intestate share of any
23 individual except the debtor. If the debtor fails to survive the decedent, the debt is not
24 taken into account in computing the intestate share of the debtor's descendants.

25 **§2-110. Alienage**

26 An individual is not disqualified to take as an heir because the individual or an
27 individual through whom the individual claims is or has been an alien.

28 **§2-111. Dower and curtesy abolished**

29 The estates of dower and curtesy are abolished.

30 **§2-112. Individuals related to decedent through 2 lines**

31 An individual who is related to the decedent through 2 lines of relationship is entitled
32 to only a single share based on the relationship that would entitle the individual to the
33 larger share. In cases where such an heir would take equal shares, the individual is
34 entitled to the equivalent of a single share. The court shall equitably apportion the
35 amount equivalent in value to the share denied such heir by the provisions of this section.

1 **§2-113. Parent barred from inheriting**

2 **1. Parent barred from inheriting through child.** A parent is barred from inheriting
3 from or through a child of the parent if:

4 A. The parent's parental rights were terminated and the parent-child relationship was
5 not judicially reestablished; or

6 B. The child died before reaching 18 years of age and there is clear and convincing
7 evidence that immediately before the child's death the parental rights of the parent
8 could have been terminated under the laws of this State other than Articles 1 to 8 on
9 the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of
10 the parent toward the child.

11 **2. Treated as predeceased child.** For the purpose of intestate succession from or
12 through a deceased child, a parent who is barred from inheriting under this section is
13 treated as if the parent predeceased the child.

14 **SUBPART 2**

15 **PARENT-CHILD RELATIONSHIP**

16 **§2-115. Definitions**

17 As used in this subpart, unless the context otherwise indicates, the following terms
18 have the following meanings.

19 **1. Adoptee.** "Adoptee" means an individual who is adopted.

20 **2. Assisted reproduction.** "Assisted reproduction" means a method of causing
21 pregnancy other than sexual intercourse.

22 **3. Divorce.** "Divorce" includes an annulment, dissolution and declaration of
23 invalidity of a marriage.

24 **4. Function as a parent of the child.** "Function as a parent of the child" means to
25 behave toward a child in a manner consistent with being the child's parent and to perform
26 functions that are customarily performed by a parent, including fulfilling parental
27 responsibilities toward the child, recognizing or holding out the child as the individual's
28 child, materially participating in the child's upbringing and residing with the child in the
29 same household as a regular member of that household.

30 **5. Genetic father.** "Genetic father" means the man whose sperm fertilized the egg
31 of a child's genetic mother. If the father-child relationship is established under the
32 presumption of paternity under Title 19-A, chapter 61, "genetic father" means only the
33 man for whom that relationship is established.

34 **6. Genetic mother.** "Genetic mother" means the woman whose egg was fertilized
35 by the sperm of a child's genetic father.

1 **7. Genetic parent.** "Genetic parent" means a child's genetic father or genetic
2 mother.

3 **8. Incapacity.** "Incapacity" means the inability of an individual to function as a
4 parent of a child because of the individual's physical or mental condition.

5 **9. Relative.** "Relative" means a grandparent or a descendant of a grandparent.

6 **§2-116. Effect of parent-child relationship**

7 Except as otherwise provided in section 2-119, subsections 2 to 5, if a parent-child
8 relationship exists or is established under this subpart or under Title 19-A, chapter 61, the
9 parent is a parent of the child and the child is a child of the parent for the purpose of
10 intestate succession.

11 **§2-117. No distinction based on marital status**

12 Except as otherwise provided in sections 2-113, 2-119, 2-120 and 2-121, a parent-
13 child relationship exists between a child and the child's genetic parents, regardless of the
14 parents' marital status.

15 **§2-118. Adoptee and adoptee's adoptive parent or parents**

16 **1. Parent-child relationship.** A parent-child relationship exists between an adoptee
17 and the adoptee's adoptive parent or parents.

18 **2. Treated as adopted.** For purposes of subsection 1:

19 A. An individual who is in the process of being adopted by a married couple when
20 one of the spouses dies is treated as adopted by the deceased spouse if the adoption is
21 subsequently granted to the decedent's surviving spouse; and

22 B. A child of a genetic parent who is in the process of being adopted by a genetic
23 parent's spouse when the spouse dies is treated as adopted by the deceased spouse if
24 the genetic parent survives the deceased spouse by 120 hours.

25 **3. Adoption by spouse.** If, after a parent-child relationship is established between a
26 child of assisted reproduction and a parent under section 2-120 or between a gestational
27 child and a parent under section 2-121, the child is in the process of being adopted by the
28 parent's spouse when that spouse dies, the child is treated as adopted by the deceased
29 spouse for the purpose of subsection 2, paragraph B.

30 **§2-119. Adoptee and adoptee's genetic parents**

31 **1. No parent-child relationship.** Except as otherwise provided in subsections 2 to
32 5, a parent-child relationship does not exist between an adoptee and the adoptee's genetic
33 parents.

34 **2. Adopted by spouse of genetic parent.** A parent-child relationship exists between
35 an individual who is adopted by the spouse of either genetic parent and:

36 A. The genetic parent whose spouse adopted the individual; and

1 B. The other genetic parent, but only for the purpose of the right of the adoptee or a
2 descendant of the adoptee to inherit from or through the other genetic parent.

3 **3. Adopted by relative of genetic parent.** A parent-child relationship exists
4 between both genetic parents and an individual who is adopted by a relative of a genetic
5 parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for
6 the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or
7 through either genetic parent.

8 **4. Adoption after death of genetic parents.** A parent-child relationship exists
9 between both genetic parents and an individual who is adopted after the death of both
10 genetic parents, but only for the purpose of the right of the adoptee or a descendant of the
11 adoptee to inherit through either genetic parent.

12 **5. Child of assisted reproduction or gestational agreement.** If, after a parent-
13 child relationship is established between a child of assisted reproduction and a parent or
14 parents under section 2-120 or between a gestational child and a parent or parents under
15 section 2-121, the child is adopted by another or others, the child's parent or parents under
16 section 2-120 or 2-121 are treated as the child's genetic parent or parents for the purpose
17 of this section.

18 **6. Inheritance in adoption decree.** Regardless of whether a parent-child
19 relationship is established or not, an adoptee inherits from the adoptee's genetic parents if
20 so provided in the adoption decree.

21 **§2-120. Child conceived by assisted reproduction other than child born to**
22 **gestational carrier or child born to surrogate**

23 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
24 following terms have the following meanings.

25 A. "Birth mother" means a woman, other than a gestational carrier or a surrogate
26 under section 2-121, who gives birth to a child of assisted reproduction. "Birth
27 mother" is not limited to a woman who is the child's genetic mother.

28 B. "Child of assisted reproduction" means a child conceived by means of assisted
29 reproduction by a woman other than a gestational carrier or surrogate under section
30 2-121.

31 C. "Third-party donor" means an individual who produces eggs or sperm used for
32 assisted reproduction, whether or not for consideration. "Third-party donor" does not
33 include:

34 (1) A husband who provides sperm, or a wife who provides eggs, that are used
35 for assisted reproduction by the wife;

36 (2) The birth mother; or

37 (3) An individual who has been determined under subsection 5 or 6 to have a
38 parent-child relationship with a child of assisted reproduction.

1 **2. Child of assisted reproduction and 3rd-party donor.** A parent-child
2 relationship does not exist between a child of assisted reproduction and a 3rd-party donor.

3 **3. Child of assisted reproduction and birth mother.** A parent-child relationship
4 exists between a child of assisted reproduction and the child's birth mother.

5 **4. Child of assisted reproduction and husband of birth mother.** Except as
6 otherwise provided in subsections 1 and 11, a parent-child relationship exists between a
7 child of assisted reproduction and the husband of the child's birth mother if the husband
8 provided the sperm that the birth mother used during his lifetime for assisted
9 reproduction.

10 **5. Birth certificate presumptively establishes relationship.** A birth certificate
11 identifying an individual other than the birth mother as the other parent of a child of
12 assisted reproduction presumptively establishes a parent-child relationship between the
13 child and that individual.

14 **6. Child of assisted reproduction and intended parent.** Except as otherwise
15 provided in subsections 8, 10 and 11, and unless a parent-child relationship is established
16 under subsection 4 or 5, a parent-child relationship exists between a child of assisted
17 reproduction and an individual other than the birth mother who consented to assisted
18 reproduction by the birth mother with intent to be treated as the other parent of the child.
19 Consent to assisted reproduction by the birth mother with intent to be treated as the other
20 parent of the child is established if the individual:

21 **A. Before or after the child's birth, signed a record that, considering all the facts and**
22 **circumstances, evidences the individual's consent; or**

23 **B. In the absence of a signed record under paragraph A:**

24 **(1) Functioned as a parent of the child no later than 2 years after the child's birth;**

25 **(2) Intended to function as a parent of the child no later than 2 years after the**
26 **child's birth but was prevented from carrying out that intent by death, incapacity**
27 **or other circumstances; or**

28 **(3) Intended to be treated as a parent of a posthumously conceived child, if that**
29 **intent is established by clear and convincing evidence.**

30 **7. Relationship conclusively established by court order.** A parent-child
31 relationship is conclusively established by a court order designating the parent or parents
32 of a child of assisted reproduction.

33 **8. No inheritance if record more than 2 years after birth; exception.** For the
34 purpose of subsection 6, paragraph A, neither an individual who signed a record more
35 than 2 years after the birth of the child nor a relative of that individual who is not also a
36 relative of the birth mother inherits from or through the child unless the individual
37 functioned as a parent of the child before the child reached 18 years of age.

38 **9. Spouse of birth mother.** For the purpose of subsection 6, paragraph B, the
39 provisions of this subsection apply.

1 A. If the birth mother is married and no divorce proceeding is pending, in the
2 absence of clear and convincing evidence to the contrary, her spouse satisfies
3 subsection 6, paragraph B, subparagraph (1) or (2).

4 B. If the birth mother is a surviving spouse and at her deceased spouse's death no
5 divorce proceeding was pending, in the absence of clear and convincing evidence to
6 the contrary, her deceased spouse satisfies subsection 6, paragraph B, subparagraph
7 (2) or (3).

8 **10. Divorce of birth mother.** If a married couple is divorced before placement of
9 eggs, sperm or embryos, a child resulting from the assisted reproduction is not a child of
10 the birth mother's former spouse, unless the former spouse consented in a record that if
11 assisted reproduction were to occur after divorce, the child would be treated as the former
12 spouse's child.

13 **11. Individual withdraws consent.** If, in a record, an individual withdraws consent
14 to assisted reproduction before placement of eggs, sperm or embryos, a child resulting
15 from the assisted reproduction is not a child of that individual, unless the individual
16 subsequently satisfies subsection 6.

17 **12. Conceived after individual's death.** If, under this section, an individual is a
18 parent of a child of assisted reproduction who is conceived after the individual's death,
19 the child is treated as in gestation at the individual's death for purposes of section 2-104,
20 subsection 1, paragraph B if the child is:

21 A. In utero not later than 36 months after the individual's death; or

22 B. Born not later than 45 months after the individual's death.

23 **§2-121. Child born to gestational carrier**

24 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
25 following terms have the following meanings.

26 A. "Gestational agreement" means an enforceable or unenforceable agreement for
27 assisted reproduction in which a woman agrees to carry a child to birth for an
28 intended parent, intended parents or an individual described in subsection 6.

29 B. "Gestational carrier" means a woman who gives birth to a child under a
30 gestational agreement and who:

31 (1) Has no genetic connection to the child; and

32 (2) Is not an intended parent.

33 C. "Gestational child" means a child born to a gestational carrier or surrogate under a
34 gestational agreement.

35 D. "Intended parent" means an individual who entered into a gestational agreement
36 providing that the individual will be the parent of a child born to a gestational carrier
37 or surrogate by means of assisted reproduction. "Intended parent" is not limited to an
38 individual who has a genetic relationship with the child.

1 E. "Surrogate" means a woman who gives birth to a child under a gestational
2 agreement and who:

3 (1) Has a genetic connection to the child; and

4 (2) Is not an intended parent.

5 **2. Relationship conclusively established by court order.** A parent-child
6 relationship is conclusively established by a court order designating the parent or parents
7 of a gestational child.

8 **3. Gestational child and gestational carrier.** A parent-child relationship between a
9 gestational child and the child's gestational carrier does not exist unless the gestational
10 carrier is designated as a parent of the child in a court order described in subsection 2.

11 **4. Gestational child and surrogate.** A parent-child relationship between a
12 gestational child and the child's surrogate does not exist unless the surrogate is:

13 A. Designated as a parent of the child in a court order described in subsection 2; or

14 B. The child's genetic mother and a parent-child relationship does not exist under this
15 section with an individual other than the surrogate.

16 **5. Gestational child and intended parent.** In the absence of a court order under
17 subsection 2, a parent-child relationship exists between a gestational child and an
18 intended parent who:

19 A. Functioned as a parent of the child no later than 2 years after the child's birth; or

20 B. Died while the gestational carrier or surrogate was pregnant if:

21 (1) There were 2 intended parents and the other intended parent functioned as a
22 parent of the child no later than 2 years after the child's birth;

23 (2) There were 2 intended parents, the other intended parent also died while the
24 gestational carrier or surrogate was pregnant and a relative of either deceased
25 intended parent or the spouse or surviving spouse of a relative of either deceased
26 intended parent functioned as a parent of the child no later than 2 years after the
27 child's birth; or

28 (3) There was no other intended parent and a relative of or the spouse or
29 surviving spouse of a relative of the deceased intended parent functioned as a
30 parent of the child no later than 2 years after the child's birth.

31 **6. Gestational child and provider of sperm or eggs after death or incapacity;**
32 **intent.** In the absence of a court order under subsection 2, a parent-child relationship
33 exists between a gestational child and an individual whose sperm or eggs were used after
34 the individual's death or incapacity to conceive a child under a gestational agreement
35 entered into after the individual's death or incapacity if the individual intended to be
36 treated as the parent of the child. The individual's intent may be shown by:

37 A. A record signed by the individual that considering all the facts and circumstances
38 evidences the individual's intent; or

1 B. Other facts and circumstances establishing the individual's intent by clear and
2 convincing evidence.

3 **7. Individual's presumed intent.** Except as otherwise provided in subsection 8, and
4 unless there is clear and convincing evidence of a contrary intent, an individual is
5 presumed to have intended to be treated as the parent of a gestational child for purposes
6 of subsection 6, paragraph B if:

7 A. The individual, before death or incapacity, deposited the sperm or eggs that were
8 used to conceive the child;

9 B. When the individual deposited the sperm or eggs, the individual was married and
10 no divorce proceeding was pending; and

11 C. The individual's spouse or surviving spouse functioned as a parent of the child no
12 later than 2 years after the child's birth.

13 **8. Exception to presumption.** The presumption under subsection 7 does not apply
14 if there is:

15 A. A court order under subsection 2; or

16 B. A signed record that satisfies subsection 6, paragraph A.

17 **9. Treated as in gestation.** If, under this section, an individual is a parent of a
18 gestational child who is conceived after the individual's death, the child is treated as in
19 gestation at the individual's death for purposes of section 2-104, subsection 1, paragraph
20 B if the child is:

21 A. In utero not later than 36 months after the individual's death; or

22 B. Born not later than 45 months after the individual's death.

23 **10. No effect on gestational agreement.** This section does not affect law of this
24 State other than this Code regarding the enforceability or validity of a gestational
25 agreement.

26 PART 2

27 ELECTIVE SHARE OF SURVIVING SPOUSE

28 §2-201. Definitions

29 As used in this Part, unless the context otherwise indicates, the following terms have
30 the following meanings.

31 **1. Decedent's nonprobate transfers to others.** As used in sections other than
32 section 2-205, "decedent's nonprobate transfers to others" means the amounts that are
33 included in the augmented estate under section 2-205.

34 **2. Fractional interest in property held in joint tenancy with the right of**
35 **survivorship.** "Fractional interest in property held in joint tenancy with the right of
36 survivorship," whether the fractional interest is unilaterally severable or not, means a

1 fraction, the numerator of which is one and the denominator of which, if the decedent was
2 a joint tenant, is one plus the number of joint tenants who survive the decedent or, if the
3 decedent was not a joint tenant, is the number of joint tenants.

4 **3. Marriage.** "Marriage," as it relates to a transfer by the decedent during marriage,
5 means any marriage of the decedent to the decedent's surviving spouse.

6 **4. Nonadverse party.** "Nonadverse party" means a person who does not have a
7 substantial beneficial interest in the trust or other property arrangement that would be
8 adversely affected by the exercise or nonexercise of the power that the person possesses
9 respecting the trust or other property arrangement. A person having a general power of
10 appointment over property is deemed to have a beneficial interest in the property.

11 **5. Power; power of appointment.** "Power" or "power of appointment" includes a
12 power to designate the beneficiary of a beneficiary designation.

13 **6. Presently exercisable general power of appointment.** "Presently exercisable
14 general power of appointment" means a power of appointment under which, at the time in
15 question, the decedent, whether or not the decedent then had the capacity to exercise the
16 power, held a power to create a present or future interest in the decedent, the decedent's
17 creditors, the decedent's estate or creditors of the decedent's estate, and includes a power
18 to revoke or invade the principal of a trust or other property arrangement.

19 **7. Property.** "Property" includes values subject to a beneficiary designation.

20 **8. Right to income.** "Right to income" includes a right to payments under a
21 commercial or private annuity, an annuity trust, a unitrust or a similar arrangement.

22 **9. Transfer.** "Transfer," as it relates to a transfer by or of the decedent, includes:

23 A. An exercise or release of a presently exercisable general power of appointment
24 held by the decedent;

25 B. A lapse at death of a presently exercisable general power of appointment held by
26 the decedent; and

27 C. An exercise, release or lapse of a general power of appointment that the decedent
28 created in the decedent and of a power described in section 2-205, subsection 2,
29 paragraph B that the decedent conferred on a nonadverse party.

30 **§2-202. Elective share**

31 **1. Elective-share amount.** The surviving spouse of a decedent who dies domiciled
32 in this State has a right of election, under the limitations and conditions stated in this Part,
33 to take an elective-share amount equal to 50% of the value of the marital-property portion
34 of the augmented estate.

35 **2. Effect of election on statutory benefits.** If the right of election is exercised by or
36 on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt
37 property and family allowance, if any, are not charged against but are in addition to the
38 elective share.

1 **3. Nondomiciliary.** The right, if any, of the surviving spouse of a decedent who dies
2 domiciled outside this State to take an elective share in property in this State is governed
3 by the law of the decedent’s domicile at death.

4 **§2-203. Composition of the augmented estate; marital-property portion**

5 **1. Value of augmented estate.** Subject to section 2-208, the value of the augmented
6 estate, to the extent provided in sections 2-204, 2-205, 2-206 and 2-207, consists of the
7 sum of the values of all property, whether real or personal, movable or immovable,
8 tangible or intangible, wherever situated, that constitute:

- 9 A. The decedent’s net probate estate;
- 10 B. The decedent’s nonprobate transfers to others;
- 11 C. The decedent’s nonprobate transfers to the surviving spouse; and
- 12 D. The surviving spouse’s property and nonprobate transfers to others.

13 **2. Value of marital-property portion.** The value of the marital-property portion of
14 the augmented estate consists of the sum of the values of the 4 components of the
15 augmented estate as determined under subsection 1 multiplied by a percentage as follows.

16 If the decedent and the spouse were married to each other:

- 17 A. Less than one year, the percentage is 3%;
- 18 B. One year but less than 2 years, the percentage is 6%;
- 19 C. Two years but less than 3 years, the percentage is 12%;
- 20 D. Three years but less than 4 years, the percentage is 18%;
- 21 E. Four years but less than 5 years, the percentage is 24%;
- 22 F. Five years but less than 6 years, the percentage is 30%;
- 23 G. Six years but less than 7 years, the percentage is 36%;
- 24 H. Seven years but less than 8 years, the percentage is 42%;
- 25 I. Eight years but less than 9 years, the percentage is 48%;
- 26 J. Nine years but less than 10 years, the percentage is 54%;
- 27 K. Ten years but less than 11 years, the percentage is 60%;
- 28 L. Eleven years but less than 12 years, the percentage is 68%;
- 29 M. Twelve years but less than 13 years, the percentage is 76%;
- 30 N. Thirteen years but less than 14 years, the percentage is 84%;
- 31 O. Fourteen years but less than 15 years, the percentage is 92%; and
- 32 P. Fifteen years or more, the percentage is 100%.

1 **§2-204. Decedent's net probate estate**

2 The value of the augmented estate includes the value of the decedent's probate estate
3 reduced by funeral and administration expenses, homestead allowance, family
4 allowances, exempt property and enforceable claims.

5 **§2-205. Decedent's nonprobate transfers to others**

6 The value of the augmented estate includes the value of the decedent's nonprobate
7 transfers to others, not included under section 2-204, of any of the following types, in the
8 amount provided respectively for each type of transfer:

9 **1. Passed outside probate at death.** Property owned or owned in substance by the
10 decedent immediately before death that passed outside probate at the decedent's death.
11 Property is included under this category only if it consists of any of the following types:

12 A. Property over which the decedent alone, immediately before death, held a
13 presently exercisable general power of appointment. The amount included is the
14 value of the property subject to the power, to the extent the property passed at the
15 decedent's death, by exercise, release, lapse, in default or otherwise, to or for the
16 benefit of any person other than the decedent's estate or surviving spouse;

17 B. The decedent's fractional interest in property held in joint tenancy with the right
18 of survivorship. The amount included is the value of the decedent's fractional
19 interest, to the extent the fractional interest passed by right of survivorship at the
20 decedent's death to a surviving joint tenant other than the decedent's surviving
21 spouse;

22 C. The decedent's ownership interest in property or accounts held in POD, TOD or
23 co-ownership registration with the right of survivorship. The amount included is the
24 value of the decedent's ownership interest, to the extent the decedent's ownership
25 interest passed at the decedent's death to or for the benefit of any person other than
26 the decedent's estate or surviving spouse; or

27 D. Proceeds of insurance, including accidental death benefits, on the life of the
28 decedent, if the decedent owned the insurance policy immediately before death or if
29 and to the extent the decedent alone and immediately before death held a presently
30 exercisable general power of appointment over the policy or its proceeds. The
31 amount included is the value of the proceeds, to the extent they were payable at the
32 decedent's death to or for the benefit of any person other than the decedent's estate or
33 surviving spouse;

34 **2. Transferred during marriage.** Property transferred in any of the following
35 forms by the decedent during marriage:

36 A. Any irrevocable transfer in which the decedent retained the right to the possession
37 or enjoyment of, or to the income from, the property if and to the extent the
38 decedent's right terminated at or continued beyond the decedent's death. The amount
39 included is the value of the fraction of the property to which the decedent's right
40 related, to the extent the fraction of the property passed outside probate to or for the
41 benefit of any person other than the decedent's estate or surviving spouse; or

1 B. Any transfer in which the decedent created a power over income or property,
2 exercisable by the decedent alone or in conjunction with any other person, or
3 exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of
4 the decedent, the decedent's estate or creditors of the decedent's estate. The amount
5 included with respect to a power over property is the value of the property subject to
6 the power, and the amount included with respect to a power over income is the value
7 of the property that produces or produced the income, to the extent the power in
8 either case was exercisable at the decedent's death to or for the benefit of any person
9 other than the decedent's surviving spouse or to the extent the property passed at the
10 decedent's death, by exercise, release, lapse, in default or otherwise, to or for the
11 benefit of any person other than the decedent's estate or surviving spouse. If the
12 power is a power over both income and property and the preceding sentence produces
13 different amounts, the amount included is the greater amount; and

14 **3. Passed during marriage within 2 years before death.** Property that passed
15 during marriage and during the 2-year period next preceding the decedent's death as a
16 result of a transfer by the decedent if the transfer was of any of the following types:

17 A. Any property that passed as a result of the termination of a right or interest in, or
18 power over, property that would have been included in the augmented estate under
19 subsection 1, paragraph A, B or C, or under subsection 2, if the right, interest or
20 power had not terminated until the decedent's death. The amount included is the
21 value of the property that would have been included under those paragraphs if the
22 property were valued at the time the right, interest or power terminated, and is
23 included only to the extent the property passed upon termination to or for the benefit
24 of any person other than the decedent or the decedent's estate, spouse or surviving
25 spouse. For purposes of this paragraph, termination, with respect to a right or interest
26 in property, occurs when the right or interest terminated by the terms of the governing
27 instrument or the decedent transferred or relinquished the right or interest, and, with
28 respect to a power over property, occurs when the power terminated by exercise,
29 release, lapse, default or otherwise, but, with respect to a power described in
30 subsection 1, paragraph A, termination occurs when the power terminated by exercise
31 or release, but not otherwise;

32 B. Any transfer of or relating to an insurance policy on the life of the decedent if the
33 proceeds would have been included in the augmented estate under subsection 1,
34 paragraph D had the transfer not occurred. The amount included is the value of the
35 insurance proceeds to the extent the proceeds were payable at the decedent's death to
36 or for the benefit of any person other than the decedent's estate or surviving spouse;
37 or

38 C. Any transfer of property, to the extent not otherwise included in the augmented
39 estate, made to or for the benefit of a person other than the decedent's surviving
40 spouse. The amount included is the value of the transferred property to the extent the
41 transfers to any one donee in either of the 2 years exceeded 50% of the amount
42 excludable from taxable gifts under 26 United States Code, Section 2503(b) or its
43 successor on the date next preceding the date of the decedent's death.

1 **§2-206. Decedent's nonprobate transfers to the surviving spouse**

2 Excluding property passing to the surviving spouse under the federal Social Security
3 system, the value of the augmented estate includes the value of the decedent's nonprobate
4 transfers to the decedent's surviving spouse, which consist of all property that passed
5 outside probate at the decedent's death from the decedent to the surviving spouse by
6 reason of the decedent's death, including:

7 **1. Joint tenancy.** The decedent's fractional interest in property held in joint tenancy
8 with the right of survivorship, to the extent that the decedent's fractional interest passed to
9 the surviving spouse as surviving joint tenant;

10 **2. Co-ownership registration.** The decedent's ownership interest in property or
11 accounts held in co-ownership registration with the right of survivorship, to the extent the
12 decedent's ownership interest passed to the surviving spouse as surviving co-owner; and

13 **3. Other nonprobate transfers.** All other property that would have been included
14 in the augmented estate under section 2-205, subsection 1 or 2 had it passed to or for the
15 benefit of a person other than the decedent's spouse, surviving spouse, the decedent or the
16 decedent's creditors, estate or estate creditors.

17 **§2-207. Surviving spouse's property and nonprobate transfers to others**

18 **1. Included property.** Except to the extent included in the augmented estate under
19 section 2-204 or 2-206, the value of the augmented estate includes the value of:

20 A. Property that was owned by the decedent's surviving spouse at the decedent's
21 death, including:

22 (1) The surviving spouse's fractional interest in property held in joint tenancy
23 with the right of survivorship;

24 (2) The surviving spouse's ownership interest in property or accounts held in co-
25 ownership registration with the right of survivorship; and

26 (3) Property that passed to the surviving spouse by reason of the decedent's
27 death, but not including the spouse's right to homestead allowance, family
28 allowance, exempt property or payments under the federal Social Security
29 system; and

30 B. Property that would have been included in the surviving spouse's nonprobate
31 transfers to others, other than the spouse's fractional and ownership interests included
32 under subsection 1, paragraph A, subparagraph (1) or (2), had the spouse been the
33 decedent.

34 **2. Time of valuation.** Property included under this section is valued at the
35 decedent's death, taking the fact that the decedent predeceased the spouse into account,
36 but, for purposes of subsection 1, paragraph A, subparagraphs (1) and (2), the values of
37 the spouse's fractional and ownership interests are determined immediately before the
38 decedent's death if the decedent was then a joint tenant or a co-owner of the property or
39 accounts. For purposes of subsection 1, paragraph B, proceeds of insurance that would

1 have been included in the spouse's nonprobate transfers to others under section 2-205,
2 subsection 1, paragraph D are not valued as if the spouse were deceased.

3 **3. Reduction for enforceable claims.** The value of property included under this
4 section is reduced by enforceable claims against the surviving spouse.

5 **§2-208. Exclusions, valuation and overlapping application**

6 **1. Exclusions.** The value of any property is excluded from the decedent's
7 nonprobate transfers to others:

8 A. To the extent the decedent received adequate and full consideration in money or
9 money's worth for a transfer of the property; or

10 B. If the property was transferred with the written joinder of, or if the transfer was
11 consented to in writing before or after the transfer by, the surviving spouse.

12 **2. Valuation.** The value of property is determined as follows.

13 A. The value of property included in the augmented estate under section 2-205,
14 2-206 or 2-207 is reduced in each category by enforceable claims against the included
15 property.

16 B. The value of property includes the commuted value of any present or future
17 interest and the commuted value of amounts payable under any trust, life insurance
18 settlement option, annuity contract, public or private pension, disability
19 compensation, death benefit or retirement plan or any similar arrangement, exclusive
20 of the federal Social Security system.

21 **3. Overlapping application; no double exclusion.** In case of overlapping
22 application to the same property of the provisions of section 2-205, 2-206 or 2-207, the
23 property is included in the augmented estate under the provision yielding the greatest
24 value, and under only one overlapping provision if they all yield the same value.

25 **§2-209. Sources from which elective share payable**

26 **1. Elective-share amount only.** In a proceeding for an elective share, the following
27 are applied first to satisfy the elective-share amount and to reduce or eliminate any
28 contributions due from the decedent's probate estate and recipients of the decedent's
29 nonprobate transfers to others:

30 A. Amounts included in the augmented estate under section 2-204 that pass or have
31 passed to the surviving spouse by testate or intestate succession and amounts
32 included in the augmented estate under section 2-206; and

33 B. The marital-property portion of amounts included in the augmented estate under
34 section 2-207.

35 **2. Marital-property portion.** The marital-property portion under subsection 1,
36 paragraph B is computed by multiplying the value of the amounts included in the
37 augmented estate under section 2-207 by the percentage of the augmented estate set forth

1 in the schedule in section 2-203, subsection 2 appropriate to the length of time the spouse
2 and the decedent were married to each other.

3 **3. Unsatisfied balance of elective-share amount; net probate estate.** If, after the
4 application of subsection 1, the elective-share amount is not fully satisfied, or the
5 surviving spouse is entitled to a supplemental elective-share amount, amounts included in
6 the decedent's net probate estate, other than assets passing to the surviving spouse by
7 testate or intestate succession, and in the decedent's nonprobate transfers to others under
8 section 2-205, subsections 1 and 2 and section 2-205, subsection 3, paragraph B are
9 applied first to satisfy the unsatisfied balance of the elective-share amount or the
10 supplemental elective-share amount. The decedent's net probate estate and that portion of
11 the decedent's nonprobate transfers to others are applied so that liability for the
12 unsatisfied balance of the elective-share amount or for the supplemental elective-share
13 amount is apportioned among the recipients of the decedent's net probate estate and of
14 that portion of the decedent's nonprobate transfers to others in proportion to the value of
15 their interests therein.

16 **4. Unsatisfied balance of elective share; nonprobate transfers.** If, after the
17 application of subsections 1 and 2, the elective-share or supplemental elective-share
18 amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers
19 to others is applied so that liability for the unsatisfied balance of the elective-share or
20 supplemental elective-share amount is apportioned among the recipients of the remaining
21 portion of the decedent's nonprobate transfers to others in proportion to the value of their
22 interests therein.

23 **5. Unsatisfied balance treated as general pecuniary devise.** The unsatisfied
24 balance of the elective-share or supplemental elective-share amount as determined under
25 subsection 3 or 4 is treated as a general pecuniary devise for purposes of section 3-904.

26 **§2-210. Personal liability of recipients**

27 **1. Original recipients; satisfaction of elective-share amount.** Only original
28 recipients of the decedent's nonprobate transfers to others, and the donees of the
29 recipients of the decedent's nonprobate transfers to others to the extent the donees have
30 the property or its proceeds, are liable to make a proportional contribution toward
31 satisfaction of the surviving spouse's elective-share amount. A person liable to make a
32 contribution may choose to give up the proportional part of the decedent's nonprobate
33 transfers to that person or to pay the value of the amount for which that person is liable.

34 **2. Preemption; obligated and personally liable.** If any section or part of any
35 section of this Part is preempted by federal law with respect to a payment, an item of
36 property or any other benefit included in the decedent's nonprobate transfers to others, a
37 person who, not for value, receives the payment, item of property or any other benefit is
38 obligated to return the payment, item of property or benefit or is personally liable for the
39 amount of the payment or the value of that item of property or benefit, as provided in
40 section 2-209, to the person who would have been entitled to it were that section or part
41 of that section not preempted.

1 **§2-211. Proceeding for elective share; time limit**

2 **1. Time of election.** Except as provided in subsection 2, the surviving spouse or the
3 surviving spouse's conservator or agent under authority of a power of attorney must make
4 the election by filing in the court and mailing or delivering to the personal representative,
5 if any, a petition for the elective share within 9 months after the date of the decedent's
6 death or within 6 months after the probate of the decedent's will, whichever limitation
7 later expires. Notice of the time and place set for the hearing must be given to persons
8 interested in the estate and to the distributees and recipients of portions of the augmented
9 estate whose interests will be adversely affected by the taking of the elective share.
10 Except as provided in subsection 2, the decedent's nonprobate transfers to others are not
11 included within the augmented estate for the purpose of computing the elective share if
12 the petition is filed more than 9 months after the decedent's death.

13 **2. Extension.** Within 9 months after the decedent's death, a petition for an extension
14 of time for making an election may be filed by the surviving spouse or the surviving
15 spouse's conservator or agent under authority of a power of attorney. If, within 9 months
16 after the decedent's death, notice is given of the petition to all persons interested in the
17 decedent's nonprobate transfers to others, the court for cause shown may extend the time
18 for election. If the court grants the petition for an extension, the decedent's nonprobate
19 transfers to others are not excluded from the augmented estate for the purpose of
20 computing the elective-share amount, if the election is made by filing in the court and
21 mailing or delivering to the personal representative, if any, a petition for the elective
22 share within the time allowed by the extension.

23 **3. Withdrawal of demand.** A demand for an elective share may be withdrawn at
24 any time before entry of a final determination by the court.

25 **4. Court determination.** After notice and hearing, the court shall determine the
26 elective-share amount, and shall order its payment from the assets of the augmented
27 estate or by contribution as appears appropriate under sections 2-209 and 2-210. If it
28 appears that a fund or property included in the augmented estate has not come into the
29 possession of the personal representative, or has been distributed by the personal
30 representative, the court nevertheless shall fix the liability of any person who has any
31 interest in the fund or property or who has possession thereof, whether as trustee or
32 otherwise. The proceeding may be maintained against fewer than all persons against
33 whom relief could be sought, but a person is not subject to contribution in any greater
34 amount than the person would have been under sections 2-209 and 2-210 had relief been
35 secured against all persons subject to contribution.

36 **5. Enforcement.** An order or judgment of the court may be enforced as necessary in
37 suit for contribution or payment in other courts of this State or other jurisdictions.

38 **§2-212. Right of election personal to surviving spouse**

39 The right of election may be exercised only by a surviving spouse who is living when
40 the petition for the elective share is filed in the court under section 2-211, subsection 1. If
41 the election is not exercised by the surviving spouse personally, it may be exercised on

1 the surviving spouse's behalf by the surviving spouse's conservator or agent under
2 authority of a power of attorney.

3 **§2-213. Waiver of right to elect and of other rights**

4 **1. Waiver of election and statutory benefits.** The right of election of a surviving
5 spouse and the rights of the surviving spouse to homestead allowance, exempt property
6 and family allowance may be waived, wholly or partially, before or after marriage, by a
7 written contract, agreement or waiver signed by the surviving spouse.

8 **2. Waiver not enforceable.** A surviving spouse's waiver is not enforceable if the
9 surviving spouse proves that:

10 A. The surviving spouse did not execute the waiver voluntarily; or

11 B. The waiver was unconscionable when it was executed and, before execution of
12 the waiver, the surviving spouse:

13 (1) Was not provided a fair and reasonable disclosure of the property or financial
14 obligations of the decedent;

15 (2) Did not voluntarily and expressly waive, in writing, any right to disclosure of
16 the property or financial obligations of the decedent beyond the disclosure
17 provided; and

18 (3) Did not have, or reasonably could not have had, an adequate knowledge of
19 the property or financial obligations of the decedent.

20 **3. Unconscionability.** An issue of unconscionability of a waiver is for decision by
21 the court as a matter of law.

22 **4. Waiver of "all rights."** Unless it provides to the contrary, a waiver of "all
23 rights," or equivalent language, in the property or estate of a present or prospective
24 spouse or a complete property settlement entered into after or in anticipation of separation
25 or divorce is a waiver of all rights of elective share, homestead allowance, exempt
26 property and family allowance by each spouse in the property of the other and a
27 renunciation by each of all benefits that would otherwise pass to the spouse from the
28 other by intestate succession or by virtue of any will executed before the waiver or
29 property settlement.

30 **§2-214. Protection of payors and other 3rd parties**

31 **1. Liability of payors and other 3rd parties.** Although under section 2-205 a
32 payment, item of property or other benefit is included in the decedent's nonprobate
33 transfers to others, a payor or other 3rd party is not liable for having made a payment or
34 transferred an item of property or other benefit to a beneficiary designated in a governing
35 instrument, or for having taken any other action in good faith reliance on the validity of a
36 governing instrument, upon request and satisfactory proof of the decedent's death, before
37 the payor or other 3rd party received written notice from the surviving spouse or spouse's
38 representative of an intention to file a petition for the elective share or that a petition for
39 the elective share has been filed. A payor or other 3rd party is liable for payments made

1 or other actions taken after the payor or other 3rd party received written notice that a
2 petition for the elective share has been filed.

3 **2. Notice to payors and other 3rd parties.** A written notice of intention to file a
4 petition for the elective share or that a petition for the elective share has been filed must
5 be mailed to the payor's or other 3rd party's main office or home by registered or certified
6 mail, return receipt requested, or served upon the payor or other 3rd party in the same
7 manner as a summons in a civil action. Upon receipt of written notice of intention to file
8 a petition for the elective share or that a petition for the elective share has been filed, a
9 payor or other 3rd party may pay any amount owed or transfer or deposit any item of
10 property held by it to or with the court having jurisdiction of the probate proceedings
11 relating to the decedent's estate or, if no proceedings have been commenced, to or with
12 the court having jurisdiction of probate proceedings relating to decedents' estates located
13 in the county of the decedent's residence. The court shall hold the funds or item of
14 property and, upon its determination under section 2-211, subsection 4, shall order
15 disbursement in accordance with the determination. If no petition is filed in the court
16 within the specified time under section 2-211, subsection 1 or, if filed, the demand for an
17 elective share is withdrawn under section 2-211, subsection 3, the court shall order
18 disbursement to the designated beneficiary. Payments or transfers to the court or deposits
19 made into court discharge the payor or other 3rd party from all claims for amounts so
20 paid or the value of property so transferred or deposited.

21 **3. Petition by beneficiary; court order.** Upon petition to the court by the
22 beneficiary designated in a governing instrument, the court may order that all or part of
23 the property be paid to the beneficiary in an amount and subject to conditions consistent
24 with this Part.

25 **PART 3**

26 **SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS**

27 **§2-301. Entitlement of spouse; premarital will**

28 **1. Entitlement of spouse.** If a testator's surviving spouse married the testator after
29 the testator executed a will, the surviving spouse is entitled to receive, as an intestate
30 share, no less than the value of the share of the estate the surviving spouse would have
31 received if the testator had died intestate as to that portion of the testator's estate, if any,
32 that neither is devised to a child of the testator who was born before the testator married
33 the surviving spouse and who is not a child of the surviving spouse nor is devised to a
34 descendant of such a child or passes under section 2-603 or 2-604 to such a child or to a
35 descendant of such a child, unless:

36 A. It appears from the will or other evidence that the will was made in contemplation
37 of the testator's marriage to the surviving spouse;

38 B. The will expresses the intention that it is to be effective notwithstanding any
39 subsequent marriage; or

1 C. The testator provided for the spouse by transfer outside the will and the intent that
2 the transfer be in lieu of a testamentary provision is shown by the testator's statements
3 or is reasonably inferred from the amount of the transfer or other evidence.

4 **2. Devises by will to spouse; others abate.** In satisfying the share provided by this
5 section, devises made by the will to the testator's surviving spouse, if any, are applied
6 first, and other devises, other than a devise to a child of the testator who was born before
7 the testator married the surviving spouse and who is not a child of the surviving spouse or
8 a devise or substitute gift under section 2-603 or 2-604 to a descendant of such a child,
9 abate as provided in section 3-902.

10 **§2-302. Omitted children**

11 **1. Omitted children shares.** Except as provided in subsection 2, if a testator fails to
12 provide in the testator's will for any of the testator's children born or adopted after the
13 execution of the will, the omitted after-born or after-adopted child receives a share in the
14 estate as follows:

15 A. If a testator had no child living when the testator executed the will, an omitted
16 after-born or after-adopted child receives a share in the estate equal in value to that
17 which the child would have received had the testator died intestate, unless the will
18 devised all or substantially all of the estate to the other parent of the omitted child and
19 that other parent survives the testator and is entitled to take under the will.

20 B. If a testator had one or more children living when the testator executed the will,
21 and the will devised property or an interest in property to one or more of the then-
22 living children, an omitted after-born or after-adopted child is entitled to share in the
23 testator's estate as follows:

24 (1) The portion of the testator's estate in which the omitted after-born or after-
25 adopted child is entitled to share is limited to devises made to the testator's then-
26 living children under the will;

27 (2) The omitted after-born or after-adopted child is entitled to receive the share
28 of the testator's estate, as limited in subparagraph (1), that the child would have
29 received had the testator included all omitted after-born and after-adopted
30 children with the children to whom devises were made under the will and had
31 given an equal share of the estate to each child;

32 (3) To the extent feasible, the interest granted an omitted after-born or after-
33 adopted child under this paragraph must be of the same character, whether
34 equitable or legal, present or future, as that devised to the testator's then-living
35 children under the will; and

36 (4) In satisfying a share provided by this paragraph, devises to the testator's
37 children who were living when the will was executed abate ratably. In abating
38 the devises of the then-living children, the court shall preserve to the maximum
39 extent possible the character of the testamentary plan adopted by the testator.

40 **2. No shares for omitted children.** Neither subsection 1, paragraph A nor
41 subsection 1, paragraph B applies if:

1 A. It appears from the will that the omission was intentional; or

2 B. The testator provided for the omitted after-born or after-adopted child by transfer
3 outside the will and the intent that the transfer be in lieu of a testamentary provision
4 is shown by the testator's statements or is reasonably inferred from the amount of the
5 transfer or other evidence.

6 **3. Child believed to be dead.** If at the time of execution of the will the testator fails
7 to provide in the testator's will for a living child solely because the testator believes the
8 child to be dead, the child is entitled to share in the estate as if the child were an omitted
9 after-born or after-adopted child.

10 **4. Shares abate.** In satisfying a share provided by subsection 1, paragraph A,
11 devises made by the will abate under section 3-902.

12 **PART 4**

13 **EXEMPT PROPERTY AND ALLOWANCES**

14 **§2-401. Applicable law**

15 This Part applies to the estate of the decedent who dies domiciled in this State.
16 Rights to homestead allowance, exempt property and family allowance for a decedent
17 who dies not domiciled in this State are governed by the law of the decedent's domicile at
18 death.

19 **§2-402. Homestead allowance**

20 A decedent's surviving spouse is entitled to a homestead allowance of \$22,500. If
21 there is no surviving spouse, each minor child and each dependent child of the decedent is
22 entitled to a homestead allowance amounting to \$22,500 divided by the number of minor
23 and dependent children of the decedent. The homestead allowance is exempt from and
24 has priority over all claims against the estate. Homestead allowance is in addition to any
25 share passing to the surviving spouse or minor or dependent child by the decedent's will
26 unless otherwise provided by intestate succession or by way of elective share.

27 **§2-403. Exempt property**

28 In addition to the homestead allowance, the decedent's surviving spouse is entitled
29 from the estate to a value, not exceeding \$15,000 in excess of any security interests in the
30 estate, in household furniture, automobiles, furnishings, appliances and personal effects.
31 If there is no surviving spouse, children of the decedent are entitled jointly to the same
32 value; however, the decedent, by will, may exclude one or more adult children from the
33 receipt of exempt property. If encumbered chattels are selected and the value in excess of
34 security interests, plus that of other exempt property, is less than \$15,000, or if there is
35 not \$15,000 worth of exempt property in the estate, the spouse or children are entitled to
36 other assets of the estate, if any, to the extent necessary to make up the \$15,000 value.
37 Rights to exempt property and assets needed to make up a deficiency of exempt property
38 have priority over all claims against the estate, except that the right to any assets to make
39 up a deficiency of exempt property abates as necessary to permit earlier payment of

1 homestead allowance and family allowance. These rights are in addition to any benefit or
2 share passing to the surviving spouse or children by the decedent's will unless otherwise
3 provided by intestate succession or by way of elective share.

4 **§2-404. Family allowance**

5 **1. Family allowance during administration.** In addition to the right to homestead
6 allowance and exempt property, the decedent's surviving spouse and minor children
7 whom the decedent was obligated to support and children who were in fact being
8 supported by the decedent are entitled to a reasonable allowance in money out of the
9 estate for their maintenance during the period of administration, which allowance may
10 not continue for longer than one year if the estate is inadequate to discharge allowed
11 claims. The allowance may be paid as a lump sum or in periodic installments. It is
12 payable to the surviving spouse, if living, for the use of the surviving spouse and minor
13 and dependent children; otherwise to the children, or persons having their care and
14 custody. If a minor child or dependent child is not living with the surviving spouse, the
15 allowance may be made partially to the child or the child's guardian or other person
16 having the child's care and custody, and partially to the spouse, as their needs may appear.
17 The family allowance is exempt from and has priority over all claims but not over the
18 homestead allowance.

19 **2. Not chargeable against benefit or share; right terminates on death.** The
20 family allowance is not chargeable against any benefit or share passing to the surviving
21 spouse or children by the decedent's will unless otherwise provided by intestate
22 succession or by way of elective share. The death of any person entitled to family
23 allowance terminates that person's right to allowance not yet paid.

24 **§2-405. Source, determination and documentation**

25 If the estate is otherwise sufficient, property specifically devised may not be used to
26 satisfy rights to homestead and exempt property. Subject to this restriction, the surviving
27 spouse, the guardians of minor children or children who are adults may select property of
28 the estate as homestead allowance and exempt property. The personal representative may
29 make these selections if the surviving spouse, the children or the guardians of the minor
30 children are unable or fail to do so within a reasonable time or there is no guardian of a
31 minor child. The personal representative may execute an instrument or deed of
32 distribution to establish the ownership of property taken as homestead allowance or
33 exempt property. The personal representative may determine the family allowance in a
34 lump sum not exceeding \$27,000 or periodic installments not exceeding \$2,250 per
35 month for one year, and may disburse funds of the estate in payment of the family
36 allowance and any part of the homestead allowance payable in cash. The personal
37 representative or any interested person aggrieved by any selection, determination,
38 payment, proposed payment or failure to act under this section may petition the court for
39 appropriate relief, which relief may include a family allowance other than that which the
40 personal representative determined or could have determined.

41 **PART 5**

42 **WILLS**

1 **§2-501. Who may make a will**

2 An individual of sound mind who is 18 or more years of age or a legally emancipated
3 minor may make a will.

4 **§2-502. Execution; holographic wills**

5 **1. Witnessed wills.** Except as otherwise provided in subsection 2 and in sections
6 2-505 and 2-512, a will must be:

7 A. In writing;

8 B. Signed by the testator or in the testator's name by some other individual in the
9 testator's conscious presence and by the testator's direction; and

10 C. Signed by at least 2 individuals, each of whom signed within a reasonable time
11 after the individual witnessed either the signing of the will as described in paragraph
12 B or the testator's acknowledgment of that signature or acknowledgment of the will.

13 **2. Holographic wills.** A will that does not comply with subsection 1 is valid as a
14 holographic will, whether or not witnessed, if the signature and material portions of the
15 document are in the testator's handwriting.

16 **3. Extrinsic evidence.** Intent that a document constitute the testator's will may be
17 established by extrinsic evidence, including, for holographic wills, portions of the
18 document that are not in the testator's handwriting.

19 **§2-503. Self-proved will**

20 **1. Self-proved at execution.** Any will may be simultaneously executed, attested and
21 made self-proved by acknowledgment thereof by the testator and affidavits of the
22 witnesses, each made before an officer authorized to administer oaths under the laws of
23 the state where execution occurs and evidenced by the officer's certificate in substantially
24 the following form:

25 I,, the testator, on this day of, 20.., being first
26 duly sworn, do hereby declare to the undersigned authority that I sign and execute this
27 instrument as my last will and that I sign it willingly (or willingly direct another to sign
28 for me), as my free and voluntary act and that I am eighteen years of age or older or am a
29 legally emancipated minor, of sound mind, and under no constraint or undue influence.

30 _____
31 Testator

32 We,, the witnesses, being first duly
33 sworn, do hereby declare to the undersigned authority that the testator has signed and
34 executed this instrument as (his) (her) last will and that (he) (she) signed it willingly (or
35 willingly directed another to sign for (him) (her)), and that each of us, in the presence and
36 hearing of the testator, signs this will as witness to the testator's signing, and that to the

1 best of our knowledge the testator is eighteen years of age or older or is a legally
2 emancipated minor, of sound mind and under no constraint or undue influence.

3
4 Witness

5
6 Witness

7 The State of

8 County of

9 Subscribed, sworn to and acknowledged before me by, the
10 testator, and subscribed and sworn to before me by and
11, witnesses, this day of

12 (Signed)

13
14 (Official capacity of officer)

15 **2. Self-proved subsequent to execution.** An attested will may at any time
16 subsequent to its execution be made self-proved by the acknowledgment thereof by the
17 testator and the affidavits of the witnesses, each made before an officer authorized to
18 administer oaths under the laws of the state where the acknowledgment occurs and
19 evidenced by the officer's certificate, attached or annexed to the will in substantially the
20 following form:

21 The State of

22 County of

23 We, and
24 the testator and the witnesses, respectively, whose names are signed to the attached or
25 foregoing instrument, being first duly sworn, do hereby declare to the undersigned
26 authority that the testator signed and executed the instrument as (his) (her) last will and
27 that (he) (she) had signed willingly (or willingly directed another to sign for (him) (her)),
28 as (his) (her) free and voluntary act, and that each of the witnesses, in the presence and
29 hearing of the testator, signed the will as witness and that to the best of (his) (her)
30 knowledge the testator was at that time eighteen years of age or older or a legally
31 emancipated minor, of sound mind and under no constraint or undue influence.

32
33 Testator

34
35 Witness

36
37 Witness
38

Subscribed, sworn to and acknowledged before me by _____, the
 testator, and subscribed and sworn to before me by _____ and
 _____, witnesses, this _____ day of _____

(Signed) _____

 (Official capacity of officer)

3. Affidavit sufficient. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

§2-504. Who may witness a will

1. Witness. An individual generally competent to be a witness may act as a witness to a will.

2. Interested witness. The signing of a will by an interested witness does not invalidate the will or any portion of it.

§2-505. Choice of law as to execution

A written will is valid if executed in compliance with section 2-502 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national or if executed in compliance with 10 United States Code, Section 1044d.

§2-506. Revocation by writing or by act

1. Revocation. A will or any part thereof is revoked:

A. By the execution of a subsequent will that revokes the previous will or part expressly or by inconsistency; or

B. By the performance of a revocatory act on the will, if the testator performs the act with the intent and for the purpose of revoking the will or part or if another individual performs the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating or destroying the will or any part of it. A burning, tearing or canceling is a revocatory act on the will, whether or not the burn, tear or cancellation touched any of the words on the will.

2. Intent to replace previous will. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by

1 inconsistency if the testator intended the subsequent will to replace rather than
2 supplement the previous will.

3 **3. Presumption of intent to replace.** The testator is presumed to have intended a
4 subsequent will to replace rather than supplement a previous will if the subsequent will
5 makes a complete disposition of the testator's estate. If this presumption arises and is not
6 rebutted by clear and convincing evidence, the previous will is revoked; only the
7 subsequent will is operative on the testator's death.

8 **4. Presumption of intent to supplement.** The testator is presumed to have intended
9 a subsequent will to supplement rather than replace a previous will if the subsequent will
10 does not make a complete disposition of the testator's estate. If this presumption arises
11 and is not rebutted by clear and convincing evidence, the subsequent will revokes the
12 previous will only to the extent the subsequent will is inconsistent with the previous will;
13 each will is fully operative on the testator's death to the extent they are not inconsistent.

14 **§2-507. Revocation by change of circumstances**

15 Except as provided in sections 2-802, 2-803 and 2-804, a change of circumstances
16 does not revoke a will or any part of it.

17 **§2-508. Revival of revoked will**

18 **1. Subsequent will revoked by revocatory act; wholly revoked previous will.** If a
19 subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory
20 act under section 2-506, subsection 1, paragraph B, the previous will remains revoked
21 unless it is revived. The previous will is revived if it is evident from the circumstances of
22 the revocation of the subsequent will or from the testator's contemporary or subsequent
23 declarations that the testator intended the previous will to take effect as executed.

24 **2. Subsequent will revoked by revocatory act; partly revoked previous will.** If a
25 subsequent will that partly revoked a previous will is thereafter revoked by a revocatory
26 act under section 2-506, subsection 1, paragraph B, a revoked part of the previous will is
27 revived unless it is evident from the circumstances of the revocation of the subsequent
28 will or from the testator's contemporary or subsequent declarations that the testator did
29 not intend the revoked part to take effect as executed.

30 **3. Subsequent will revoked by later will.** If a subsequent will that revoked a
31 previous will in whole or in part is thereafter revoked by another, later will, the previous
32 will remains revoked in whole or in part, unless it or its revoked part is revived. The
33 previous will or its revoked part is revived to the extent it appears from the terms of the
34 later will that the testator intended the previous will to take effect.

35 **§2-509. Incorporation by reference**

36 Any writing in existence when a will is executed may be incorporated by reference if
37 the language of the will manifests this intent and describes the writing sufficiently to
38 permit its identification.

1 **§2-510. Uniform Testamentary Additions to Trusts Act**

2 **1. Devise to a trust.** A will may validly devise property to the trustee of a trust
3 established or to be established:

4 A. During the testator's lifetime by the testator, by the testator and some other person
5 or by some other person, including a funded or unfunded life insurance trust,
6 although the settlor has reserved any or all rights of ownership of the insurance
7 contracts; or

8 B. At the testator's death by the testator's devise to the trustee, if the trust is identified
9 in the testator's will and its terms are set forth in a written instrument, other than a
10 will, executed before, concurrently with or after the execution of the testator's will or
11 in another individual's will if that other individual has predeceased the testator,
12 regardless of the existence, size or character of the corpus of the trust.

13 The devise is not invalid because the trust is amendable or revocable or because the trust
14 was amended after the execution of the will or the testator's death.

15 **2. Not held under testamentary trust.** Unless the testator's will provides
16 otherwise, property devised to a trust described in subsection 1 is not held under a
17 testamentary trust of the testator but becomes a part of the trust to which it is devised and
18 must be administered and disposed of in accordance with the provisions of the governing
19 instrument setting forth the terms of the trust, including any amendments thereto made
20 before or after the testator's death.

21 **3. Revocation or termination before death.** Unless the testator's will provides
22 otherwise, a revocation or termination of the trust before the testator's death causes the
23 devise to lapse.

24 **§2-511. Events of independent significance**

25 A will may dispose of property by reference to acts and events that have significance
26 apart from their effect upon the dispositions made by the will, whether they occur before
27 or after the execution of the will or before or after the testator's death. The execution or
28 revocation of a will of another person is such an event.

29 **§2-512. Separate writing identifying devise of certain types of tangible personal**
30 **property**

31 Whether or not the provisions relating to holographic wills apply, a will may refer to
32 a written statement or list to dispose of items of tangible personal property not otherwise
33 specifically disposed of by the will, other than money. To be admissible under this
34 section as evidence of the intended disposition, the writing must be in the handwriting of
35 the testator or be signed by the testator and must describe the items and the devisees with
36 reasonable certainty. The writing may be referred to as one to be in existence at the time
37 of the testator's death; it may be prepared before or after the execution of the will; it may
38 be altered by the testator after its preparation; and it may be a writing that has no
39 significance apart from its effect upon the dispositions made by the will.

1 **§2-513. Contracts concerning succession**

2 A contract to make a will or devise, or not to revoke a will or devise, or to die
3 intestate, if executed after the effective date of this Act, can be established only by:

4 1. Material provisions. Provisions of a will stating material provisions of the
5 contract:

6 2. Express reference, extrinsic evidence. An express reference in a will to a
7 contract and extrinsic evidence proving the terms of the contract; or

8 3. Writing evidencing the contract. A writing signed by the decedent evidencing
9 the contract.

10 The execution of a joint will or mutual wills does not create a presumption of a
11 contract not to revoke the will or wills.

12 **§2-514. Disposition of will deposited with court**

13 A will deposited for safekeeping with the court in the office of the register before
14 September 19, 1997 may be delivered only to the testator or to a person authorized in
15 writing signed by the testator to receive the will. A conservator may be allowed to
16 examine a deposited will of a protected testator under procedures designed to maintain
17 the confidential character of the document to the extent possible and to ensure that it will
18 be resealed and left on deposit after the examination. Upon being informed of the
19 testator's death, the court shall notify any person designated to receive the will and deliver
20 it to that designated person on request; or the court may deliver the will to the appropriate
21 court. The court may not accept a will for safekeeping after September 19, 1997.

22 **§2-515. Duty of custodian of will; liability**

23 After the death of a testator, a person having custody of a will of the testator shall
24 deliver it with reasonable promptness to a person able to secure its probate or, if no such
25 person is known, to an appropriate court for filing and recording until probate is sought.
26 A person having custody of a will is not liable, to any person aggrieved, for failure to
27 learn of the death of the testator of that will and the failure, therefore, to deliver that will
28 as required. A person who willfully fails to deliver a will or who willfully defaces or
29 destroys any will of a deceased person is liable to any person aggrieved for the damages
30 that may be sustained by such failure to deliver or by such defacement or destruction. A
31 person who willfully refuses or fails to deliver a will, or who defaces or destroys it, after
32 being ordered by the court in a proceeding brought for the purpose of compelling delivery
33 is subject to penalty for contempt of court.

34 **§2-516. Penalty clause for contest**

35 A provision in a will purporting to penalize an interested person for contesting the
36 will or instituting other proceedings relating to the estate is unenforceable if probable
37 cause exists for instituting proceedings.

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§2-517. Statutory wills

1. Form. Any person may execute a will on the following form, and the will must be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in this Code.

Maine Statutory Will

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK THE LAWYER TO EXPLAIN IT TO YOU.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY THAT PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS THAT YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

1 10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL
2 ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR
3 PROPERTY, YOU SHOULD CONSULT A LAWYER.

4
5 MAINE STATUTORY WILL OF

6
7
8
9 (Print your name)

10
11
12 Article 1. Declaration

13
14 This is my will and I revoke any prior wills and codicils.

15
16 Article 2. Disposition of my property

17
18 2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it
19 shall be equally divided among my children who survive me; except as specifically
20 provided below: (specific distribution not valid without signature.)

21 I leave the following specific real property to the person(s) named:

22

<u>(name)</u>	<u>(description of item)</u>	<u>(signature)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

23
24
25
26
27
28
29 2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings,
30 household items, personal automobiles and personal items to my spouse, if living;
31 otherwise they shall be equally divided among my children who survive me; except as
32 specifically provided below: (specific distribution not valid without signature.)

33 I leave the following specific items to the person(s) named:

1
2
3
4
5
6

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7
8
9
10

2.3 CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS. I make the following cash gift(s) to the named charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made.

11
12
13
14
15

(name)	(amount)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____

16
17
18
19
20
21
22

2.4 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A," "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B," or after each individual distribution in clause "C." If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I fail to place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will.

23

Property Disposition Clauses. (select one)

24
25

___ A. I leave all my remaining property to my spouse, if living. If my spouse is not living, then in equal shares to my children and the descendants of any deceased child.

26

_____ (signature).

27
28
29
30

___ B. I leave the following stated amount to my spouse and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child.

31

_____ (signature).

32

___ C. I leave the following stated amounts to the persons named:

33

1
2
3
4
5
6
7
8
9
10

_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)

11
12
13
14
15
16

2.5 UNDISTRIBUTED PROPERTY. If I have any property that, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

(this paragraph only valid if signed)

17
18
19

Article 3. Nomination of guardian, conservator and personal representative

20
21

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

22
23
24
25

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others shall serve in the order I list them. My nomination of a guardian is not valid without my signature.

26
27
28
29
30
31
32

<u>FIRST GUARDIAN</u>	_____	_____
		(signature)
<u>SECOND GUARDIAN</u>	_____	_____
		(signature)
<u>THIRD GUARDIAN</u>	_____	_____
		(signature)

33
34
35
36
37

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

1 I nominate the first conservator named below to serve as conservator for any minor
2 children of mine. If the first conservator does not serve, then the others shall serve in the
3 order I list them. My nomination of a conservator is not valid without my signature.

4
5 FIRST CONSERVATOR _____ (signature)
6
7 SECOND CONSERVATOR _____ (signature)
8
9 THIRD CONSERVATOR _____ (signature)
10

11 3.3 PERSONAL REPRESENTATIVE. (Name at least one.) I nominate the person or
12 institution named as first personal representative below to administer the provisions of
13 this will. If that person or institution does not serve, then I nominate the others to serve in
14 the order I list them. My nomination of a personal representative is not valid without my
15 signature.

16
17
18 FIRST PERSONAL _____ (signature)
19 REPRESENTATIVE
20
21 SECOND PERSONAL _____ (signature)
22 REPRESENTATIVE
23
24 THIRD PERSONAL _____ (signature)
25 REPRESENTATIVE
26

27 I sign my name to this Maine Statutory Will on _____ (date) at
28 _____ (city) in the State of _____.

29
30 _____
Your Signature

31 STATEMENT OF WITNESSES (You must have two witnesses.)

32 Each of us declares that the person who signed above willingly signed this Maine
33 Statutory Will in our presence or willingly directed another to sign it for him or her or
34 that he or she acknowledged that the signature on this Maine Statutory Will is his or hers
35 or that he or she acknowledged that this Maine Statutory Will is his or her will and we
36 sign below as witnesses to that signing.

37 Signature _____
38 Printed name _____
39 Address _____

1 Signature _____

2 Printed name _____

3 Address _____

4 Completing the following section and having all signatures acknowledged by a notary
5 public or other individual authorized to take acknowledgments is optional but if
6 completed will simplify the submission of your will to the probate court after your death.

7 I, _____, the testator, on this _____ day of _____, 20___, being first duly
8 sworn, do hereby declare to the undersigned authority that I sign and execute this
9 instrument as my last will and that I sign it willingly (or willingly direct another to sign
10 for me) as my free and voluntary act and that I am 18 years of age or older or am a legally
11 emancipated minor, of sound mind and under no constraint or undue influence.

12 _____

13 Testator

14 We, _____, _____, the witnesses, being first duly
15 sworn, do hereby declare to the undersigned authority that the testator has signed and
16 executed this instrument as (his)(her) last will and that (he)(she) signed it willingly (or
17 willingly directed another to sign for (him)(her)), and that each of us, in the presence and
18 hearing of the testator, signs this will as witness to the testator's signing, and that to the
19 best of our knowledge the testator is 18 years of age or older or is a legally emancipated
20 minor, of sound mind and under no constraint or undue influence.

21 _____

22 Witness

23 _____

24 Witness

25 The State of _____

26 County of _____

27 Subscribed, sworn to and acknowledged before me by _____, the
28 testator, and subscribed and sworn to before me by _____ and
29 _____, witnesses, this _____ day of _____

30 (Signed) _____

31 _____

32 (Official capacity of officer)

33 **2. Forms provided.** Forms for executing a statutory will must be provided at all
34 probate courts for a cost equivalent to the reasonable cost of printing and storing the
35 forms. The probate courts shall make the statutory will form available via the Internet for
36 free printing by anyone choosing to use the form. A statutory will is deemed to be valid
37 if the blanks are filled in with a typewriter or in the handwriting of the person making the
38 will. Failure to complete or mark through any section or part of a section in the statutory
39 will does not invalidate the entire will. Failure to sign any section or part of a section in

1 the statutory will requiring a signature invalidates only the part not signed, except as
2 specifically provided in paragraph 2.4.

3 **PART 6**

4 **RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS**

5 **§2-601. Scope**

6 In the absence of a finding of a contrary intention, the rules of construction in this
7 Part control the construction of a will.

8 **§2-602. Will may pass all property and after-acquired property**

9 A will may provide for the passage of all property the testator owns at death and all
10 property acquired by the estate after the testator's death.

11 **§2-603. Antilapse; deceased devisee; class gifts**

12 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
13 following terms have the following meanings.

14 A. "Alternative devise" means a devise that is expressly created by a will and, under
15 the terms of the will, can take effect instead of another devise on the happening of
16 one or more events, including survival of the testator or failure to survive the testator,
17 whether an event is expressed in condition-precedent, condition-subsequent or any
18 other form. A residuary clause constitutes an alternative devise with respect to a
19 nonresiduary devise only if the will specifically provides that, upon lapse or failure,
20 the nonresiduary devise, or nonresiduary devises in general, pass under the residuary
21 clause.

22 B. "Class member" includes an individual who fails to survive the testator but who
23 would have taken under a devise in the form of a class gift had the individual
24 survived the testator.

25 C. "Descendant of a grandparent" means an individual who qualifies as a descendant
26 of a grandparent of the testator or of the donor of a power of appointment under the:

27 (1) Rules of construction applicable to a class gift created in the testator's will if
28 the devise or exercise of the power is in the form of a class gift; or

29 (2) Rules for intestate succession if the devise or exercise of the power is not in
30 the form of a class gift.

31 D. "Devise" includes an alternative devise, a devise in the form of a class gift and an
32 exercise of a power of appointment.

33 E. "Devisee" includes:

34 (1) A class member if the devise is in the form of a class gift;

35 (2) An individual or class member who was deceased at the time the testator
36 executed the testator's will as well as an individual or class member who was then
37 living but who failed to survive the testator; and

1 (3) An appointee under a power of appointment exercised by the testator's will.
2 F. "Stepchild" means a child of the surviving, deceased or former spouse of the
3 testator or of the donor of a power of appointment and not of the testator or donor.
4 G. "Surviving devisee" or "surviving descendant" means a devisee or descendant,
5 respectively, who neither predeceased the testator nor is deemed to have predeceased
6 the testator under section 2-702.
7 H. "Testator" includes the donee of a power of appointment if the power is exercised
8 in the testator's will.
9 **2. Substitute gift.** If a devisee fails to survive the testator and is a grandparent, a
10 descendant of a grandparent or a stepchild of either the testator or the donor of a power of
11 appointment exercised by the testator's will, the following apply.
12 A. Except as provided in paragraph D, if the devise is not in the form of a class gift
13 and the deceased devisee leaves surviving descendants, a substitute gift is created in
14 the devisee's surviving descendants. The surviving descendants take per capita at
15 each generation the property to which the devisee would have been entitled had the
16 devisee survived the testator.
17 B. Except as provided in paragraph D, if the devise is in the form of a class gift,
18 other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of
19 kin," "relatives" or "family," or a class described by language of similar import, a
20 substitute gift is created in the surviving descendants of any deceased devisee. The
21 property to which the devisees would have been entitled had all of them survived the
22 testator passes to the surviving devisees and the surviving descendants of the
23 deceased devisees. Each surviving devisee takes the share to which the devisee
24 would have been entitled had the deceased devisee survived the testator. Each
25 deceased devisee's surviving descendants who are substituted for the deceased
26 devisee take per capita at each generation the share to which the deceased devisee
27 would have been entitled had the deceased devisee survived the testator. For the
28 purposes of this paragraph, "deceased devisee" means a class member who failed to
29 survive the testator and left one or more surviving descendants.
30 C. For the purposes of section 2-601, words of survivorship, such as in a devise to an
31 individual "if he survives me," or in a devise to "my surviving children," are, in the
32 absence of additional evidence, a sufficient indication of an intent contrary to the
33 application of this section.
34 D. If the will creates an alternative devise with respect to a devise for which a
35 substitute gift is created by paragraph A or B, the substitute gift is superseded by the
36 alternative devise if:
37 (1) The alternative devise is in the form of a class gift and one or more members
38 of the class is entitled to take under the will; or
39 (2) The alternative devise is not in the form of a class gift and the expressly
40 designated devisee of the alternative devise is entitled to take under the will.
41 E. Unless the language creating a power of appointment expressly excludes the
42 substitution of the descendants of an appointee for the appointee, a surviving

1 descendant of a deceased appointee of a power of appointment may be substituted for
2 the appointee under this section, whether or not the descendant is an object of the
3 power.

4 "Descendant," in the phrase "surviving descendant," used in reference to a deceased
5 devisee or class member, means the descendant of a deceased devisee or class member in
6 paragraphs A and B who would take under a class gift created in the testator's will.

7 **3. More than one substitute gift; which one takes effect.** If, under subsection 2,
8 substitute gifts are created and not superseded with respect to more than one devise and
9 the devises are alternative devises, one to the other, the devised property passes under the
10 primary substitute gift except that if there is a younger-generation devise, the devised
11 property passes under the younger-generation substitute gift and not under the primary
12 substitute gift.

13 As used in this subsection, unless the context otherwise indicates, the following terms
14 have the following meanings.

15 A. "Primary devise" means the devise that would have taken effect had all the
16 deceased devisees of the alternative devises who left surviving descendants survived
17 the testator.

18 B. "Primary substitute gift" means the substitute gift created with respect to the
19 primary devise.

20 C. "Younger-generation devise" means a devise that:

21 (1) Is to a descendant of a devisee of the primary devise;

22 (2) Is an alternative devise with respect to the primary devise;

23 (3) Is a devise for which a substitute gift is created; and

24 (4) Would have taken effect had all the deceased devisees who left surviving
25 descendants survived the testator except the deceased devisee or devisees of the
26 primary devise.

27 D. "Younger-generation substitute gift" means the substitute gift created with respect
28 to the younger-generation devise.

29 **§2-604. Failure of testamentary provision**

30 **1. Failed devise becomes part of residue.** Except as provided in section 2-603, a
31 devise, other than a residuary devise, that fails for any reason becomes a part of the
32 residue.

33 **2. Failed residuary devise passes in proportion.** Except as provided in section
34 2-603, if the residue is devised to 2 or more persons, the share of a residuary devisee that
35 fails for any reason passes to the other residuary devisee or to other residuary devisees in
36 proportion to the interest of each in the remaining part of the residue.

1 **§2-605. Increase in securities; accessions**

2 **1. Additional securities.** If a testator executes a will that devises securities and the
3 testator then owned securities that meet the description in the will, the devise includes
4 additional securities owned by the testator at death to the extent the additional securities
5 were acquired by the testator after the will was executed as a result of the testator's
6 ownership of the described securities and are securities of any of the following types:

7 A. Securities of the same organization acquired by reason of action initiated by the
8 organization or any successor, related or acquiring organization, excluding any
9 acquired by exercise of purchase options;

10 B. Securities of another organization acquired as a result of a merger, consolidation,
11 reorganization or other distribution by the organization or any successor, related or
12 acquiring organization; or

13 C. Securities of the same organization acquired as a result of a plan of reinvestment.

14 **2. Distributions in cash.** Distributions in cash before death with respect to a
15 described security are not part of the devise under subsection 1.

16 **§2-606. Nonademption of specific devises; unpaid proceeds of sale, condemnation or**
17 **insurance; sale by conservator or agent**

18 **1. Specifically devised property.** A specific devisee has a right to specifically
19 devised property in the testator's estate at the testator's death and to:

20 A. Any balance of the purchase price, together with any security agreement, owed by
21 a purchaser at the testator's death by reason of sale of the property;

22 B. Any amount of a condemnation award for the taking of the property unpaid at
23 death;

24 C. Any proceeds unpaid at death on fire or casualty insurance on or other recovery
25 for injury to the property;

26 D. Any property owned by the testator at death and acquired as a result of
27 foreclosure, or obtained in lieu of foreclosure, of the security interest for a
28 specifically devised obligation;

29 E. Any real property or tangible personal property owned by the testator at death that
30 the testator acquired as a replacement for specifically devised real property or
31 tangible personal property; and

32 F. If not covered by paragraphs A to E, a pecuniary devise equal to the value as of its
33 date of disposition of other specifically devised property disposed of during the
34 testator's lifetime but only to the extent it is established that ademption would be
35 inconsistent with the testator's manifested plan of distribution or that at the time the
36 will was made, the date of disposition or otherwise, the testator did not intend
37 ademption of the devise.

38 **2. General pecuniary devise from specifically devised property.** If specifically
39 devised property is sold or mortgaged by a conservator or by an agent acting within the

1 authority of a durable power of attorney for an incapacitated principal, or a condemnation
2 award, insurance proceeds or recovery for injury to the property is paid to a conservator
3 or to an agent acting within the authority of a durable power of attorney for an
4 incapacitated principal, the specific devisee has the right to a general pecuniary devise
5 equal to the net sale price, the amount of the unpaid loan, the condemnation award, the
6 insurance proceeds or the recovery.

7 **3. Reduction of right to general pecuniary devise.** The right of a specific devisee
8 under subsection 2 is reduced by any right the devisee has under subsection 1.

9 **4. Survival of testator; incapacity ceased.** For the purposes of the references in
10 subsection 2 to a conservator, subsection 2 does not apply if, after the sale, mortgage,
11 condemnation, casualty or recovery, it was adjudicated that the testator's incapacity
12 ceased and the testator survived the adjudication for at least one year.

13 **5. Durable power of attorney.** For the purposes of the references in subsection 2 to
14 an agent acting within the authority of a durable power of attorney for an incapacitated
15 principal:

16 A. "Incapacitated principal" means a principal who is an incapacitated person;

17 B. An adjudication of incapacity before death is not necessary; and

18 C. The acts of an agent within the authority of a durable power of attorney are
19 presumed to be for an incapacitated principal.

20 **§2-607. Nonexoneration**

21 A specific devise passes subject to any mortgage interest existing at the date of death
22 without right of exoneration, regardless of a general directive in the will to pay debts.

23 **§2-608. Exercise power of appointment**

24 In the absence of a requirement that a power of appointment be exercised by a
25 reference to the power or by an express or specific reference to the power, a general
26 residuary clause in a will, or a will making general disposition of all of the testator's
27 property, expresses an intention to exercise a power of appointment held by the testator
28 only if:

29 **1. General power.** The power is a general power exercisable in favor of the
30 powerholder's estate and the creating instrument does not contain an effective gift if the
31 power is not exercised; or

32 **2. Intention to include property subject to the power.** The testator's will
33 manifests an intention to include the property subject to the power.

34 **§2-609. Ademption by satisfaction**

35 **1. Property given during testator's lifetime.** Property a testator gave in the
36 testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part
37 only if:

1 B. There are more than 2 co-owners with right of survivorship and it is not
2 established by clear and convincing evidence that at least one of them survived the
3 others by 120 hours, the property passes in the proportion that one bears to the whole
4 number of co-owners.

5 For the purposes of this subsection, "co-owners with right of survivorship" includes joint
6 tenants, tenants by the entireties and other co-owners of property or accounts held under
7 circumstances that entitle one or more to the whole of the property or account on the
8 death of the other or others.

9 **4. Exceptions.** Survival by 120 hours is not required if:

10 A. The governing instrument contains language dealing explicitly with simultaneous
11 deaths or deaths in a common disaster and that language is operable under the facts of
12 the case;

13 B. The governing instrument expressly indicates that an individual is not required to
14 survive an event, including the death of another individual, by any specified period or
15 expressly requires the individual to survive the event by a specified period. Survival
16 of the event and the specified period must be established by clear and convincing
17 evidence;

18 C. The imposition of a 120-hour requirement of survival would cause a nonvested
19 property interest or a power of appointment to fail to qualify for validity under Title
20 33, section 111, subsection 1, paragraph A, subsection 2, paragraph A or subsection
21 3, paragraph A or to become invalid under Title 33, section 111, subsection 1,
22 paragraph B, subsection 2, paragraph B or subsection 3, paragraph B. Survival must
23 be established by clear and convincing evidence; or

24 D. The application of a 120-hour requirement of survival to multiple governing
25 instruments would result in an unintended failure or duplication of a disposition.
26 Survival must be established by clear and convincing evidence.

27 **5. Protection of payors and other 3rd parties.** This subsection governs liability of
28 payors and other 3rd parties.

29 A. A payor or other 3rd party is not liable for having made a payment or transferred
30 an item of property or any other benefit to a beneficiary designated in a governing
31 instrument who, under this section, is not entitled to the payment or item of property
32 or for having taken any other action if that payment, transfer or other action is made
33 in good faith reliance on the beneficiary's apparent entitlement under the terms of the
34 governing instrument before the payor or other 3rd party received written notice of a
35 claimed lack of entitlement under this section. A payor or other 3rd party is liable for
36 a payment or transfer made or other action taken after the payor or other 3rd party
37 received written notice of a claimed lack of entitlement under this section.

38 B. Written notice of a claimed lack of entitlement under paragraph A must be mailed
39 to the payor's or other 3rd party's main office or home by registered or certified mail,
40 return receipt requested, or served upon the payor or other 3rd party in the same
41 manner as a summons in a civil action. Upon receipt of written notice of a claimed
42 lack of entitlement under this section, a payor or other 3rd party may pay any amount
43 owed or transfer or deposit any item of property held by the payor or other 3rd party

1 to or with the court having jurisdiction of the probate proceedings relating to the
2 decedent's estate or, if no proceedings have been commenced, to or with the court
3 having jurisdiction of probate proceedings relating to decedents' estates located in the
4 county of the decedent's residence. The court shall hold the funds or item of property
5 and, upon its determination under this section, shall order disbursement in accordance
6 with the determination. Payments, transfers or deposits made to or with the court
7 discharge the payor or other 3rd party from all claims for the value of amounts paid
8 to or items of property transferred to or deposited with the court.

9 **6. Protection of bona fide purchaser; personal liability of recipient.** This
10 subsection governs the liability of bona fide purchasers and other recipients.

11 A. A person who purchases property for value and without notice, or who receives a
12 payment, and item of property or any other benefit in partial or full satisfaction of a
13 legally enforceable obligation, is neither obligated under this section to return the
14 payment, item of property or benefit nor liable under this section for the amount of
15 the payment or the value of the item of property or benefit. A person who, not for
16 value, receives a payment, item of property or other benefit to which the person is not
17 entitled under this section is obligated to return the payment, item of property or
18 benefit, or is personally liable for the amount of the payment or the value of the item
19 of property or benefit, to the person who is entitled to it under this section.

20 B. If this section or any part of this section is preempted by federal law with respect
21 to a payment, an item of property or any other benefit covered by this section, a
22 person who, not for value, receives the payment, item of property or other benefit to
23 which the person is not entitled under this section is obligated to return the payment,
24 item of property or benefit, or is personally liable for the amount of the payment or
25 the value of the item of property or benefit, to the person who would have been
26 entitled to it were this section or part of this section not preempted.

27 **§2-703. Choice of law as to meaning and effect of governing instrument**

28 The meaning and legal effect of a governing instrument is determined by the local
29 law of the state selected in the governing instrument, unless the application of that law is
30 contrary to the provisions relating to the elective share described in Part 2, the provisions
31 relating to exempt property and allowances described in Part 4 or any other public policy
32 of this State otherwise applicable to the disposition.

33 **§2-704. Power of appointment; compliance with specific reference requirement**

34 A powerholder's substantial compliance with a formal requirement of appointment
35 imposed in a governing instrument by the donor, including a requirement that the
36 instrument exercising the power of appointment make reference or specific reference to
37 the power, is sufficient if:

38 **1. Knows of and intends to exercise power.** The powerholder knows of and
39 intends to exercise the power; and

40 **2. Does not impair a material purpose.** The powerholder's manner of attempted
41 exercise does not impair a material purpose of the donor in imposing the requirement.

1 **§2-705. Class gifts construed to accord with intestate succession; exceptions**

2 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
3 following terms have the following meanings.

4 A. "Adoptee" has the meaning set forth in section 2-115.

5 B. "Child of assisted reproduction" has the meaning set forth in section 2-120.

6 C. "Distribution date" means the date when an immediate or postponed class gift
7 takes effect in possession or enjoyment.

8 D. "Function as a parent of the adoptee" has the meaning set forth in section 2-115,
9 substituting "adoptee" for "child" in that definition.

10 E. "Function as a parent of the child" has the meaning set forth in section 2-115.

11 F. "Genetic parent" has the meaning set forth in section 2-115.

12 G. "Gestational child" has the meaning set forth in section 2-121.

13 H. "Relative" has the meaning set forth in section 2-115.

14 **2. Terms of relationship.** A class gift that uses a term of relationship to identify the
15 class members includes in the class a child of assisted reproduction, a gestational child
16 and, except as otherwise provided in subsections 5 and 6, an adoptee and a child born to
17 parents who are not married to each other, and their respective descendants if appropriate
18 to the class, in accordance with the rules for intestate succession regarding parent-child
19 relationships. For the purpose of determining whether a contrary intention exists under
20 section 2-701, a provision in a governing instrument that relates to the inclusion or
21 exclusion in a class gift of a child born to parents who are not married to each other but
22 does not specifically refer to a child of assisted reproduction or a gestational child does
23 not apply to a child of assisted reproduction or a gestational child.

24 **3. Relatives by marriage.** Terms of relationship in a governing instrument that do
25 not differentiate relationships by blood from those by marriage, such as uncles, aunts,
26 nieces or nephews, are construed to exclude relatives by marriage, unless:

27 A. When the governing instrument was executed, the class was then and foreseeably
28 would be empty; or

29 B. The language or circumstances otherwise establish that relatives by marriage were
30 intended to be included.

31 **4. Half-blood relatives.** Terms of relationship in a governing instrument that do not
32 differentiate relationships by the half blood from those by the whole blood, such as
33 brothers, sisters, nieces or nephews, are construed to include both types of relationships.

34 **5. Transferor not genetic parent.** In construing a dispositive provision of a
35 transferor who is not the genetic parent, a child of a genetic parent is not considered the
36 child of that genetic parent unless the genetic parent, a relative of the genetic parent or the
37 spouse or surviving spouse of the genetic parent or of a relative of the genetic parent
38 functioned as a parent of the child before the child reached 18 years of age.

1 **6. Transferor not adoptive parent.** In construing a dispositive provision of a
2 transferor who is not the adoptive parent, an adoptee is not considered the child of the
3 adoptive parent unless:

4 A. The adoption took place before the adoptee reached 18 years of age;

5 B. The adoptive parent was the adoptee's stepparent or foster parent; or

6 C. The adoptive parent functioned as a parent of the adoptee before the adoptee
7 reached 18 years of age.

8 **7. Class-closing rules.** The following provisions apply for purposes of the class-
9 closing rules.

10 A. A child in utero at a particular time is treated as living at that time if the child
11 lives 120 hours after birth.

12 B. If a child of assisted reproduction or a gestational child is conceived
13 posthumously and the distribution date is the deceased parent's death, the child is
14 treated as living on the distribution date if the child lives 120 hours after birth and
15 was in utero not later than 36 months after the deceased parent's death or born not
16 later than 45 months after the deceased parent's death.

17 C. An individual who is in the process of being adopted when the class closes is
18 treated as adopted when the class closes if the adoption is subsequently granted.

19 **§2-706. Life insurance; retirement plan; account with POD designation; TOD**
20 **designation; deceased beneficiary**

21 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
22 following terms have the following meanings.

23 A. "Alternative beneficiary designation" means a beneficiary designation that is
24 expressly created by the governing instrument and, under the terms of the governing
25 instrument, can take effect instead of another designation on the happening of one or
26 more events, including survival of the decedent or failure to survive the decedent,
27 whether an event is expressed in condition-precedent, condition-subsequent or any
28 other form.

29 B. "Beneficiary" means the beneficiary of a beneficiary designation under which the
30 beneficiary must survive the decedent and includes:

31 (1) A class member if the beneficiary designation is in the form of a class gift;
32 and

33 (2) An individual or class member who was deceased at the time the beneficiary
34 designation was executed as well as an individual or class member who was then
35 living but who failed to survive the decedent.

36 "Beneficiary" excludes a joint tenant of a joint tenancy with the right of survivorship
37 and a party to a joint survivorship account.

38 C. "Beneficiary designation" includes an alternative beneficiary designation and a
39 beneficiary designation in the form of a class gift.

1 D. "Class member" includes an individual who fails to survive the decedent but who
2 would have taken under a beneficiary designation in the form of a class gift had the
3 individual survived the decedent.

4 E. "Descendant of a grandparent" means an individual who qualifies as a descendant
5 of a grandparent of the decedent under the:

6 (1) Rules of construction applicable to a class gift created in the decedent's
7 beneficiary designation if the beneficiary designation is in the form of a class
8 gift; or

9 (2) Rules for intestate succession if the beneficiary designation is not in the form
10 of a class gift.

11 F. "Stepchild" means a child of the decedent's surviving, deceased or former spouse
12 and not of the decedent.

13 G. "Surviving beneficiaries" or "surviving descendants" means beneficiaries or
14 descendants, respectively, who neither predeceased the decedent nor are deemed to
15 have predeceased the decedent under section 2-702.

16 **2. Substitute gift.** If a beneficiary fails to survive the decedent and is a grandparent,
17 a descendant of a grandparent or a stepchild of the decedent, the following apply.

18 A. Except as provided in paragraph D, if the beneficiary designation is not in the
19 form of a class gift and the deceased beneficiary leaves surviving descendants, a
20 substitute gift is created in the beneficiary's surviving descendants. The surviving
21 descendants take per capita at each generation the property to which the beneficiary
22 would have been entitled had the beneficiary survived the decedent.

23 B. Except as provided in paragraph D, if the beneficiary designation is in the form of
24 a class gift, other than a beneficiary designation to "issue," "descendants," "heirs of
25 the body," "heirs," "next of kin," "relatives" or "family," or a class described by
26 language of similar import, a substitute gift is created in the surviving descendants of
27 any deceased beneficiary. The property to which the beneficiaries would have been
28 entitled had all of them survived the decedent passes to the surviving beneficiaries
29 and the surviving descendants of the deceased beneficiaries. Each surviving
30 beneficiary takes the share to which that beneficiary would have been entitled had the
31 deceased beneficiary survived the decedent. Each deceased beneficiary's surviving
32 descendants who are substituted for the deceased beneficiary take per capita at each
33 generation the share to which the deceased beneficiary would have been entitled had
34 the deceased beneficiary survived the decedent. For the purposes of this paragraph,
35 "deceased beneficiary" means a class member who failed to survive the decedent and
36 left one or more surviving descendants.

37 C. For the purposes of section 2-701, words of survivorship, such as in a beneficiary
38 designation to an individual "if he survives me" or "if she survives me," or in a
39 beneficiary designation to "my surviving children," are, in the absence of additional
40 evidence, a sufficient indication of an intent contrary to the application of this
41 section.

1 D. If a governing instrument creates an alternative beneficiary designation with
2 respect to a beneficiary designation for which a substitute gift is created under
3 paragraph A or B, the substitute gift is superseded by the alternative beneficiary
4 designation if:

5 (1) The alternative beneficiary designation is in the form of a class gift and one
6 or more members of the class is entitled to take; or

7 (2) The alternative beneficiary designation is not in the form of a class gift and
8 the expressly designated beneficiary of the alternative beneficiary designation is
9 entitled to take.

10 "Descendants," in the phrase "surviving descendants," used in reference to a deceased
11 beneficiary or class member in paragraphs A and B, means the descendants of a deceased
12 beneficiary or class member who would take under a class gift created in the beneficiary
13 designation.

14 **3. More than one substitute gift; which one takes effect.** If, under subsection 2,
15 substitute gifts are created and not superseded with respect to more than one beneficiary
16 designation and the beneficiary designations are alternative beneficiary designations, one
17 to the other, the property passes under the primary substitute gift except that if there is a
18 younger-generation beneficiary designation, the property passes under the younger-
19 generation substitute gift and not under the primary substitute gift.

20 As used in this subsection, unless the context otherwise indicates, the following terms
21 have the following meanings.

22 A. "Primary beneficiary designation" means the beneficiary designation that would
23 have taken effect had all the deceased beneficiaries of the alternative beneficiary
24 designations who left surviving descendants survived the decedent.

25 B. "Primary substitute gift" means the substitute gift created with respect to the
26 primary beneficiary designation.

27 C. "Younger-generation beneficiary designation" means a beneficiary designation
28 that:

29 (1) Is to a descendant of a beneficiary of the primary beneficiary designation;

30 (2) Is an alternative beneficiary designation with respect to the primary
31 beneficiary designation;

32 (3) Is a beneficiary designation for which a substitute gift is created; and

33 (4) Would have taken effect had all the deceased beneficiaries who left surviving
34 descendants survived the decedent except the deceased beneficiary or
35 beneficiaries of the primary beneficiary designation.

36 D. "Younger-generation substitute gift" means the substitute gift created with respect
37 to the younger-generation beneficiary designation.

38 **4. Protection of payors.** This subsection governs the liability of payors.

39 A. A payor is protected from liability in making payments under the terms of the
40 beneficiary designation until the payor has received written notice of a claim to a

1 substitute gift under this section. Payment made before the receipt of written notice
2 of a claim to a substitute gift under this section discharges the payor, but not the
3 recipient, from all claims for the amounts paid. A payor is liable for a payment made
4 after the payor has received written notice of the claim. A recipient is liable for a
5 payment received, whether or not written notice of the claim is given.

6 B. The written notice of the claim under paragraph A must be mailed to the payor's
7 main office or home by registered or certified mail, return receipt requested, or served
8 upon the payor in the same manner as a summons in a civil action. Upon receipt of
9 written notice of the claim, a payor may pay any amount owed by the payor or other
10 3rd party to the court having jurisdiction of the probate proceedings relating to the
11 decedent's estate or, if no proceedings have been commenced, to the court having
12 jurisdiction of probate proceedings relating to decedents' estates located in the county
13 of the decedent's residence. The court shall hold the funds and, upon its
14 determination under this section, shall order disbursement in accordance with the
15 determination. Payment made to the court discharges the payor from all claims for
16 the amounts paid.

17 **5. Protection of bona fide purchaser; personal liability of recipient. This**
18 **subsection governs the liability of bona fide purchasers and other recipients.**

19 A. A person who purchases property for value and without notice, or who receives a
20 payment, an item of property or any other benefit in partial or full satisfaction of a
21 legally enforceable obligation, is neither obligated under this section to return the
22 payment, item of property or benefit nor liable under this section for the amount of
23 the payment or the value of the item of property or benefit. A person who, not for
24 value, receives a payment, item of property or other benefit to which the person is not
25 entitled under this section is obligated to return the payment, item of property or
26 benefit, or is personally liable for the amount of the payment or the value of the item
27 of property or benefit, to the person who is entitled to it under this section.

28 B. If this section or any part of this section is preempted by federal law with respect
29 to a payment, an item of property or any other benefit covered by this section, a
30 person who, not for value, receives the payment, item of property or other benefit to
31 which the person is not entitled under this section is obligated to return the payment,
32 item of property or benefit, or is personally liable for the amount of the payment or
33 the value of the item of property or benefit, to the person who would have been
34 entitled to it were this section or part of this section not preempted.

35 **§2-707. Survivorship with respect to future interests under terms of trust;**
36 **substitute takers**

37 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
38 following terms have the following meanings.

39 A. "Alternative future interest" means an expressly created future interest that can
40 take effect in possession or enjoyment instead of another future interest on the
41 happening of one or more events, including survival of an event or failure to survive
42 an event, whether the event is expressed in condition-precedent, condition-subsequent
43 or any other form. A residuary clause in a will does not create an alternative future

1 interest with respect to a future interest created in a nonresiduary devise in the will,
2 whether or not the will specifically provides that lapsed or failed devises are to pass
3 under the residuary clause.

4 B. "Beneficiary" means the beneficiary of a future interest and includes a class
5 member if the future interest is in the form of a class gift.

6 C. "Class member" includes an individual who fails to survive the distribution date
7 but who would have taken under a future interest in the form of a class gift had the
8 individual survived the distribution date.

9 D. "Distribution date," with respect to a future interest, means the time when the
10 future interest is to take effect in possession or enjoyment. The distribution date need
11 not occur at the beginning or end of a calendar day, but can occur at a time during the
12 course of a day.

13 E. "Future interest" includes an alternative future interest and a future interest in the
14 form of a class gift.

15 F. "Future interest under the terms of a trust" means a future interest that was created
16 by a transfer creating a trust or to an existing trust or by an exercise of a power of
17 appointment to an existing trust, directing the continuance of an existing trust,
18 designating a beneficiary of an existing trust or creating a trust.

19 G. "Surviving beneficiaries" or "surviving descendants" means beneficiaries or
20 descendants, respectively, who neither predeceased the distribution date nor are
21 deemed to have predeceased the distribution date under section 2-702.

22 **2. Survivorship required; substitute gift.** A future interest under the terms of a
23 trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of
24 a future interest under the terms of a trust fails to survive the distribution date, the
25 following apply.

26 A. Except as provided in paragraph D, if the future interest is not in the form of a
27 class gift and the deceased beneficiary leaves surviving descendants, a substitute gift
28 is created in the beneficiary's surviving descendants. The surviving descendants take
29 per capita at each generation the property to which the beneficiary would have been
30 entitled had the beneficiary survived the distribution date.

31 B. Except as provided in paragraph D, if the future interest is in the form of a class
32 gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs,"
33 "next of kin," "relatives" or "family," or a class described by language of similar
34 import, a substitute gift is created in the surviving descendants of any deceased
35 beneficiary. The property to which the beneficiaries would have been entitled had all
36 of them survived the distribution date passes to the surviving beneficiaries and the
37 surviving descendants of the deceased beneficiaries. Each surviving beneficiary
38 takes the share to which that beneficiary would have been entitled had the deceased
39 beneficiaries survived the distribution date. Each deceased beneficiary's surviving
40 descendants who are substituted for the deceased beneficiary take per capita at each
41 generation the share to which the deceased beneficiary would have been entitled had
42 the deceased beneficiary survived the distribution date. For the purposes of this

1 paragraph, "deceased beneficiary" means a class member who failed to survive the
2 distribution date and left one or more surviving descendants.

3 C. For the purposes of section 2-701, words of survivorship attached to a future
4 interest are, in the absence of additional evidence, a sufficient indication of an intent
5 contrary to the application of this section. As used in this paragraph, "words of
6 survivorship" includes words of survivorship that relate to the distribution date or to
7 an earlier or an unspecified time, whether those words of survivorship are expressed
8 in condition-precedent, condition-subsequent or any other form.

9 D. If the governing instrument creates an alternative future interest with respect to a
10 future interest for which a substitute gift is created under paragraph A or B, the
11 substitute gift is superseded by the alternative future interest if:

12 (1) The alternative future interest is in the form of a class gift and one or more
13 members of the class is entitled to take in possession or enjoyment; or

14 (2) The alternative future interest is not in the form of a class gift and the
15 expressly designated beneficiary of the alternative future interest is entitled to
16 take in possession or enjoyment.

17 "Descendants," in the phrase "surviving descendants," used in reference to a deceased
18 beneficiary or class member in paragraphs A and B, means the descendants of a deceased
19 beneficiary or class member who would take under a class gift created in the trust.

20 **3. More than one substitute gift; which one takes effect.** If, under subsection 2,
21 substitute gifts are created and not superseded with respect to more than one future
22 interest and the future interests are alternative future interests, one to the other, the
23 property passes under the primary substitute gift, except that if there is a younger-
24 generation future interest, the property passes under the younger-generation substitute gift
25 and not under the primary substitute gift.

26 As used in this subsection, unless the context otherwise indicates, the following terms
27 have the following meanings.

28 A. "Primary future interest" means the future interest that would have taken effect
29 had all the deceased beneficiaries of the alternative future interests who left surviving
30 descendants survived the distribution date.

31 B. "Primary substitute gift" means the substitute gift created with respect to the
32 primary future interest.

33 C. "Younger-generation future interest" means a future interest that:

34 (1) Is to a descendant of a beneficiary of the primary future interest;

35 (2) Is an alternative future interest with respect to the primary future interest;

36 (3) Is a future interest for which a substitute gift is created; and

37 (4) Would have taken effect had all the deceased beneficiaries who left surviving
38 descendants survived the distribution date except the deceased beneficiary or
39 beneficiaries of the primary future interest.

1 D. "Younger-generation substitute gift" means the substitute gift created with respect
2 to the younger-generation future interest.

3 **4. If no other taker, property passes under residuary clause or to transferor's**
4 **heirs.** Except as provided in subsection 5, if, after the application of subsections 2 and 3,
5 there is no surviving taker, the property passes in the following order.

6 A. If the trust was created in a nonresiduary devise in the transferor's will or in a
7 codicil to the transferor's will, the property passes under the residuary clause in the
8 transferor's will. For purposes of this section, the residuary clause is treated as
9 creating a future interest under the terms of a trust; and

10 B. If a taker is not produced by the application of paragraph A, the property passes to
11 the transferor's heirs under section 2-711.

12 For purposes of this subsection, "transferor" means the donor if the power was a
13 nongeneral power and means the donee if the power was a general power.

14 **5. No other taker and future interest created by exercise of power of**
15 **appointment.** If, after the application of subsections 2 and 3, there is no surviving taker
16 and if the future interest was created by the exercise of a power of appointment:

17 A. The property passes under the donor's gift-in-default clause, if any. The donor's
18 gift-in-default clause is treated as creating a future interest under the terms of a trust;
19 and

20 B. If no taker is produced by the application of paragraph A, the property passes as
21 provided in subsection 4.

22 **§2-708. Class gifts to "descendants," "issue" or "heirs of the body"; form of**
23 **distribution if none specified**

24 If a class gift in favor of "descendants," "issue" or "heirs of the body" does not
25 specify the manner in which the property is to be distributed among the class members,
26 the property is distributed among the class members who are living when the interest is to
27 take effect in possession or enjoyment, in such shares as they would receive, under the
28 applicable law of intestate succession, if the designated ancestor had then died intestate
29 owning the subject matter of the class gift.

30 **§2-709. Per capita at each generation; per stirpes or by representation**

31 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
32 following terms have the following meanings.

33 A. "Deceased child" or "deceased descendant" means a child or a descendant,
34 respectively, who either predeceased the distribution date or is deemed to have
35 predeceased the distribution date pursuant to section 2-702.

36 B. "Distribution date," with respect to an interest, means the time when the interest is
37 to take effect in possession or enjoyment. The distribution date need not occur at the
38 beginning or end of a calendar day, but can occur at a time during the course of a day.

1 C. "Surviving ancestor," "surviving child" or "surviving descendant" means an
2 ancestor, a child or a descendant, respectively, who neither predeceased the
3 distribution date nor is deemed to have predeceased the distribution date pursuant to
4 section 2-702.

5 **2. Per capita at each generation.** If an applicable statute or a governing instrument
6 calls for property to be distributed "per capita at each generation," the property is divided
7 into as many equal shares as there are:

8 A. Surviving descendants in the generation nearest to the designated ancestor that
9 contains one or more surviving descendants; and

10 B. Deceased descendants in the same generation who left surviving descendants, if
11 any.

12 Each surviving descendant in the nearest generation is allocated one share. The
13 remaining shares, if any, are combined and then divided in the same manner among the
14 surviving descendants of the deceased descendants as if the surviving descendants who
15 were allocated a share and their surviving descendants had predeceased the distribution
16 date.

17 **3. Per stirpes or by representation.** If a governing instrument calls for property to
18 be distributed "per stirpes" or "by representation," the property is divided into as many
19 equal shares as there are:

20 A. Surviving children of the designated ancestor; and

21 B. Deceased children who left surviving descendants.

22 Each surviving child, if any, is allocated one share. The share of each deceased child
23 with surviving descendants is divided in the same manner, with subdivision repeating at
24 each succeeding generation until the property is fully allocated among surviving
25 descendants.

26 **4. Deceased descendant with no surviving descendant disregarded.** For the
27 purposes of subsections 2 and 3, an individual who is deceased and left no surviving
28 descendant is disregarded, and an individual who leaves a surviving ancestor who is a
29 descendant of the designated ancestor is not entitled to a share.

30 **§2-710. Worthier-title doctrine abolished**

31 The doctrine of worthier title is abolished as a rule of law and as a rule of
32 construction. Language in a governing instrument describing the beneficiaries of a
33 disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees,"
34 "relatives" or "family," or language of similar import, does not create or presumptively
35 create a reversionary interest in the transferor.

36 **§2-711. Interests in "heirs" and like**

37 If an applicable statute or a governing instrument calls for a present or future
38 distribution to or creates a present or future interest in a designated individual's "heirs,"
39 "heirs at law," "next of kin," "relatives" or "family," or language of similar import, the

1 property passes to those persons, including the State, and in such shares as would succeed
2 to the designated individual's intestate estate under the intestate succession law of the
3 designated individual's domicile if the designated individual died when the disposition is
4 to take effect in possession or enjoyment. If the designated individual's surviving spouse
5 is living but is remarried at the time the disposition is to take effect in possession or
6 enjoyment, the surviving spouse is not an heir of the designated individual.

7 **PART 8**

8 **GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE**
9 **TRANSFERS**

10 **§2-801. Effect of divorce, annulment and decree of separation**

11 **1. Divorce; annulment; separation.** An individual who is divorced from the
12 decedent or whose marriage to the decedent has been annulled is not a surviving spouse
13 unless, by virtue of a subsequent marriage, the individual is married to the decedent at the
14 time of death. A decree of separation that does not terminate the status of spouses is not a
15 divorce for purposes of this section.

16 **2. Not a surviving spouse.** For purposes of Parts 1, 2, 3 and 4 and of section 3-203,
17 a surviving spouse does not include:

18 A. An individual who obtains or consents to a final decree or judgment of divorce
19 from the decedent or an annulment of their marriage, if that decree or judgment is not
20 recognized as valid in this State, unless they subsequently participate in a marriage
21 ceremony purporting to marry each to the other, or subsequently live together as
22 spouses;

23 B. An individual who, following an invalid decree or judgment of divorce or
24 annulment obtained by the decedent, participates in a marriage ceremony with a 3rd
25 individual; or

26 C. An individual who was a party to a valid proceeding concluded by an order
27 purporting to terminate all marital property rights.

28 **§2-802. Effect of homicide on intestate succession, wills, trusts, joint assets, life**
29 **insurance and beneficiary designations**

30 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
31 following terms have the following meanings.

32 A. "Disposition or appointment of property" includes a transfer of an item of
33 property or any other benefit to a beneficiary designated in a governing instrument.

34 B. "Governing instrument" means a governing instrument executed by the decedent.

35 C. "Revocable," with respect to a disposition, appointment, provision or nomination,
36 means one under which the decedent, at the time of or immediately before death, was
37 alone empowered, by law or under the governing instrument, to cancel the
38 designation in favor of the killer, whether or not the decedent was then empowered to

1 designate the decedent in place of the killer and whether or not the decedent then had
2 capacity to exercise the power.

3 **2. Forfeiture of statutory benefits.** An individual who feloniously and
4 intentionally kills the decedent forfeits all benefits under this Article with respect to the
5 decedent's estate, including an intestate share, an elective share, an omitted spouse's or
6 child's share, a homestead allowance, exempt property and a family allowance. If the
7 decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the
8 killer's intestate share.

9 **3. Revocation of benefits under governing instruments.** The felonious and
10 intentional killing of the decedent:

11 A. Revokes any revocable:

12 (1) Disposition or appointment of property made by the decedent to the killer in
13 a governing instrument;

14 (2) Provision in a governing instrument conferring a general or nongeneral
15 power of appointment on the killer; and

16 (3) Nomination of the killer in a governing instrument nominating or appointing
17 the killer to serve in any fiduciary or representative capacity, including as a
18 personal representative, executor, trustee or agent; and

19 B. Severs the interests of the decedent and killer in property held by them at the time
20 of the killing as joint tenants with the right of survivorship, transforming the interests
21 of the decedent and killer into equal tenancies in common.

22 **4. Effect of severance.** A severance under subsection 3, paragraph B does not affect
23 any 3rd-party interest in property acquired for value and in good faith reliance on an
24 apparent title by survivorship in the killer unless a writing declaring the severance has
25 been noted, registered, filed or recorded in records appropriate to the kind and location of
26 the property that are relied upon, in the ordinary course of transactions involving such
27 property, as evidence of ownership.

28 **5. Effect of revocation.** Provisions of a governing instrument are given effect as if
29 the killer disclaimed all provisions revoked by this section or, in the case of a revoked
30 nomination in a fiduciary or representative capacity, as if the killer predeceased the
31 decedent.

32 **6. Wrongful acquisition of property.** A wrongful acquisition of property or
33 interest by a killer not covered by this section must be treated in accordance with the
34 principle that a killer may not profit from the killer's wrong.

35 **7. Felonious and intentional killing; how determined.** After all right to appeal has
36 been exhausted, a judgment of conviction establishing criminal accountability for the
37 felonious and intentional killing of the decedent conclusively establishes the convicted
38 individual as the decedent's killer for purposes of this section. In the absence of a
39 conviction, the court, upon the petition of an interested person, shall determine whether,
40 under the preponderance of evidence standard, the individual would be found criminally
41 accountable for the felonious and intentional killing of the decedent. If the court

1 determines that, under that standard, the individual would be found criminally
2 accountable for the felonious and intentional killing of the decedent, the determination
3 conclusively establishes that individual as the decedent's killer for purposes of this
4 section.

5 **8. Protection of payors and other 3rd parties.** This subsection governs the
6 liability of payors and other 3rd parties.

7 A. A payor or other 3rd party is not liable for having made a payment or transferred
8 an item of property or any other benefit to a beneficiary designated in a governing
9 instrument affected by an intentional and felonious killing or for having taken any
10 other action if that payment, transfer or other action is made in good faith reliance on
11 the validity of the governing instrument, upon request and satisfactory proof of the
12 decedent's death, before the payor or other 3rd party received written notice of a
13 claimed forfeiture or revocation under this section. A payor or other 3rd party is
14 liable for a payment or transfer made or other action taken after the payor or other 3rd
15 party received written notice of a claimed forfeiture or revocation under this section.

16 B. Written notice of a claimed forfeiture or revocation under paragraph A must be
17 mailed to the payor's or other 3rd party's main office or home by registered or
18 certified mail, return receipt requested, or served upon the payor or other 3rd party in
19 the same manner as a summons in a civil action. Upon receipt of written notice of a
20 claimed forfeiture or revocation under this section, a payor or other 3rd party may
21 pay any amount owed or transfer or deposit any item of property held by the payor or
22 other 3rd party to or with the court having jurisdiction of the probate proceedings
23 relating to the decedent's estate or, if no proceedings have been commenced, to or
24 with the court having jurisdiction of probate proceedings relating to decedents' estates
25 located in the county of the decedent's residence. The court shall hold the funds or
26 item of property and, upon its determination under this section, shall order
27 disbursement in accordance with the determination. Payments, transfers or deposits
28 made to or with the court discharge the payor or other 3rd party from all claims for
29 the value of amounts paid to or items of property transferred to or deposited with the
30 court.

31 **9. Protection of bona fide purchaser; personal liability of recipient.** This
32 subsection governs the liability of bona fide purchasers and other recipients.

33 A. A person who purchases property for value and without notice, or who receives a
34 payment, an item of property or any other benefit in partial or full satisfaction of a
35 legally enforceable obligation, is neither obligated under this section to return the
36 payment, item of property or benefit nor liable under this section for the amount of
37 the payment or the value of the item of property or benefit. A person who, not for
38 value, receives a payment, item of property or other benefit to which the person is not
39 entitled under this section is obligated to return the payment, item of property or
40 benefit, or is personally liable for the amount of the payment or the value of the item
41 of property or benefit, to the person who is entitled to it under this section.

42 B. If this section or any part of this section is preempted by federal law with respect
43 to a payment, an item of property or any other benefit covered by this section, a
44 person who, not for value, receives the payment, item of property or other benefit to

1 which the person is not entitled under this section is obligated to return the payment,
2 item of property or benefit, or is personally liable for the amount of the payment or
3 the value of the item of property or benefit, to the person who would have been
4 entitled to it were this section or part of this section not preempted.

5 **§2-803. Effect of criminal conviction on intestate succession, wills, joint assets,**
6 **beneficiary designations and other property acquisition when restitution is**
7 **owed to the decedent**

8 A person who has been convicted of a crime of which the decedent was a victim is
9 not entitled to the following benefits to the extent that the benefits do not exceed the
10 amount of restitution the person owes to the decedent as a result of the sentence for the
11 crime:

12 **1. Decedent's will or this Article.** Any benefits under the decedent's will or under
13 this Article;

14 **2. Jointly owned property.** Any property owned jointly with the decedent;

15 **3. Bond, life insurance policy or other contractual arrangement.** Any benefit as
16 a beneficiary of a bond, life insurance policy or other contractual arrangement in which
17 the principal obligee or the person upon whose life the policy is issued is the decedent;
18 and

19 **4. Acquisition of property.** Any benefit from any acquisition of property in which
20 the decedent had an interest.

21 **§2-804. Revocation of probate and nonprobate transfers by divorce; no revocation**
22 **by other changes of circumstances**

23 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
24 following terms have the following meanings.

25 A. "Disposition or appointment of property" includes a transfer of an item of
26 property or any other benefit to a beneficiary designated in a governing instrument.

27 B. "Divorce or annulment" means any divorce or annulment, or any dissolution or
28 declaration of invalidity of a marriage, that would exclude the spouse as a surviving
29 spouse within the meaning of section 2-801. A decree of separation that does not
30 terminate the status of spouses is not a divorce for purposes of this section.

31 C. "Divorced individual" includes an individual whose marriage has been annulled.

32 D. "Governing instrument" means a governing instrument executed by the divorced
33 individual before the divorce or annulment of the individual's marriage to the
34 individual's former spouse.

35 E. "Relative of the divorced individual's former spouse" means an individual who is
36 related to the divorced individual's former spouse by blood, adoption or affinity and
37 who, after the divorce or annulment, is not related to the divorced individual by
38 blood, adoption or affinity.

1 F. "Revocable," with respect to a disposition, appointment, provision or nomination,
2 means one under which the divorced individual, at the time of the divorce or
3 annulment, was alone empowered, by law or under the governing instrument, to
4 cancel the designation in favor of the divorced individual's former spouse or relative
5 of the divorced individual's former spouse, whether or not the divorced individual
6 was then empowered to designate the divorced individual in place of the divorced
7 individual's former spouse or in place of the relative of the divorced individual's
8 former spouse and whether or not the divorced individual then had the capacity to
9 exercise the power.

10 **2. Revocation upon divorce.** Except as provided by the express terms of a
11 governing instrument, a court order or a contract relating to the division of the marital
12 estate made between the divorced individuals before or after the marriage, divorce or
13 annulment, the divorce or annulment of a marriage:

14 A. Revokes any revocable:

15 (1) Disposition or appointment of property made by a divorced individual to the
16 divorced individual's former spouse in a governing instrument and any
17 disposition or appointment created by law or in a governing instrument to a
18 relative of the divorced individual's former spouse;

19 (2) Provision in a governing instrument conferring a general or nongeneral
20 power of appointment on the divorced individual's former spouse or on a relative
21 of the divorced individual's former spouse; and

22 (3) Nomination in a governing instrument nominating a divorced individual's
23 former spouse or a relative of the divorced individual's former spouse to serve in
24 any fiduciary or representative capacity, including as a personal representative,
25 executor, trustee, conservator, agent or guardian; and

26 B. Severs the interests of the former spouses in property held by them at the time of
27 the divorce or annulment as joint tenants with the right of survivorship, transforming
28 the interests of the former spouses into equal tenancies in common.

29 **3. Effect of severance.** A severance under subsection 2, paragraph B does not affect
30 any 3rd-party interest in property acquired for value and in good faith reliance on an
31 apparent title by survivorship in the survivor of the former spouses unless a writing
32 declaring the severance has been noted, registered, filed or recorded in records
33 appropriate to the kind and location of the property that are relied upon, in the ordinary
34 course of transactions involving such property, as evidence of ownership.

35 **4. Effect of revocation.** Provisions of a governing instrument are given effect as if
36 the divorced individual's former spouse and relatives of the divorced individual's former
37 spouse disclaimed all provisions revoked by this section or, in the case of a revoked
38 nomination in a fiduciary or representative capacity, as if the divorced individual's former
39 spouse and relatives of the divorced individual's former spouse died immediately before
40 the divorce or annulment.

1 **5. Revival if divorce nullified.** Provisions revoked solely by this section are revived
2 by the divorced individual's remarriage to the former spouse or by a nullification of the
3 divorce or annulment.

4 **6. No revocation for other change of circumstances.** A change of circumstances
5 other than as described in this section or in section 2-802 does not effect a revocation
6 pursuant to this section.

7 **7. Protection of payors and other 3rd parties.** This subsection governs the
8 liability of payors and other 3rd parties.

9 A. A payor or other 3rd party is not liable for having made a payment or transferred
10 an item of property or any other benefit to a beneficiary designated in a governing
11 instrument affected by a remarriage, divorce or annulment or for having taken any
12 other action if that payment, transfer or other action is made in good faith reliance on
13 the validity of the governing instrument before the payor or other 3rd party received
14 written notice of the remarriage, divorce or annulment. A payor or other 3rd party is
15 liable for a payment or transfer made or other action taken after the payor or other 3rd
16 party received written notice of a claimed remarriage, divorce or annulment under
17 this section.

18 B. Written notice of the remarriage, divorce or annulment under paragraph A must
19 be mailed to the payor's or other 3rd party's main office or home by registered or
20 certified mail, return receipt requested, or served upon the payor or other 3rd party in
21 the same manner as a summons in a civil action. Upon receipt of written notice of
22 the remarriage, divorce or annulment, a payor or other 3rd party may pay any amount
23 owed or transfer or deposit any item of property held by the payor or other 3rd party
24 to or with the court having jurisdiction of the probate proceedings relating to the
25 decedent's estate or, if no proceedings have been commenced, to or with the court
26 having jurisdiction of probate proceedings relating to decedents' estates located in the
27 county of the decedent's residence. The court shall hold the funds or item of property
28 and, upon its determination under this section, shall order disbursement or transfer in
29 accordance with the determination. Payments, transfers or deposits made to or with
30 the court discharge the payor or other 3rd party from all claims for the value of
31 amounts paid to or items of property transferred to or deposited with the court.

32 **8. Protection of bona fide purchaser; personal liability of recipient.** This
33 subsection governs the liability of bona fide purchasers and other recipients.

34 A. A person who purchases property from a divorced individual's former spouse,
35 relative of a divorced individual's former spouse or any other person for value and
36 without notice, or who receives from a divorced individual's former spouse, relative
37 of a divorced individual's former spouse or any other person a payment, an item of
38 property or any other benefit in partial or full satisfaction of a legally enforceable
39 obligation, is neither obligated under this section to return the payment, item of
40 property or benefit nor liable under this section for the amount of the payment or the
41 value of the item of property or benefit. A divorced individual's former spouse,
42 relative of a divorced individual's former spouse or other person who, not for value,
43 receives a payment, item of property or other benefit to which that person is not
44 entitled under this section is obligated to return the payment, item of property or

1 benefit, or is personally liable for the amount of the payment or the value of the item
2 of property or benefit, to the person who is entitled to it under this section.

3 B. If this section or any part of this section is preempted by federal law with respect
4 to a payment, an item of property or any other benefit covered by this section, a
5 divorced individual's former spouse, relative of the divorced individual's former
6 spouse or any other person who, not for value, receives the payment, item of property
7 or other benefit to which that person is not entitled under this section is obligated to
8 return that payment, item of property or benefit, or is personally liable for the amount
9 of the payment or the value of the item of property or benefit, to the person who
10 would have been entitled to it were this section or part of this section not preempted.

11 **§2-805. Reformation to correct mistakes**

12 The court may reform the terms of a governing instrument, even if unambiguous, to
13 conform the terms to the transferor's intention if it is proved by clear and convincing
14 evidence what the transferor's intention was and that the terms of the governing
15 instrument were affected by a mistake of fact or law, whether in expression or
16 inducement.

17 **§2-806. Modification to achieve transferor's tax objectives**

18 To achieve the transferor's tax objectives, the court may modify the terms of a
19 governing instrument in a manner that is not contrary to the transferor's probable
20 intention. The court may provide that the modification has retroactive effect.

21 **§2-807. Actions for wrongful death**

22 **1. Liability notwithstanding death.** Whenever the death of a person is caused by a
23 wrongful act, neglect or default, and the act, neglect or default is such as would, if death
24 had not ensued, have entitled the party injured to maintain an action and recover damages
25 in respect thereof, then the person or the corporation that would have been liable if death
26 had not ensued is liable for damages as provided in this section, notwithstanding the
27 death of the person injured and although the death was caused under circumstances that
28 amount to a felony.

29 **2. Wrongful death action; damages; limitations.** Every wrongful death action
30 must be brought by and in the name of the personal representative or special
31 administrator of the deceased person, and is distributable, after payment for funeral
32 expenses and the costs of recovery including attorney's fees, directly to the decedent's
33 heirs without becoming part of the probate estate, except as may be specifically provided
34 in this subsection. The amount recovered in every wrongful death action, except as
35 specifically provided in this subsection, is for the exclusive benefit of the deceased's heirs
36 to be distributed to the individuals and in the proportions as provided in sections 2-102
37 and 2-103. The jury may give damages as it determines a fair and just compensation with
38 reference to the pecuniary injuries resulting from the death. Damages are payable to the
39 estate of the deceased person only if the jury specifically makes an award payable to the
40 estate for reasonable expenses of medical, surgical and hospital care and treatment and
41 for reasonable funeral expenses or, in the case of a settlement, the settlement documents
42 specifically provide for such an allocation to the estate for the same. In addition, the jury

1 may give damages not exceeding \$500,000 for the loss of comfort, society and
2 companionship of the deceased, including any damages for emotional distress arising
3 from the same facts as those constituting the underlying claim, to the persons for whose
4 benefit the action is brought. The jury may also give punitive damages not exceeding
5 \$250,000. An action under this section must be commenced within 2 years after the
6 decedent's death, except that if the decedent's death is caused by a homicide, the action
7 may be commenced within 6 years of the date the personal representative or special
8 administrator of the decedent discovers that there is a just cause of action against the
9 person who caused the homicide. If a claim under this section is settled without an action
10 having been commenced, the amount paid in settlement must be distributed as provided
11 in this subsection. A settlement on behalf of minor children is not valid unless approved
12 by the court, as provided in Title 14, section 1605.

13 **3. Damages for conscious suffering.** Whenever death ensues following a period of
14 conscious suffering, as a result of personal injuries due to the wrongful act, neglect or
15 default of any person, the person who caused the personal injuries resulting in such
16 conscious suffering and death is, in addition to the action at common law and damages
17 recoverable therein, liable in damages in a separate count in the same action for such
18 death, brought, commenced and determined and subject to the same limitation as to the
19 amount recoverable for such death and exclusively for the beneficiaries in the manner set
20 forth in subsection 2, separately found, but in such cases there is only one recovery for
21 the same injury.

22 **4. Maine Tort Claims Act.** Any action under this section brought against a
23 governmental entity under Title 14, sections 8101 to 8118 is limited as provided in those
24 sections.

25 **PART 9**

26 **UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT**

27 **§2-901. Short title**

28 This Part may be known and cited as "the Uniform Disclaimer of Property Interests
29 Act."

30 **§2-902. Definitions**

31 As used in this Part, unless the context otherwise indicates, the following terms have
32 the following meanings.

33 **1. Disclaimant.** "Disclaimant" means the person to whom a disclaimed interest or
34 power would have passed had the disclaimer not been made.

35 **2. Disclaimed interest.** "Disclaimed interest" means the interest that would have
36 passed to the disclaimant had the disclaimer not been made.

37 **3. Disclaimer.** "Disclaimer" means the refusal to accept an interest in or power over
38 property.

1 **4. Fiduciary.** "Fiduciary" means a personal representative, trustee, agent acting
2 under a power of attorney or other person authorized to act as a fiduciary with respect to
3 the property of another person.

4 **5. Jointly held property.** "Jointly held property" means property held in the name
5 of 2 or more persons under an arrangement in which all holders have concurrent interests
6 and under which the last surviving holder is entitled to the whole of the property.

7 **6. Person.** "Person" means an individual, corporation, business trust, estate, trust,
8 partnership, limited liability company, association, joint venture, government,
9 governmental subdivision, agency or instrumentality, public corporation or any other
10 legal or commercial entity.

11 **7. State.** "State" means a state of the United States, the District of Columbia, the
12 Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or
13 insular possession subject to the jurisdiction of the United States. "State" includes an
14 Indian tribe or band or Alaskan native village recognized by federal law or formally
15 acknowledged by a state.

16 **8. Trust.** "Trust" means:

17 A. An express trust, charitable or noncharitable, with additions thereto, whenever
18 and however created; and

19 B. A trust created pursuant to a statute, judgment or decree that requires the trust to
20 be administered in the manner of an express trust.

21 **§2-903. Scope**

22 This Part applies to disclaimers of any interest in or power over property, whenever
23 created.

24 **§2-904. Part supplemented by other law**

25 **1. Principles of law and equity.** Unless displaced by a provision of this Part, the
26 principles of law and equity supplement this Part.

27 **2. Right to waive, release, disclaim or renounce property interest.** This Part does
28 not limit any right of a person to waive, release, disclaim or renounce an interest in or
29 power over property under a law other than this Part.

30 **§2-905. Power to disclaim; general requirements; when irrevocable**

31 **1. Power to disclaim.** A person may disclaim, in whole or part, any interest in or
32 power over property, including a power of appointment. A person may disclaim the
33 interest or power even if its creator imposed a spendthrift provision or similar restriction
34 on transfer or a restriction or limitation on the right to disclaim.

35 **2. Fiduciary authority to disclaim.** Except to the extent a fiduciary's right to
36 disclaim is expressly restricted or limited by another statute of this State or by the
37 instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part,

1 any interest in or power over property, including a power of appointment, whether acting
2 in a personal or representative capacity. A fiduciary may disclaim the interest or power
3 even if its creator imposed a spendthrift provision or similar restriction on transfer or a
4 restriction or limitation on the right to disclaim or an instrument other than the instrument
5 that created the fiduciary relationship imposed a restriction or limitation on the right to
6 disclaim.

7 **3. General requirements.** To be effective, a disclaimer must be in a writing or
8 other record, declare the disclaimer, describe the interest or power disclaimed, be signed
9 by the person making the disclaimer and be delivered or filed in the manner provided in
10 section 2-912. As used in this subsection, unless the context otherwise indicates, the
11 following terms have the following meanings.

12 A. "Record" means information that is inscribed on a tangible medium or that is
13 stored in an electronic or other medium and is retrievable in perceivable form.

14 B. "Sign" means, with present intent to authenticate or adopt a record, to:

15 (1) Execute or adopt a tangible symbol; or

16 (2) Attach to or logically associate with the record an electronic sound, symbol
17 or process.

18 **4. Partial disclaimer.** A partial disclaimer may be expressed as a fraction,
19 percentage, monetary amount, term of years, limitation of a power or any other interest or
20 estate in the property.

21 **5. When irrevocable.** A disclaimer becomes irrevocable when it is delivered or
22 filed pursuant to section 2-912 or when it becomes effective as provided in sections 2-906
23 to 2-911, whichever occurs later.

24 **6. Disclaimer not a transfer, assignment or release.** A disclaimer made under this
25 Part is not a transfer, assignment or release.

26 **§2-906. Disclaimer of interest in property**

27 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
28 following terms have the following meanings.

29 A. "Future interest" means an interest that takes effect in possession or enjoyment, if
30 at all, later than the time of its creation.

31 B. "Time of distribution" means the time when a disclaimed interest would have
32 taken effect in possession or enjoyment.

33 **2. General provisions governing disclaimers.** Except for a disclaimer governed by
34 section 2-907 or 2-908, the following provisions apply to a disclaimer of an interest in
35 property.

36 A. The disclaimer takes effect as of the time the instrument creating the interest
37 becomes irrevocable or, if the interest arose under the law of intestate succession, as
38 of the time of the intestate's death.

1 B. The disclaimed interest passes according to any provision in the instrument
2 creating the interest providing for the disposition of the interest, should it be
3 disclaimed, or of disclaimed interests in general.

4 C. If the instrument does not contain a provision described in paragraph B, the
5 following provisions apply.

6 (1) If the disclaimant is not an individual, the disclaimed interest passes as if the
7 disclaimant did not exist.

8 (2) If the disclaimant is an individual, except as otherwise provided in
9 subparagraphs (3) and (4), the disclaimed interest passes as if the disclaimant had
10 died immediately before the time of distribution.

11 (3) If by law or under the instrument the descendants of the disclaimant would
12 share in the disclaimed interest by any method of representation had the
13 disclaimant died before the time of distribution, the disclaimed interest passes
14 only to the descendants of the disclaimant who survive the time of distribution.

15 (4) If the disclaimed interest would pass to the disclaimant's estate had the
16 disclaimant died before the time of distribution, the disclaimed interest instead
17 passes by representation to the descendants of the disclaimant who survive the
18 time of distribution. If no descendant of the disclaimant survives the time of
19 distribution, the disclaimed interest passes to those persons, including the State
20 but excluding the disclaimant, and in such shares as would succeed to the
21 transferor's intestate estate under the intestate succession law of the transferor's
22 domicile had the transferor died at the time of distribution. However, if the
23 transferor's surviving spouse is living but is remarried at the time of distribution,
24 the transferor is deemed to have died unmarried at the time of distribution.

25 D. Upon the disclaimer of a preceding interest, a future interest held by a person
26 other than the disclaimant takes effect as if the disclaimant had died or ceased to exist
27 immediately before the time of distribution, but a future interest held by the
28 disclaimant is not accelerated in possession or enjoyment.

29 **§2-907. Disclaimer of rights of survivorship in jointly held property**

30 **1. Disclaimer by surviving holder of jointly held property.** Upon the death of a
31 holder of jointly held property, a surviving holder may disclaim, in whole or part, the
32 greater of:

33 A. A fractional share of the property determined by dividing the number one by the
34 number of joint holders alive immediately before the death of the holder to whose
35 death the disclaimer relates; and

36 B. All of the property except that part of the value of the entire interest attributable to
37 the contribution furnished by the disclaimant.

38 **2. Effective date of disclaimer.** A disclaimer under subsection 1 takes effect as of
39 the death of the holder of jointly held property to whose death the disclaimer relates.

1 **3. Disclaimer of disclaimed property.** An interest in jointly held property
2 disclaimed by a surviving holder of the property passes as if the disclaimant predeceased
3 the holder to whose death the disclaimer relates.

4 **§2-908. Disclaimer of interest by trustee**

5 If a trustee disclaims an interest in property that otherwise would have become trust
6 property, the interest does not become trust property.

7 **§2-909. Disclaimer of power of appointment or other power not held in fiduciary**
8 **capacity**

9 If a holder disclaims a power of appointment or other power not held in a fiduciary
10 capacity, the following provisions apply.

11 **1. Disclaimer of unexercised power.** If the holder has not exercised the power, the
12 disclaimer takes effect as of the time the instrument creating the power becomes
13 irrevocable.

14 **2. Disclaimer of exercised power.** If the holder has exercised the power and the
15 disclaimer is of a power other than a presently exercisable general power of appointment,
16 the disclaimer takes effect immediately after the last exercise of the power.

17 **3. Construction of instrument creating the power.** The instrument creating the
18 power is construed as if the power expired when the disclaimer became effective.

19 **§2-910. Disclaimer by appointee, object or taker in default of exercise of power of**
20 **appointment**

21 **1. Disclaimer by appointee.** A disclaimer of an interest in property by an appointee
22 of a power of appointment takes effect as of the time the instrument by which the holder
23 exercises the power becomes irrevocable.

24 **2. Disclaimer by object or taker in default.** A disclaimer of an interest in property
25 by an object or taker in default of an exercise of a power of appointment takes effect as of
26 the time the instrument creating the power becomes irrevocable.

27 **§2-911. Disclaimer of power held in fiduciary capacity**

28 **1. Disclaimer of unexercised power.** If a fiduciary disclaims a power held in a
29 fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time
30 the instrument creating the power becomes irrevocable.

31 **2. Disclaimer of exercised power.** If a fiduciary disclaims a power held in a
32 fiduciary capacity that has been exercised, the disclaimer takes effect immediately after
33 the last exercise of the power.

34 **3. Effect of disclaimer by fiduciary.** A disclaimer under this section is effective as
35 to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the
36 authority to bind the estate, trust or other person for whom the fiduciary is acting.

1 **§2-912. Delivery or filing**

2 **1. Beneficiary designation.** As used in this section, "beneficiary designation"
3 means an instrument, other than an instrument creating a trust, naming the beneficiary of:

4 A. An annuity or insurance policy;

5 B. An account with a designation for payment;

6 C. A security registered in beneficiary form;

7 D. A pension, profit-sharing, retirement or other employment-related benefit plan; or

8 E. Any other nonprobate transfer at death.

9 **2. Delivery of disclaimer; generally.** Subject to subsections 3 to 12, delivery of a
10 disclaimer may be effected by personal delivery, first-class mail or any other method
11 likely to result in its receipt.

12 **3. Disclaimer of interest from intestate succession or will.** In the case of an
13 interest created under the law of intestate succession or an interest created by will, other
14 than an interest in a testamentary trust:

15 A. A disclaimer must be delivered to the personal representative of the decedent's
16 estate or the special administrator of the decedent's estate; or

17 B. If no personal representative is then serving, a disclaimer must be filed with the
18 court having jurisdiction to appoint the personal representative.

19 **4. Disclaimer of interest in a testamentary trust.** In the case of an interest in a
20 testamentary trust:

21 A. A disclaimer must be delivered to the trustee then serving or, if no trustee is then
22 serving, to the personal representative of the decedent's estate; or

23 B. If no trustee or personal representative is then serving, the disclaimer must be
24 filed with the court having jurisdiction to enforce the trust.

25 **5. Disclaimer of interest in inter vivos trust.** In the case of an interest in an inter
26 vivos trust:

27 A. A disclaimer must be delivered to the trustee then serving;

28 B. If no trustee is then serving, the disclaimer must be filed with the court having
29 jurisdiction to enforce the trust; or

30 C. If the disclaimer is made before the time the instrument creating the trust becomes
31 irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of
32 the interest.

33 **6. Disclaimer of interest created by beneficiary designation.** In the case of an
34 interest created by a beneficiary designation that is disclaimed before the time the
35 designation becomes irrevocable, the disclaimer must be delivered to the person making
36 the beneficiary designation.

1 **7. Disclaimer of interest created by irrevocable beneficiary designation.** In the
2 case of an interest created by a beneficiary designation that is disclaimed after the
3 designation becomes irrevocable:

4 **A. The disclaimer of an interest in personal property must be delivered to the person**
5 **obligated to distribute the interest; and**

6 **B. The disclaimer of an interest in real property must be recorded in the registry of**
7 **deeds of the county where the real property that is the subject of the disclaimer is**
8 **located.**

9 **8. Disclaimer by surviving holder of jointly held property.** In the case of a
10 disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered
11 to the person to whom the disclaimed interest passes.

12 **9. Disclaimer by object or taker in default.** In the case of a disclaimer by an
13 object or taker in default of exercise of a power of appointment at any time after the
14 power was created:

15 **A. The disclaimer must be delivered to the holder of the power or to the fiduciary**
16 **acting under the instrument that created the power; or**

17 **B. If no fiduciary is then serving, the disclaimer must be filed with the court having**
18 **authority to appoint the fiduciary.**

19 **10. Disclaimer by appointee.** In the case of a disclaimer by an appointee of a
20 nonfiduciary power of appointment:

21 **A. The disclaimer must be delivered to the holder, the personal representative of the**
22 **holder's estate or to the fiduciary under the instrument that created the power; or**

23 **B. If no fiduciary is then serving, the disclaimer must be filed with the court having**
24 **authority to appoint the fiduciary.**

25 **11. Disclaimer by fiduciary.** In the case of a disclaimer by a fiduciary of a power
26 over a trust or estate, the disclaimer must be delivered as provided in subsection 3, 4 or 5
27 as if the power disclaimed were an interest in property.

28 **12. Disclaimer of a power by an agent.** In the case of a disclaimer of a power by
29 an agent, the disclaimer must be delivered to the principal or the principal's
30 representative.

31 **§2-913. When disclaimer barred or limited**

32 **1. Bar pursuant to written waiver.** A disclaimer is barred by a written waiver of
33 the right to disclaim.

34 **2. Bar pursuant to events.** A disclaimer of an interest in property is barred if any of
35 the following events occur before the disclaimer becomes effective:

36 **A. The disclaimant accepts the interest sought to be disclaimed;**

1 B. The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the
2 interest sought to be disclaimed or contracts to do so; or

3 C. A judicial sale of the interest sought to be disclaimed occurs.

4 **3. Previous exercise not a bar to disclaimer of power held in fiduciary capacity.**
5 A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary
6 capacity is not barred by its previous exercise.

7 **4. Previous exercise not a bar to disclaimer of power not held in fiduciary**
8 **capacity; exception.** A disclaimer, in whole or part, of the future exercise of a power not
9 held in a fiduciary capacity is not barred by its previous exercise unless the power is
10 exercisable in favor of the disclaimant.

11 **5. Bar pursuant to law.** A disclaimer is barred or limited if so provided by law
12 other than this Part.

13 **6. Effect of bar.** A disclaimer of a power over property that is barred by this section
14 is ineffective. A disclaimer of an interest in property that is barred by this section takes
15 effect as a transfer of the interest disclaimed to the persons who would have taken the
16 interest under this Part had the disclaimer not been barred.

17 **§2-914. Tax qualified disclaimer**

18 Notwithstanding any other provision of this Part, if as a result of a disclaimer or
19 transfer the disclaimed or transferred interest is treated, pursuant to the provisions of 26
20 United States Code, as amended, or any successor statute, and the regulations
21 promulgated thereunder, as never having been transferred to the disclaimant, the
22 disclaimer or transfer is effective as a disclaimer under this Part.

23 **§2-915. Recording of disclaimer**

24 If an instrument transferring an interest in or power over property subject to a
25 disclaimer is required or permitted by law to be filed, recorded or registered, the
26 disclaimer may be so filed, recorded or registered. Except as otherwise provided in
27 section 2-912, subsection 7, paragraph B, failure to file, record or register the disclaimer
28 does not affect its validity as between the disclaimant and persons to whom the property
29 interest or power passes by reason of the disclaimer.

30 **§2-916. Application to existing relationships**

31 Except as otherwise provided in section 2-913, an interest in or power over property
32 existing on January 1, 2019 as to which the time for delivering or filing a disclaimer
33 under law superseded by this Part has not expired may be disclaimed after January 1,
34 2019.

35 **§2-917. Relation to Electronic Signatures in Global and National Commerce Act**

36 This Part modifies, limits and supersedes the federal Electronic Signatures in Global
37 and National Commerce Act, 15 United States Code, Section 7001, et seq., but does not
38 modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section

1 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b)
2 of that Act, 15 United States Code, Section 7003(b).

3 **Maine Uniform Probate Code Comment (§2-101)**

4 There is no counterpart to subsection 2 in former Title 18-A. Subsection 2 makes
5 clear that a decedent may by will exclude or limit the right of an individual or class to
6 succeed to property passing by intestate succession.

7 **Maine Uniform Probate Code Comment (§2-102)**

8 This section retains most of the provisions of former Title 18-A, section 2-102
9 regarding the share of the surviving spouse as a nonuniform provision. This section
10 decreases the surviving spouse's share from the first \$225,000, plus one-half of any
11 balance of the intestate estate, if all of the decedent's surviving descendants are also
12 descendants of the surviving spouse and the surviving spouse has one or more surviving
13 descendants who are not descendants of the decedent, to the first \$100,000, plus one-half
14 of the intestate estate.

15 **Maine Uniform Probate Code Comment (§2-103)**

16 This section was modified to add descendants of a spouse as takers of last resort
17 before an estate escheats to the State.

18 **Maine Uniform Probate Code Comment (§2-104)**

19 Section 2-104, subsection 1, paragraph B explicitly includes individuals in gestation.
20 Such individuals are deemed to be living as of the decedent's death if they live for 120
21 hours after birth. The issue of afterborn heirs was addressed in former Title 18-A, section
22 2-108.

23 **Maine Uniform Probate Code Comment (§2-106)**

24 This section does not constitute a substantive change to Maine law.

25 **Maine Uniform Probate Code Comment (§2-108)**

26 This section does not constitute a substantive change to Maine law.

27 **Maine Uniform Probate Code Comment (§2-109)**

28 This section does not constitute a substantive change to Maine law.

29 **Maine Uniform Probate Code Comment (§2-110)**

30 This section does not constitute a substantive change to Maine law.

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Maine Uniform Probate Code Comment (§2-111)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§2-112)

The last 2 sentences in this section were adopted under former Title 18-A, section 2-114 and are retained for clarity. This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§2-115)

This subpart treats children conceived through assisted reproduction technology the same as children conceived through sexual intercourse. This subpart is not intended to change the parent-child relationship governed by Title 19-A.

Maine Uniform Probate Code Comment (§2-116)

This section treats children conceived through assisted reproduction technology the same as children conceived through sexual intercourse. This section is not intended to change the parent-child relationship governed by Title 19-A. This section includes a reference to the Maine Parentage Act as a nonuniform provision and will create an expanded opportunity for establishing a parent-child relationship.

Maine Uniform Probate Code Comment (§2-117)

This section is not intended to change the parent-child relationship governed by Title 19-A.

Maine Uniform Probate Code Comment (§2-201)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§2-202)

The Uniform Probate Code redefines the elective share and introduces the additional supplemental elective-share amount. The additional supplemental elective-share amount in the Uniform Probate Code, section 2-202(b) is not adopted.

Maine Uniform Probate Code Comment (§2-203)

The Uniform Probate Code defines the values to be considered in calculating the augmented estate with more clarity and specificity than former Title 18-A. The Uniform Probate Code applies a partnership theory of marriage in calculating this marital-property portion of the augmented estate, which prevents inequitable results by taking into account the length of the marriage.

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Maine Uniform Probate Code Comment (§2-204)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§2-205)

The Maine Uniform Probate Code, section 2-205 changes Maine law in several respects. Subsection 1 includes in the augmented estate any property of which the decedent could have become the owner through the exercise of certain specific rights, regardless of who created those rights. Under former Title 18-A, such property would be included in the augmented estate only if the decedent's rights were retained in connection with a transfer of the property made by the decedent during the marriage. Subsection 1 also closes a perceived loophole in the elective-share statute by including in the augmented estate proceeds of insurance on the life of the decedent that are payable to someone other than the surviving spouse. It also clarifies that individual retirement accounts and qualified retirement assets payable to persons other than the surviving spouse are included in the gross estate.

Subsection 2 expands the assets that would be included in the augmented estate under prior law by including powers that are exercisable by a "nonadverse party." Prior law had included only powers exercisable by the decedent "either alone or in conjunction with any other person . . ."

Subsection 3, paragraph C increases the amount that is excluded from the augmented estate to the excess over 50% of the amount excludable from taxable gifts pursuant to 26 United States Code, Section 2503(b). The exclusion amount had been \$3,000 under prior law.

Maine Uniform Probate Code Comment (§2-207)

The Maine Uniform Probate Code, section 2-207 modifies Maine law by including in the augmented estate all of the surviving spouse's property, regardless of whether it was derived from the decedent. Former Title 18-A included only property owned by the surviving spouse at the decedent's death that was derived from the decedent and property transferred by the surviving spouse during marriage that would have been included in the augmented estate had the surviving spouse predeceased the decedent. The Maine Uniform Probate Code, section 2-207 modifies this by including in the augmented estate any property that would have constituted the surviving spouse's nonprobate transfers to others applying the expanded rules under the Maine Uniform Probate Code, section 2-205 had the surviving spouse been the decedent.

Maine Uniform Probate Code Comment (§2-208)

Although the Uniform Probate Code provides that the value of property includes the commuted value of present or future interests and amounts payable under trusts and various contractual arrangements, it provides no guidance in terms of valuing beneficial interest in fully discretionary trusts for which commuted values are not readily

1 determinable. In adopting the Uniform Probate Code, section 2-208(b), Maine law is
2 modified to establish a rebuttable presumption that the value of a beneficial interest in a
3 fully discretionary trust is 50% of the value of the trust assets. This provision is similar to
4 the presumption under former Title 18-A, section 2-207, subsection (a) with respect to the
5 value of an electing spouse's beneficial interest in a life estate or trust.

6 **Maine Uniform Probate Code Comment (§2-212)**

7 This section revises former Title 18-A, section 2-203 in 3 significant respects. First,
8 it makes it clear that the right of election may be exercised only by or on behalf of a
9 living surviving spouse. Second, the election can be pursued on behalf of the surviving
10 spouse by the spouse's conservator or agent. In any case, the surviving spouse must be
11 alive when the election is made and cannot be pursued on behalf of a decedent. Third, it
12 treats incapacitated spouses the same as spouses with capacity. Previously, if a spouse
13 was incapacitated, the court exercised the share on behalf of the incapacitated spouse only
14 after a judicial proceeding to determine the necessity of the share for the incapacitated
15 spouse's life expectancy; a spouse with capacity was able to elect regardless of need.

16 Treating incapacitated spouses the same as spouses with capacity is a deviation from
17 the Uniform Probate Code (1990), which provides that the incapacitated spouse's share is
18 to be distributed to a custodial trust for the surviving spouse's life, the remainder
19 beneficiaries of which are the predeceased spouse's residuary devisees or heirs.

20 Eliminating the disparate treatment between incapacitated spouses and spouses with
21 capacity is consistent with the revised elective-share law, which attempts to more closely
22 align the amounts that a spouse receives upon divorce to that which the spouse receives
23 upon death. Under this partnership theory of marriage, which forms the basis of much of
24 the revisions to elective-share law, an incapacitated spouse in a divorce proceeding does
25 not receive less of an equitable distribution solely due to the incapacity. This section
26 therefore applies the partnership theory of marriage equitably to all surviving spouses.

27 **Maine Uniform Probate Code Comment (§2-214)**

28 There is no counterpart to this section in former Title 18-A.

29 **Maine Uniform Probate Code Comment (§2-301)**

30 This section does not constitute a substantive change to Maine law.

31 **Maine Uniform Probate Code Comment (§2-302)**

32 This section does not constitute a substantive change to Maine law.

33 **Maine Uniform Probate Code Comment (§2-401)**

34 This section does not constitute a substantive change to Maine law.

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Maine Uniform Probate Code Comment (§2-402)

This section increases the homestead allowance to \$22,500 from the previous \$10,000. The homestead allowance is subject to cost-of-living adjustments as provided in section 1-109.

Maine Uniform Probate Code Comment (§2-403)

This section increases exempt property to \$15,000 from the previous \$7,000. Exempt property is subject to cost-of-living adjustments as provided in section 1-109. The section now provides a specific listing of the types of property available to satisfy the exempt property entitlement, in lieu of referencing Title 14, section 4421 et seq. The section has been modified to permit the decedent, by will, to exclude one or more adult children from the receipt of exempt property.

Maine Uniform Probate Code Comment (§2-404)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§2-405)

Maine’s adoption of section 2-405 represents a deviation from the Uniform Probate Code by eliminating the discretion of the personal representative to add any unexpended portions payable under the homestead allowance, exempt property and family allowance to a custodial trust established under the Uniform Probate Code, section 2-212(b). Maine has chosen not to treat an incapacitated surviving spouse differently from a surviving spouse with capacity for purposes of the elective share and therefore has not adopted section 2-212(b) of the Uniform Probate Code. See Maine Uniform Probate Code Comment section 2-212. This same concept is applied in this section to amounts payable under the homestead allowance, exempt property and family allowance, with no distinction made between a surviving incapacitated spouse and a surviving spouse with capacity.

This section increases the family allowance to a lump sum not exceeding \$27,000 from the previous \$12,000 and increases periodic installments to an amount not exceeding \$2,250 per month from the previous \$1,000. The family allowance is subject to cost-of-living adjustments as provided in section 1-109.

Maine Uniform Probate Code Comment (§2-501)

This section has been modified to make it clear that a legally emancipated minor under 18 years of age may make a will.

Maine Uniform Probate Code Comment (§2-502)

1 This section does not adopt the Uniform Probate Code’s alternative method of will
2 execution of acknowledgement by a notary in lieu of execution by 2 witnesses. The
3 section adopts the “conscious presence” test of the Uniform Probate Code. Under the
4 “conscious presence” test, a signing is sufficient if it was done within the range of the
5 testator’s senses, such as within the testator’s hearing; the signing need not have occurred
6 within the testator’s line of sight.

7 The Maine Supreme Judicial Court held in *In Re Estate of Gonzalez*, 855 A.2d 1146
8 2004 ME 109 (Me. 2004) that a preprinted form filled in with the testator’s handwriting
9 can qualify as a holographic will.

10 The section departs from the Uniform Probate Code by not referencing the harmless
11 error standard of the Uniform Probate Code, which is not adopted in Maine.

12 **Maine Uniform Probate Code Comment (§2-503)**

13 This section modifies former Title 18-A, section 2-504 in 3 respects: it adds
14 references where appropriate to a legally emancipated minor, adds male and female
15 gender options where appropriate to update the single male pronoun and deletes
16 references to a notary seal as unnecessary.

17 The section includes as subsection 3 a new provision from the Uniform Probate Code
18 to make clear that it is not necessary for a testator who is simultaneously self-proving the
19 testator’s will to sign the will twice, once on the will itself and again on the self-proving
20 provisions. A single signature by the testator on the self-proving provisions is sufficient.

21 **Maine Uniform Probate Code Comment (§2-504)**

22 This section does not constitute a substantive change to Maine law.

23 **Maine Uniform Probate Code Comment (§2-505)**

24 This section does not constitute a substantive change to Maine law. The omission of
25 a reference to section 2-503 is a result of moving Maine’s former holographic will
26 provision to Title 18-C, section 2-502, subsection 2.

27 **Maine Uniform Probate Code Comment (§2-506)**

28 This section expands the category of acts that constitute revocation to include any act
29 performed by the testator with the intent and for the purpose of revoking the will in whole
30 or in part.

31 **Maine Uniform Probate Code Comment (§2-507)**

32 The exceptions referenced in this section are Title 18-C, section 2-802 (effect of
33 homicide), formerly Title 18-A, section 2-803; Title 18-C, section 2-803 (effect of

1 criminal conviction), formerly Title 18-A, section 2-806; and Title 18-C, section 2-807
2 (revocation by divorce), formerly Title 18-A, section 2-508.

3 **Maine Uniform Probate Code Comment (§2-508)**

4 This section does not constitute a substantive change to Maine law.

5 **Maine Uniform Probate Code Comment (§2-509)**

6 This section does not constitute a substantive change to Maine law.

7 **Maine Uniform Probate Code Comment (§2-510)**

8 This section does not constitute a substantive change to Maine law.

9 **Maine Uniform Probate Code Comment (§2-511)**

10 This section does not constitute a substantive change to Maine law.

11 **Maine Uniform Probate Code Comment (§2-512)**

12 This section does not constitute a substantive change to Maine law. Maine deviates
13 from the Uniform Probate Code by not requiring the testator's signature if the separate
14 writing is in the testator's handwriting.

15 **Maine Uniform Probate Code Comment (§2-513)**

16 This section does not constitute a substantive change to Maine law. The same
17 provision existed as former Title 18-A, section 2-701.

18 **Maine Uniform Probate Code Comment (§2-514)**

19 This section does not constitute a substantive change to Maine law. The same
20 provision existed as former Title 18-A, section 2-901.

21 **Maine Uniform Probate Code Comment (§2-515)**

22 This section does not constitute a substantive change to Maine law. The same
23 provision existed as former Title 18-A, section 2-902.

24 **Maine Uniform Probate Code Comment (§2-516)**

25 This section does not constitute a substantive change to Maine law. The same
26 provision existed as former Title 18-A, section 3-905.

27 **Maine Uniform Probate Code Comment (§2-517)**

1 The statutory will form is revised to add an optional self-proving provision. The
2 statutory will provision existed as former Title 18-A, section 2-514.

3 **Maine Uniform Probate Code Comment (§2-601)**

4 The new language of this section reflects the broad theme of the latest Uniform
5 Probate Code to discern the intent of the testator and a willingness to look outside the 4
6 corners of the will itself to determine an intent that would rebut the statutory rules of
7 construction.

8 **Maine Uniform Probate Code Comment (§2-602)**

9 The removal of the second sentence "A devise of property conveys all the estate of a
10 devisor unless it appears by his will that he intended to convey a lesser estate." from former
11 Title 18-A, section 2-604 is not intended to create an inference that Maine is changing a long-
12 standing presumption that a devise passes the testator's full interest in the property.

13 **Maine Uniform Probate Code Comment (§2-603)**

14 The phrase "by representation" in the Uniform Probate Code has been changed to
15 "per capita at each generation" in Title 18-C. The phrase "by representation" is synonymous
16 with "per stirpes." See the Maine Uniform Probate Code, section 2-709. Maine has long
17 considered inheritance by right of representation to be synonymous with inheritance per
18 stirpes. *Fiduciary Trust Co. v. Brown*, 131 A.2d 191 (Me. 1957).

19 Maine has reversed the presumption of section 2-603(b)(3) of the Uniform Probate
20 Code, which created a rebuttable presumption that using words of survivorship, such as a
21 devise to an individual "if he survives me" or in a devise to "my surviving children," are not,
22 in the absence of additional evidence, a sufficient indication of an intent contrary to the
23 application of the anti-lapse provisions. Under the Maine Uniform Probate Code, words of
24 survivorship create a rebuttable presumption of the testator's intent to not have the anti-lapse
25 provisions apply. For example, in a devise to "my surviving children," if the testator had
26 three children, X, Y and Z, and child X predeceased the testator leaving GC1 and GC2, the
27 devise will be distributed in equal shares to Y and Z, with no distribution to GC1 and GC2.

28 **Maine Uniform Probate Code Comment (§2-604)**

29 This section does not constitute a substantive change to Maine law.

30 **Maine Uniform Probate Code Comment (§2-605)**

31 This section does not constitute a substantive change to Maine law.

32 **Maine Uniform Probate Code Comment (§2-606)**

1 Subsection 1, paragraphs E and F of this section reflect an adoption of the "intent"
2 theory of ademption in certain circumstances.

3 **Maine Uniform Probate Code Comment (§2-607)**

4 This section does not constitute a substantive change to Maine law. The same
5 provision existed as former Title 18-A, section 2-609.

6 See section 3-814, which empowers the personal representative to pay an
7 encumbrance under some circumstances. The last sentence of that section makes it clear that
8 payment of the encumbrance does not increase the right of the specific distributee. Section
9 2-607 governs the substantive rights of the devisee. The common law rule of exoneration of
10 the specific devise is abolished by this section, and the contrary rule is adopted.

11 **Maine Uniform Probate Code Comment (§2-608)**

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13 If the document creating a power of appointment does not require a specific reference
14 to the power in order for it to be exercised, the general rule remains unchanged in stating that
15 a general residuary clause is not effective to exercise the power unless the testator's will
16 manifests an intention to have the residuary clause include the property subject to the power.
17 This section adds one circumstance where a residuary clause is presumed to include the
18 property subject to the power of appointment: if "the power is a general power...and the
19 creating instrument does not contain an effective gift if the power is not exercised."

20 **Maine Uniform Probate Code Comment (§2-701)**

21 The rules of construction in this Part apply to governing instruments of any type, not
22 just wills.

23 **Maine Uniform Probate Code Comment (§2-702)**

24 This section includes what was formerly the Uniform Simultaneous Death Act in
25 former Title 18-A, section 2-805.

26 **Maine Uniform Probate Code Comment (§2-704)**

27 There is no counterpart to this section in former Title 18-A.

28 **Maine Uniform Probate Code Comment (§2-705)**

29 This section establishes a comprehensive reformulation of rules of construction for
30 class gifts that identify the recipient by reference to a relationship to another individual.

31 **Maine Uniform Probate Code Comment (§2-706)**

1 This section parallels section 2-603 in the Maine Uniform Probate Code and extends
2 that comprehensive revision of the anti-lapse statute into the area of "beneficiary
3 designations" as defined in the Maine Uniform Probate Code, section 1-201.

4 The phrase "by representation" in the Uniform Probate Code has been changed to
5 "per capita at each generation" in Title 18-C. The phrase "by representation" is synonymous
6 with "per stirpes." See the Maine Uniform Probate Code, section 2-709. Maine has long
7 considered inheritance by right of representation to be synonymous with inheritance per
8 stirpes. *Fiduciary Trust Co. v. Brown*, 131 A.2d 191 (Me. 1957).

9 Maine has reversed the presumption of section 2-706(b)(3) of the Uniform Probate
10 Code (Maine Uniform Probate Code, section 2-706, subsection 2, paragraph C), which
11 created a rebuttable presumption that using words of survivorship, such as a beneficiary
12 designation to an individual "if he survives me" or in a beneficiary designation to "my
13 surviving children," are not, in the absence of additional evidence, a sufficient indication of
14 an intent contrary to the application of the anti-lapse provisions. Under the Maine Uniform
15 Probate Code, words of survivorship create a rebuttable presumption of the testator's intent to
16 not have the anti-lapse provisions apply. For example, in a devise to "my surviving children,"
17 if the testator had three children, X, Y and Z, and child X predeceased the testator leaving
18 GC1 and GC2, the devise is distributed in equal shares to Y and Z, with no distribution to
19 GC1 and GC2.

20 **Maine Uniform Probate Code Comment (§2-707)**

21 This section parallels the Maine Uniform Probate Code, section 2-603 and extends
22 that comprehensive revision of the anti-lapse statute into the area of future interests under the
23 terms of a trust.

24 The phrase "by representation" in the Uniform Probate Code has been changed to
25 "per capita at each generation" in the Maine Uniform Probate Code. The phrase "by
26 representation" is synonymous with "per stirpes." See the Maine Uniform Probate Code,
27 section 2-709.

28 Maine has reversed the presumption of section 2-707(b)(3) of the Uniform Probate
29 Code (Maine Uniform Probate Code, section 2-707, subsection 2, paragraph C), which
30 created a rebuttable presumption that using words of survivorship attached to a future interest
31 are not, in the absence of additional evidence, a sufficient indication of an intent contrary to
32 the application of the anti-lapse provisions. Under the Maine Uniform Probate Code, words
33 of survivorship create a rebuttable presumption of the testator's intent to not have the anti-
34 lapse provisions apply.

35 **Maine Uniform Probate Code Comment (§2-708)**

36 There is no counterpart to this section in former Title 18-A.

37 **Maine Uniform Probate Code Comment (§2-709)**

1 The phrase "by representation" in Maine is synonymous with "per stirpes."

2 **Maine Uniform Probate Code Comment (§2-710)**

3 The doctrine of worthier title, as articulated in *Randall v. Marble*, 69 Me. 310, 313
4 (1879), is abolished.

5 **Maine Uniform Probate Code Comment (§2-711)**

6 There is no counterpart to this section in former Title 18-A.

7 **Maine Uniform Probate Code Comment (§2-801)**

8 This section does not constitute a substantive change to Maine law.

9 **Maine Uniform Probate Code Comment (§2-805)**

10 There is no counterpart to this section in former Title 18-A. This section constitutes a
11 substantial change to Maine law, but provides consistency between Title 18-B, section 415
12 and Maine laws that govern wills.

13 **Maine Uniform Probate Code Comment (§2-806)**

14 There is no counterpart to this section in former Title 18-A. This section provides
15 consistency between Title 18-B, section 416 and Maine laws that govern wills.

16 **Maine Uniform Probate Code Comment (§2-807)**

17 This section does not constitute a substantive change to Maine law on wrongful death
18 claims. It does, however, affect the procedures for distribution of the proceeds from wrongful
19 death claims and ties the beneficiaries to those named in the Maine intestacy statutes.

20 **Maine Uniform Probate Code Comment (§2-902)**

21 There is no counterpart to this section in former Title 18-A.

22 This section is based on the Uniform Probate Code, section 2-1102.

23 **Maine Uniform Probate Code Comment (§2-903)**

24 This section is based on the Uniform Probate Code, section 2-1103.

25 **Maine Uniform Probate Code Comment (§2-904)**

26 This section is based on the Uniform Probate Code, section 2-1104.

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Maine Uniform Probate Code Comment (§2-905)

This section removes ambiguity under previous Maine law regarding delivery of a disclaimer of a power.

This section is based on the Uniform Probate Code, section 2-1105.

Maine Uniform Probate Code Comment (§2-906)

This section does not constitute a substantive change to Maine law, but removes ambiguity and adds clarity.

This section is based on the Uniform Probate Code, section 2-1106.

Maine Uniform Probate Code Comment (§2-907)

This section removes ambiguity under previous Maine law and adds clarity.

This section is based on the Uniform Probate Code, section 2-1107.

Maine Uniform Probate Code Comment (§2-908)

There is no counterpart to this section in former Title 18-A.

This section is based on the Uniform Probate Code, section 2-1108.

Maine Uniform Probate Code Comment (§2-909)

There is no counterpart to this section in former Title 18-A.

This section is based on the Uniform Probate Code, section 2-1109.

Maine Uniform Probate Code Comment (§2-910)

There is no counterpart to this section in former Title 18-A.

This section is based on the Uniform Probate Code, section 2-1110.

Maine Uniform Probate Code Comment (§2-911)

There is no counterpart to this section in former Title 18-A.

This section is based on the Uniform Probate Code, section 2-1111.

Maine Uniform Probate Code Comment (§2-912)

1 Former Title 18-A, section 2-801 included a 9-month time limit on disclaimers,
2 which is not retained in the section.

3 This section is based on the Uniform Probate Code, section 2-1112.

4 **Maine Uniform Probate Code Comment (§2-913)**

5 This section is based on the Uniform Probate Code, section 2-1113.

6 **Maine Uniform Probate Code Comment (§2-914)**

7 This section does not constitute a substantive change to Maine law.

8 This section is based on the Uniform Probate Code, section 2-1114.

9 **Maine Uniform Probate Code Comment (§2-915)**

10 This section does not constitute a substantive change to Maine law.

11 This section is based on the Uniform Probate Code, section 2-1115.

12 **Maine Uniform Probate Code Comment (§2-916)**

13 This section does not constitute a substantive change to Maine law.

14 This section is based on the Uniform Probate Code, section 2-1116.

15 **Maine Uniform Probate Code Comment (§2-917)**

16 There is no counterpart to this section in former Title 18-A.

17 This section is based on the Uniform Probate Code, section 2-1117.

18 **ARTICLE 3**

19 **PROBATE OF WILLS AND ADMINISTRATION**

20 **PART 1**

21 **GENERAL PROVISIONS**

22 **§3-101. Devolution of estate at death; restrictions**

23 The power of a person to leave property by will and the rights of creditors, devisees
24 and heirs to the person's property are subject to the restrictions and limitations contained
25 in this Code to facilitate the prompt settlement of estates. Upon the death of a person, the

1 person's real and personal property devolves to the persons to whom it is devised by the
2 person's last will or to those indicated as substitutes for them in cases involving lapse,
3 renunciation or other circumstances affecting the devolution of testate estate or, in the
4 absence of testamentary disposition, to the person's heirs, or to those indicated as
5 substitutes for them in cases involving renunciation or other circumstances affecting
6 devolution of intestate estates, subject to homestead allowance, exempt property and
7 family allowance, to rights of creditors, to elective share of the surviving spouse and to
8 administration.

9 **§3-102. Necessity of order of probate for will**

10 Except as provided in section 3-1201, to be effective to prove the transfer of any
11 property or to nominate an executor, a will must be declared to be valid by an order of
12 informal probate by the registers or an adjudication of probate by the court.

13 **§3-103. Necessity of appointment for administration**

14 Except as otherwise provided in Article 4, to acquire the powers and undertake the
15 duties and liabilities of a personal representative of a decedent, a person must be
16 appointed by order of the court or registers, qualify and be issued letters. Administration
17 of an estate is commenced by the issuance of letters.

18 **§3-104. Claims against decedent; necessity of administration**

19 A proceeding to enforce a claim against the estate of a decedent or the decedent's
20 successors may not be revived or commenced before the appointment of a personal
21 representative. After the appointment and until distribution, all proceedings and actions
22 to enforce a claim against the estate are governed by the procedure prescribed by this
23 Article. After distribution, a creditor whose claim has not been barred may recover from
24 the distributees as provided in section 3-1004 or from a former personal representative
25 individually liable as provided in section 3-1005. This section has no application to a
26 proceeding by a secured creditor of the decedent to enforce the creditor's right to the
27 security except as to any deficiency judgment that might be sought.

28 **§3-105. Proceedings affecting devolution and administration; jurisdiction of subject**
29 **matter**

30 Persons interested in decedents' estates may apply to the register for determination in
31 the informal proceedings provided in this Article and may petition the court for orders in
32 formal proceedings within the court's jurisdiction including but not limited to those
33 described in this Article. The court has exclusive jurisdiction of formal proceedings to
34 determine how decedents' estates subject to the laws of this State are to be administered,
35 expended and distributed. The court has concurrent jurisdiction of any other action or
36 proceeding concerning a succession or to which an estate, through a personal
37 representative, may be a party, including actions to determine title to property alleged to
38 belong to the estate, and of any action or proceeding in which property is distributed by a
39 personal representative or its value is sought to be subjected to rights of creditors or
40 successors of the decedent.

1 **§3-106. Proceedings within the jurisdiction of court; service; jurisdiction over**
2 **persons**

3 In proceedings within the exclusive jurisdiction of the court where notice is required
4 by this Code or by rule, and in proceedings to construe probated wills or determine heirs
5 that concern estates that have not been and cannot now be opened for administration,
6 interested persons may be bound by the orders of the court in respect to property in or
7 subject to the laws of this State by notice in conformity with section 1-401. An order is
8 binding on all who are given notice of the proceeding though fewer than all interested
9 persons are notified.

10 **§3-107. Scope of proceedings; proceedings independent; exception**

11 Unless supervised administration as described in Part 5 is involved:

12 **1. Proceedings independent.** Each proceeding before the court or register is
13 independent of any other proceeding involving the same estate;

14 **2. Petitions for formal orders.** Petitions for formal orders of the court may
15 combine various requests for relief in a single proceeding if the orders sought may be
16 finally granted without delay. Except as required for proceedings that are particularly
17 described by other sections of this Article, a petition is not defective because it fails to
18 embrace all matters that might then be the subject of a final order;

19 **3. Petitions for appointment of personal representative.** Proceedings for probate
20 of wills or adjudications of no will may be combined with proceedings for appointment of
21 personal representatives; and

22 **4. Order.** A proceeding for appointment of a personal representative is concluded
23 by an order making or declining the appointment.

24 **§3-108. Probate, testacy and appointment proceedings; ultimate time limit**

25 **1. Limitations period; exceptions.** An informal probate or appointment proceeding
26 or formal testacy or appointment proceeding, other than a proceeding to probate a will
27 previously probated at the testator's domicile and appointment proceedings relating to an
28 estate in which there has been a prior appointment, may not be commenced more than 3
29 years after the decedent's death, except:

30 A. If a previous proceeding was dismissed because of doubt about the fact of the
31 decedent's death, appropriate probate, appointment or testacy proceedings may be
32 maintained at any time thereafter upon a finding that the decedent's death occurred
33 prior to the initiation of the previous proceeding and the applicant or petitioner has
34 not delayed unduly in initiating the subsequent proceeding;

35 B. Appropriate probate, appointment or testacy proceedings may be maintained in
36 relation to the estate of an absent, disappeared or missing person for whose estate a
37 conservator has been appointed at any time within 3 years after the conservator
38 becomes able to establish the death of the protected person;

1 C. A proceeding to contest an informally probated will and to secure appointment of
2 the person with legal priority for appointment in the event the contest is successful
3 may be commenced within the later of 12 months from the informal probate or 3
4 years from the decedent's death;

5 D. An informal appointment or a formal testacy or appointment proceeding may be
6 commenced more than 3 years after the decedent's death if no proceeding concerning
7 the succession or estate administration has occurred within the 3-year period after the
8 decedent's death, but the personal representative has no right to possess estate assets
9 as provided in section 3-709 beyond that necessary to confirm title in the successors
10 to the estate, and claims other than expenses of administration may not be presented
11 against the estate; and

12 E. A formal testacy proceeding may be commenced at any time after 3 years from
13 the decedent's death for the purpose of establishing an instrument to direct or control
14 the ownership of property passing or distributable after the decedent's death from a
15 person other than the decedent when the property is to be appointed by the terms of
16 the decedent's will or is to pass or be distributed as a part of the decedent's estate or
17 its transfer is otherwise to be controlled by the terms of the decedent's will.

18 **2. Limitations period inapplicable.** The limitations under subsection 1 do not
19 apply to proceedings to construe probated wills or determine heirs of an intestate.

20 **3. Special provision regarding date of death.** In cases under subsection 1,
21 paragraph A or B, the date on which a testacy or appointment proceeding is properly
22 commenced is deemed to be the date of the decedent's death for purposes of other
23 limitations provisions of this Code that relate to the date of death.

24 **§3-109. Statutes of limitation on decedent's cause of action**

25 A statute of limitation running on a cause of action belonging to a decedent that had
26 not been barred as of the date of death does not apply to bar a cause of action surviving
27 the decedent's death sooner than 4 months after death. A cause of action that but for this
28 section would have been barred less than 4 months after death is barred after 4 months
29 unless tolled.

30 **§3-110. Discovery of property**

31 **1. Examination by court.** Upon petition by a county attorney, personal
32 representative, heir, devisee, creditor or other person interested in the estate of a
33 decedent, anyone suspected of having concealed, withheld or conveyed away any
34 property of the decedent, of having fraudulently received any such property, or of aiding
35 others in so doing, may be cited by the court to appear and be examined under oath. The
36 court may require the person to produce for the inspection of the court and parties all
37 documents within the person's control relating to the matter under examination. The time
38 for filing such petitions is governed by section 1-105.

39 **2. Penalties for refusal.** If a person duly cited pursuant to subsection 1 refuses to
40 appear and submit to the court's examination, to answer all lawful interrogatories or to
41 produce the documents ordered, the person is subject to contempt of the court and is

1 liable to any injured party in a civil action for all the damages, expenses and charges
2 arising from such refusal.

3 **PART 2**

4 **VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO**
5 **ADMINISTER AND DEMAND FOR NOTICE**

6 **§3-201. Venue for first and subsequent estate proceedings; location of property**

7 **1. Venue for first estate proceedings.** Venue for the first informal or formal testacy
8 or appointment proceedings after a decedent's death is:

9 A. In the county where the decedent was domiciled at the time of death; or

10 B. If the decedent was not domiciled in this State, in any county where property of
11 the decedent was located at the time of the decedent's death.

12 **2. Venue for subsequent proceedings.** Venue for all subsequent proceedings
13 within the exclusive jurisdiction of the court is in the place where the initial proceeding
14 occurred, unless the initial proceeding has been transferred as provided in subsection 3 or
15 section 1-303.

16 **3. Transfer after informal proceeding.** If the first proceeding was informal, on
17 application of an interested person and after notice to the proponent in the first
18 proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding
19 and the file to the other court.

20 **4. Location of property.** For the purpose of aiding determinations concerning
21 location of property that may be relevant in cases involving non-domiciliaries, a debt,
22 other than one evidenced by investment or commercial paper or other instrument in favor
23 of a non-domiciliary, is located where the debtor resides or, if the debtor is a person other
24 than an individual, at the place where it has its principal office. Commercial paper,
25 investment paper and other instruments are located where the instrument is. An interest in
26 property held in trust is located where the trustee may be sued.

27 **§3-202. Appointment or testacy proceedings; conflicting claim of domicile in**
28 **another state**

29 If conflicting claims as to the domicile of a decedent are made in a formal testacy or
30 appointment proceeding commenced in this State, and in a testacy or appointment
31 proceeding after notice pending at the same time in another state, the court of this State
32 must stay, dismiss or permit suitable amendment in the proceeding in this State unless it
33 is determined that the proceeding in this State was commenced before the proceeding
34 elsewhere. The determination of domicile in the proceeding first commenced must be
35 accepted as determinative in the proceeding in this State.

36 **§3-203. Priority among persons seeking appointment as personal representative**

37 **1. Priority.** Whether the proceedings are formal or informal, persons who are not
38 disqualified have priority for appointment in the following order:

- 1 A. The person with priority as determined by a probated will including a person
2 nominated by a power conferred in a will;
- 3 B. The surviving spouse of the decedent who is a devisee of the decedent;
- 4 C. Other devisees of the decedent;
- 5 D. The surviving spouse of the decedent;
- 6 E. The surviving domestic partner of the decedent;
- 7 F. Other heirs of the decedent;
- 8 G. Forty-five days after the death of the decedent, any creditor; and
- 9 H. Six months after the death of the decedent if no testacy proceeding have been held
10 or no personal representative has been appointed, the State Tax Assessor upon
11 application by the State Tax Assessor.

12 **2. Objection.** An objection to an appointment may be made only in formal
13 proceedings. In case of objection the priorities stated in subsection 1 apply except that:

- 14 A. If the estate appears to be more than adequate to meet exemptions and costs of
15 administration but inadequate to discharge anticipated unsecured claims, the court, on
16 petition of creditors, may appoint any qualified person; or
- 17 B. In case of objection to appointment of a person other than one whose priority is
18 determined by will by an heir or devisee appearing to have a substantial interest in the
19 estate, the court may appoint a person who is acceptable to heirs and devisees whose
20 interests in the estate appear to be worth in total more than 1/2 of the probable
21 distributable value or, in default of this accord, any suitable person.

22 **3. Nomination and renunciation.** A person entitled to letters under subsection 1,
23 paragraphs B to F may nominate a qualified person to act as personal representative. Any
24 person may renounce the person's right to nominate or to an appointment by appropriate
25 writing filed with the court. When 2 or more persons share a priority, those of them who
26 do not renounce must concur in nominating another to act for them or in applying for
27 appointment.

28 **4. Authority of conservators and guardians.** Conservators of the estates of
29 protected persons or, if there is no conservator, any guardian except a guardian ad litem
30 of a minor or incapacitated person, or an agent under a power of attorney that expressly
31 grants the agent the authority to do so, may exercise the same right to nominate, to object
32 to another's appointment or to participate in determining the preference of a majority in
33 interest of the heirs and devisees that the protected person or ward would have if qualified
34 for appointment.

35 **5. Appointment without priority.** Appointment of a person who does not have
36 priority, including priority resulting from renunciation or nomination determined pursuant
37 to this section, may be made only in formal proceedings. Before appointing a person
38 without priority, the court must determine that those persons having priority, although
39 given notice of the proceedings, have failed to request appointment or to nominate
40 another person for appointment and that administration is necessary.

1 and addresses of the spouse, children, heirs and devisees and the ages of any who
2 are minors so far as known or ascertainable with reasonable diligence by the
3 applicant;

4 (3) If the decedent was not domiciled in the State at the time of death, a
5 statement showing venue;

6 (4) A statement identifying and indicating the address of any personal
7 representative of the decedent appointed in this State or elsewhere whose
8 appointment has not been terminated;

9 (5) A statement indicating whether the applicant has received a demand for
10 notice or is aware of any demand for notice of any probate or appointment
11 proceeding concerning the decedent that may have been filed in this State or
12 elsewhere; and

13 (6) A statement that the time limit for informal probate or appointment as
14 provided in this Article has not expired either because 3 years or less have passed
15 since the decedent's death or, if more than 3 years from death have passed,
16 circumstances as described by section 3-108 have occurred authorizing tardy
17 probate or appointment;

18 B. An application for informal probate of a will must state the following in addition
19 to the statements required by paragraph A:

20 (1) That the original of the decedent's last will is in the possession of the court or
21 accompanies the application or that an authenticated copy of a will probated in
22 another jurisdiction accompanies the application;

23 (2) That the applicant, to the best of the applicant's knowledge, believes the will
24 to have been validly executed; and

25 (3) That after the exercise of reasonable diligence, the applicant is unaware of
26 any instrument revoking the will and that the applicant believes that the
27 instrument that is the subject of the application is the decedent's last will;

28 C. An application for informal appointment of a personal representative to
29 administer an estate under a will must describe the will by date of execution and state
30 the time and place of probate or the pending application or petition for probate. The
31 application for appointment must adopt the statements in the application or petition
32 for probate and state the name, address and priority for appointment of the person
33 whose appointment is sought;

34 D. An application for informal appointment of an administrator in intestacy must
35 state in addition to the statements required by paragraph A:

36 (1) That after the exercise of reasonable diligence the applicant is unaware of
37 any unrevoked testamentary instrument relating to property having a situs in this
38 State under section 1-301 or a statement why any such instrument of which the
39 applicant may be aware is not being probated; and

40 (2) The priority of the person whose appointment is sought and the names of any
41 other persons having a prior or equal right to the appointment under section
42 3-203;

1 E. An application for appointment of a personal representative to succeed a personal
2 representative appointed under a different testacy status must refer to the order in the
3 most recent testacy proceeding, state the name and address of the person whose
4 appointment is sought and of the person whose appointment will be terminated if the
5 application is granted and describe the priority of the applicant; and

6 F. An application for appointment of a personal representative to succeed a personal
7 representative who has tendered a resignation as provided in section 3-610,
8 subsection 3 or whose appointment has been terminated by death or removal must
9 adopt the statements in the application or petition that led to the appointment of the
10 person being succeeded except as specifically changed or corrected, state the name
11 and address of the person who seeks appointment as successor and describe the
12 priority of the applicant.

13 **2. Personal jurisdiction over applicant.** By verifying an application for informal
14 probate or informal appointment, the applicant submits personally to the jurisdiction of
15 the court in any proceeding for relief from fraud relating to the application, or for perjury,
16 that may be instituted against the applicant.

17 **§3-302. Informal probate; duty of register; effect of informal probate**

18 Upon receipt of an application requesting informal probate of a will, the register upon
19 making the findings required by section 3-303 shall issue a written statement of informal
20 probate if at least 120 hours have elapsed since the decedent's death. Informal probate is
21 conclusive as to all persons until superseded by an order in a formal testacy proceeding.
22 No defect in the application or procedure that leads to informal probate of a will renders
23 the probate void.

24 **§3-303. Informal probate; proof and findings required**

25 **1. Informal probate; proof and findings required.** In an informal proceeding for
26 original probate of a will, the register shall determine whether:

27 A. The application is complete;

28 B. The applicant has made oath or affirmation that the statements contained in the
29 application are true to the best of the applicant's knowledge and belief;

30 C. The applicant appears from the application to be an interested person as defined in
31 section 1-201, subsection 26;

32 D. On the basis of the statements in the application, venue is proper;

33 E. An original, duly executed and apparently unrevoked will is in the register's
34 possession;

35 F. Any notice required by section 3-204 has been given and the application is not
36 required to be declined under section 3-304; and

37 G. It appears from the application that the time limit for original probate has not
38 expired.

1 **2. Denial.** The application must be denied if it indicates that a personal
2 representative has been appointed in another county of this State or, except as provided in
3 subsection 4, if it appears that this or another will of the decedent has been the subject of
4 a previous probate order.

5 **3. Executed will.** A will that appears to have the required signatures and that
6 contains an attestation clause showing that requirements of execution under section 2-502
7 or 2-505 have been met must be probated without further proof. In other cases, the
8 register may assume execution if the will appears to have been properly executed or the
9 register may accept a sworn statement or affidavit of any person having knowledge of the
10 circumstances of execution, whether or not the person was a witness to the will.

11 **4. Will previously probated elsewhere.** Informal probate of a will that has been
12 previously probated elsewhere may be granted at any time upon written application by
13 any interested person, together with deposit of an authenticated copy of the will and of
14 the statement probating it from the office of court where it was first probated.

15 **5. Will from another jurisdiction.** A will from a place that does not require
16 probate of a will after death and that is not eligible for probate under subsection 1 may be
17 probated in this State upon receipt by the register of a duly authenticated copy of the will
18 and a duly authenticated certificate of its legal custodian that the copy filed is a true copy
19 and that the will has become operative under the law of that place.

20 **§3-304. Informal probate; unavailable in certain cases**

21 Applications for informal probate that relate to one or more of a known series of
22 testamentary instruments, the latest of which does not expressly revoke the earlier, other
23 than a will and one or more codicils thereto, must be declined.

24 **§3-305. Informal probate; register not satisfied**

25 If the register is not satisfied that a will is entitled to be probated in informal
26 proceedings because of failure to meet the requirements of sections 3-303 and 3-304 or
27 any other reason, the register may decline the application. A declination of informal
28 probate is not an adjudication and does not preclude formal probate proceedings.

29 **§3-306. Informal probate; notice requirements**

30 The moving party shall give notice as described by section 1-401 of the moving
31 party's application for informal probate to any person demanding notice pursuant to
32 section 3-204 and to any personal representative of the decedent whose appointment has
33 not been terminated. If the decedent was 55 years of age or older, the moving party shall
34 give notice as described in section 1-401 to the Department of Health and Human
35 Services. Except as provided in section 3-705, no other notice of informal probate is
36 required.

1 **§3-307. Informal appointment proceedings; delay in order; duty of register; effect**
2 **of appointment**

3 **1. Duty to appoint; delay in order.** Upon receipt of an application for informal
4 appointment of a personal representative, other than a special administrator as provided in
5 section 3-614, if at least 120 hours have elapsed since the decedent's death, the register,
6 after making the findings required by section 3-308, shall appoint the applicant subject to
7 qualification and acceptance. If the decedent was a nonresident, the register shall delay
8 the order of appointment until 30 days have elapsed since death unless the personal
9 representative appointed at the decedent's domicile is the applicant or unless the
10 decedent's will directs that the decedent's estate be subject to the laws of this State.

11 **2. Effect of appointment.** The status of personal representative and the powers and
12 duties pertaining to the office are fully established by informal appointment. An
13 appointment, and the office of personal representative it creates, is subject to termination
14 as provided in sections 3-608 to 3-612 but is not subject to retroactive vacation.

15 **§3-308. Informal appointment proceedings; proof and findings required**

16 **1. Informal appointment proceedings; proof and findings required.** In informal
17 appointment proceedings, the register shall determine whether:

18 A. The application for informal appointment of a personal representative is
19 complete;

20 B. The applicant has made oath or affirmation that the statements contained in the
21 application are true to the best of the applicant's knowledge and belief;

22 C. The applicant appears from the application to be an interested person as defined in
23 section 1-201, subsection 26;

24 D. On the basis of the statements in the application, venue is proper;

25 E. Any will to which the requested appointment relates has been formally or
26 informally probated, but this requirement does not apply to the appointment of a
27 special administrator;

28 F. Any notice required by section 3-204 has been given; and

29 G. From the statements in the application, the person whose appointment is sought
30 has priority entitling the applicant to the appointment.

31 **2. Denial.** Unless section 3-612 controls, the application must be denied if it
32 indicates that a personal representative who has not filed a written statement of
33 resignation as provided in section 3-610, subsection 3 has been appointed in this or
34 another county of this State; that, unless the applicant is the domiciliary personal
35 representative or the nominee, the decedent was not domiciled in this State and that a
36 personal representative whose appointment has not been terminated has been appointed
37 by a court in the state of domicile; or that other requirements of this section have not been
38 met.

1 **§3-309. Informal appointment proceedings; register not satisfied**

2 If the register is not satisfied that a requested informal appointment of a personal
3 representative should be made because of failure to meet the requirements of sections
4 3-307 and 3-308, or for any other reason, the register may decline the application. A
5 declination of informal appointment is not an adjudication and does not preclude
6 appointment in formal proceedings.

7 **§3-310. Informal appointment proceedings; notice requirements**

8 The moving party shall give notice as described by section 1-401 of the moving
9 party's intention to seek an appointment informally to any person demanding notice
10 pursuant to section 3-204 and to any person having a prior or equal right to appointment
11 not waived in writing and filed with the court. If the decedent was 55 years of age or
12 older, the moving party shall give notice as described in section 1-401 to the Department
13 of Health and Human Services. No other notice of an informal appointment proceeding
14 is required.

15 **§3-311. Informal appointment unavailable in certain cases**

16 If an application for informal appointment indicates the existence of a possible
17 unrevoked testamentary instrument that may relate to property subject to the laws of this
18 State and that is not filed for probate in the court, the register must decline the
19 application.

20 **PART 4**

21 **FORMAL TESTACY AND APPOINTMENT PROCEEDINGS**

22 **§3-401. Formal testacy proceedings; nature; when commenced**

23 A formal testacy proceeding is litigation to determine whether a decedent left a valid
24 will. A formal testacy proceeding may be commenced by an interested person filing a
25 petition as described in section 3-402, subsection 1 in which the petitioner requests that
26 the court, after notice and hearing, enter an order probating a will, or a petition to set
27 aside an informal probate of a will or to prevent informal probate of a will that is the
28 subject of a pending application, or a petition in accordance with section 3-402,
29 subsection 2 for an order that the decedent died intestate.

30 A petition may seek formal probate of a will without regard to whether the same or a
31 conflicting will has been informally probated. A formal testacy proceeding may, but
32 need not, involve a request for appointment of a personal representative.

33 During the pendency of a formal testacy proceeding, the register may not act upon
34 any application for informal probate of any will of the decedent or any application for
35 informal appointment of a personal representative of the decedent.

36 Unless a petition in a formal testacy proceeding also requests confirmation of the
37 previous informal appointment, a previously appointed personal representative, after
38 receipt of notice of the commencement of a formal probate proceeding, must refrain from

1 making any further distribution of the estate during the pendency of the formal
2 proceeding. A petitioner who seeks the appointment of a different personal
3 representative in a formal proceeding also may request an order restraining the acting
4 personal representative from exercising any of the powers of the office and requesting the
5 appointment of a special administrator. In the absence of a request, or if the request is
6 denied, the commencement of a formal proceeding has no effect on the powers and duties
7 of a previously appointed personal representative other than those relating to distribution.

8 **§3-402. Formal testacy or appointment proceedings; petition; contents**

9 **1. Petition for formal probate of a will; contents.** Petitions for formal probate of a
10 will, or for adjudication of intestacy with or without request for appointment of a personal
11 representative, must be directed to the court, request a judicial order after notice and
12 hearing, contain further statements as indicated in this section and contain such other
13 information and be in such form as the Supreme Judicial Court may by rule provide. A
14 petition for formal probate of a will must:

15 A. Request an order as to the testacy of the decedent in relation to a particular
16 instrument that may or may not have been informally probated and determining the
17 heirs;

18 B. Contain the statements required for informal applications as stated in section
19 3-301, subsection 1, paragraph A, subparagraphs (1) to (4) and the statements
20 required by section 3-301, subsection 1, paragraph B, subparagraphs (2) and (3); and

21 C. State whether the original of the last will of the decedent is in the possession of
22 the court or accompanies the petition.

23 If the original will is neither in the possession of the court nor accompanies the petition
24 and no authenticated copy of a will probated in another jurisdiction accompanies the
25 petition, the petition also must state the contents of the will and indicate that it is lost,
26 destroyed or otherwise unavailable.

27 **2. Relief requested.** A petition for adjudication of intestacy and appointment of an
28 administrator in intestacy must request a judicial finding and order that the decedent left
29 no will and determining the heirs, contain the statements required by section 3-301,
30 subsection 1, paragraphs A and D, indicate whether supervised administration is sought
31 and contain such other information and be in such form as the Supreme Judicial Court
32 may by rule provide. A petition may request an order determining intestacy and heirs
33 without requesting the appointment of an administrator, in which case the statements
34 required by section 3-301, subsection 1, paragraph D, subparagraph (2) may be omitted.

35 **§3-403. Formal testacy proceeding; notice of hearing on petition**

36 **1. Notice of hearing on petition for formal probate of a will.** Upon
37 commencement of a formal testacy proceeding, the court shall fix a time and place of
38 hearing. Notice must be given in the manner prescribed by section 1-401 by the
39 petitioner to the persons enumerated in this subsection and to any additional person who
40 has filed a demand for notice under section 3-204.

1 Notice must be given to the following persons: the surviving spouse, children and other
2 heirs of the decedent, the devisees and executors named in any will that is being, or has
3 been, probated or offered for informal or formal probate in the county or that is known by
4 the petitioner to have been probated or offered for informal or formal probate elsewhere
5 and any personal representative of the decedent whose appointment has not been
6 terminated. If the decedent was 55 years of age or older, the petitioner shall give notice
7 as described in section 1-401 to the Department of Health and Human Services. Notice
8 may be given to other persons. In addition, the petitioner shall give notice by publication
9 to all unknown persons and to all known persons whose addresses are unknown who have
10 any interest in the matters being litigated.

11 **2. Additional notice when death in doubt.** If it appears by the petition or otherwise
12 that the fact of the death of the alleged decedent may be in doubt, or on the written
13 demand of any interested person, a copy of the notice of the hearing on the petition must
14 be sent by registered mail to the alleged decedent at the alleged decedent's last known
15 address. The court shall direct the petitioner to report the results of, or make and report
16 back concerning, a reasonably diligent search for the alleged decedent in any manner that
17 may seem advisable, including any of the following methods:

18 A. By inserting in one or more suitable periodicals a notice requesting information
19 from any person having knowledge of the whereabouts of the alleged decedent;

20 B. By notifying law enforcement officials and public welfare agencies in appropriate
21 locations of the disappearance of the alleged decedent; and

22 C. By engaging the services of an investigator. The costs of any search directed by
23 the court must be paid by the petitioner if there is no administration or by the estate of
24 the decedent if there is administration.

25 **§3-404. Formal testacy proceedings; written objections to probate**

26 Any party to a formal proceeding who opposes the probate of a will for any reason
27 shall state in that party's pleadings that party's objections to probate of the will.

28 **§3-405. Formal testacy proceedings; uncontested cases; hearings and proof**

29 If a petition in a testacy proceeding is unopposed, the court may order probate or
30 intestacy on the strength of the pleadings if satisfied that the conditions of section 3-409
31 have been met or conduct a hearing in open court and require proof of the matters
32 necessary to support the order sought. If evidence concerning execution of the will is
33 necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is
34 sufficient. If the affidavit or testimony of an attesting witness is not available, execution
35 of the will may be proved by other evidence or affidavit.

36 **§3-406. Formal testacy proceedings; contested cases**

37 In a contested case in which the proper execution of a will is at issue:

38 **1. Self-proved will; witness not required.** If the will is self-proved pursuant to
39 section 2-503, the will satisfies the requirements for execution without the testimony of
40 any attesting witness upon the filing of the will and the acknowledgment and affidavits

1 annexed or attached to it, unless there is evidence of fraud or forgery affecting the
2 acknowledgment or affidavit; or

3 **2. Will not notarized; attesting witness required.** If the will is witnessed pursuant
4 to section 2-502, subsection 1, paragraph C but not notarized or self-proved, the
5 testimony of at least one of the attesting witnesses is required to establish proper
6 execution if the witness is within this State, competent and able to testify. Proper
7 execution may be established by other evidence, including an affidavit of an attesting
8 witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable
9 presumption that the events recited in the clause occurred.

10 **§3-407. Formal testacy proceedings; burdens in contested cases**

11 In contested cases, petitioners who seek to establish intestacy have the burden of
12 establishing prima facie proof of death, venue and heirship. Proponents of a will have the
13 burden of establishing prima facie proof of due execution in all cases and, if they are also
14 petitioners, prima facie proof of death and venue. Contestants of a will have the burden
15 of establishing lack of testamentary intent or capacity, undue influence, fraud, duress,
16 mistake or revocation. Parties have the ultimate burden of persuasion as to matters with
17 respect to which they have the initial burden of proof. If a will is opposed by the petition
18 for probate of a later will revoking the former, it must be determined first whether the
19 later will is entitled to probate, and if a will is opposed by a petition for a declaration of
20 intestacy, it must be determined first whether the will is entitled to probate.

21 **§3-408. Formal testacy proceedings; will construction; effect of final order in**
22 **another jurisdiction**

23 A final order of a court of another state determining testacy or the validity or
24 construction of a will made in a proceeding involving notice to and an opportunity for
25 contest by all interested persons must be accepted as determinative by the courts of this
26 State if it includes or is based upon a finding that the decedent at death was domiciled in
27 the state where the order was made.

28 **§3-409. Formal testacy proceedings; order; foreign will**

29 After the time required for any notice has expired, upon proof of notice, and after any
30 hearing that may be necessary, if the court finds that the testator is dead, venue is proper
31 and that the proceeding was commenced within the limitation prescribed by section
32 3-108, the court shall determine the decedent's domicile at death, heirs and state of
33 testacy. Any will found to be valid and unrevoked must be formally probated.
34 Termination of any previous informal appointment of a personal representative, which
35 may be appropriate in view of the relief requested and findings, is governed by section
36 3-612. The petition must be dismissed or appropriate amendment allowed if the court is
37 not satisfied that the alleged decedent is dead. A will from a foreign jurisdiction,
38 including a place that does not provide for probate of a will after death, may be proved
39 for probate in this State by a duly authenticated certificate of its legal custodian that the
40 copy introduced is a true copy and that the will has become effective under the law of the
41 other place.

1 **§3-410. Formal testacy proceedings; probate of more than one instrument**

2 If 2 or more instruments are offered for probate before a final order is entered in a
3 formal testacy proceeding, more than one instrument may be probated if neither expressly
4 revokes the other or contains provisions that work a total revocation by implication. If
5 more than one instrument is probated, the order must indicate what provisions control in
6 respect to the nomination of an executor, if any. The order may, but need not, indicate
7 how any provisions of a particular instrument are affected by the other instrument. After
8 a final order in a testacy proceeding has been entered, no petition for probate of any other
9 instrument of the decedent may be entertained, except incident to a petition to vacate or
10 modify a previous probate order and subject to the time limits of section 3-412.

11 **§3-411. Formal testacy proceedings; partial intestacy**

12 If it becomes evident in the course of a formal testacy proceeding that, though one or
13 more instruments are entitled to be probated, the decedent's estate is or may be partially
14 intestate, the court shall enter an order to that effect.

15 **§3-412. Formal testacy proceedings; effect of order; vacation**

16 Subject to appeal and subject to vacation as provided in this section and in section
17 3-413, a formal testacy order under sections 3-409 to 3-411, including an order that the
18 decedent left no valid will and determining heirs, is final as to all persons with respect to
19 all issues concerning the decedent's estate that the court considered or might have
20 considered incident to its rendition relevant to the question of whether the decedent left a
21 valid will and to the determination of heirs, except that:

22 **1. Petition to modify or vacate formal testacy order.** The court shall entertain a
23 petition for modification or vacation of its order and probate of another will of the
24 decedent if it is shown that the proponents of the later-offered will:

25 A. Were unaware of its existence at the time of the earlier proceeding; or

26 B. Were unaware of the earlier proceeding and were given no notice thereof, except
27 by publication;

28 **2. Reconsideration of order determining heirs.** If intestacy of all or part of the
29 estate has been ordered, the determination of heirs of the decedent may be reconsidered if
30 it is shown that one or more persons were omitted from the determination and it is also
31 shown that the persons were unaware of their relationship to the decedent, were unaware
32 of the decedent's death or were given no notice of any proceeding concerning the
33 decedent's estate, except by publication;

34 **3. Time limits.** A petition for vacation under either subsection 1 or 2 must be filed
35 prior to the earlier of the following time limits:

36 A. If a personal representative has been appointed for the estate, the time of entry of
37 any order approving final distribution of the estate or, if the estate is closed by
38 statement, 6 months after the filing of the closing statement;

1 B. Whether or not a personal representative has been appointed for the estate of the
2 decedent, the time prescribed by section 3-108 when it is no longer possible to initiate
3 an original proceeding to probate a will of the decedent; or

4 C. Twelve months after the entry of the order sought to be vacated;

5 **4. Modification or vacation order.** The order originally rendered in the testacy
6 proceeding may be modified or vacated, if appropriate under the circumstances, by the
7 order of probate of the later-offered will or the order redetermining heirs; and

8 **5. Effect of finding of fact of death.** The finding of the fact of death is conclusive
9 as to the alleged decedent only if notice of the hearing on the petition in the formal
10 testacy proceeding was sent by registered or certified mail addressed to the alleged
11 decedent at the decedent's last known address and the court finds that a search under
12 section 3-403, subsection 2 was made.

13 If the alleged decedent is not dead, even if notice was sent and search was made, the
14 alleged decedent may recover estate assets in the hands of the personal representative. In
15 addition to any remedies available to the alleged decedent by reason of any fraud or
16 intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from
17 distributees that is in their hands, or the value of distributions received by them, to the
18 extent that any recovery from distributees is equitable in view of all of the circumstances.

19 **§3-413. Formal testacy proceedings; vacation of order for other cause**

20 For good cause shown, an order in a formal testacy proceeding may be modified or
21 vacated within the time allowed for appeal.

22 **§3-414. Formal proceedings concerning appointment of personal representative**

23 **1. Formal proceeding for appointment of personal representative.** A formal
24 proceeding for adjudication regarding the priority or qualification of a person who is an
25 applicant for appointment as personal representative, or of a person who previously has
26 been appointed personal representative in informal proceedings, if an issue concerning
27 the testacy of the decedent is or may be involved, is governed by section 3-402 as well as
28 by this section. In other cases, the petition must contain or adopt the statements required
29 by section 3-301, subsection 1, paragraph A and describe the question relating to priority
30 or qualification of the personal representative that is to be resolved. If the proceeding
31 precedes any appointment of a personal representative, it shall stay any pending informal
32 appointment proceedings as well as any commenced thereafter. If the proceeding is
33 commenced after appointment, the previously appointed personal representative, after
34 receipt of notice, shall refrain from exercising any power of administration except as
35 necessary to preserve the estate or unless the court orders otherwise.

36 **2. Notice and decision.** After notice to interested persons, including all persons
37 interested in the administration of the estate as successors under the applicable
38 assumption concerning testacy, any previously appointed personal representative and any
39 person having or claiming priority for appointment as personal representative, the court
40 shall determine who is entitled to appointment under section 3-203, make a proper

1 appointment and, if appropriate, terminate any prior appointment found to have been
2 improper as provided in cases of removal under section 3-611.

3 **PART 5**

4 **SUPERVISED ADMINISTRATION**

5 **§3-501. Supervised administration; nature of proceeding**

6 Supervised administration is a single in rem proceeding to secure complete
7 administration and settlement of a decedent's estate under the continuing authority of the
8 court that extends until entry of an order approving distribution of the estate and
9 discharging the personal representative or other order terminating the proceeding. A
10 supervised personal representative is responsible to the court, as well as to the interested
11 parties, and is subject to directions concerning the estate made by the court on its own
12 motion or on the motion of any interested party. Except as otherwise provided in this
13 Part, or as otherwise ordered by the court, a supervised personal representative has the
14 same duties and powers as a personal representative who is not supervised.

15 **§3-502. Supervised administration; petition; order**

16 A petition for supervised administration may be filed by any interested person or by a
17 personal representative at any time or the prayer for supervised administration may be
18 joined with a petition in a testacy or appointment proceeding. If the testacy of the
19 decedent and the priority and qualification of any personal representative have not been
20 adjudicated previously, the petition for supervised administration must include the
21 matters required of a petition in a formal testacy proceeding and the notice requirements
22 and procedures applicable to a formal testacy proceeding apply. If not previously
23 adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to
24 the priority and qualifications of the personal representative in any case involving a
25 request for supervised administration, even though the request for supervised
26 administration may be denied. After notice to interested persons:

27 **1. Will directing supervised administration.** If the decedent's will directs
28 supervised administration, the court must order supervised administration of the
29 decedent's estate unless the court finds that circumstances bearing on the need for
30 supervised administration have changed since the execution of the will and that there is
31 no necessity for supervised administration;

32 **2. Will directing unsupervised administration.** If the decedent's will directs
33 unsupervised administration, the court may order supervised administration of the
34 decedent's estate only upon a finding that it is necessary for protection of persons
35 interested in the estate; or

36 **3. Other cases.** In other cases when the court finds that supervised administration is
37 necessary under the circumstances, the court must order supervised administration of the
38 decedent's estate.

1 **§3-503. Supervised administration; effect on other proceedings**

2 **1. Effect on application for informal proceedings.** The pendency of a proceeding
3 for supervised administration of a decedent's estate stays action on any informal
4 application then pending or thereafter filed.

5 **2. Effect on will probated in informal proceedings.** If a will has been previously
6 probated in informal proceedings, the effect of the filing of a petition for supervised
7 administration is as provided for formal testacy proceedings by section 3-401.

8 **3. Effect on personal representative.** After receiving notice of the filing of a
9 petition for supervised administration, a personal representative who has been appointed
10 previously may not exercise the power to distribute any estate. The filing of the petition
11 does not affect the personal representative's other powers and duties unless the court
12 restricts the exercise of any of them pending full hearing on the petition.

13 **§3-504. Supervised administration; powers of personal representative**

14 Unless restricted by the court, a supervised personal representative has, without
15 interim orders approving exercise of a power, all powers of personal representatives
16 under this Code, but the personal representative may not exercise the power to make any
17 distribution of the estate without prior order of the court. Any other restriction on the
18 power of a personal representative that is ordered by the court must be endorsed on the
19 personal representative's letters of appointment and, unless so endorsed, is ineffective as
20 to persons dealing in good faith with the personal representative.

21 **§3-505. Supervised administration; interim orders; distribution and closing orders**

22 Unless otherwise ordered by the court, supervised administration is terminated by
23 order in accordance with time restrictions, notices and contents of orders prescribed for
24 proceedings under section 3-1001. Interim orders approving or directing partial
25 distributions or granting other relief may be issued by the court at any time during the
26 pendency of a supervised administration on the application of the personal representative
27 or any interested person.

28 **PART 6**

29 **PERSONAL REPRESENTATIVE: APPOINTMENT, CONTROL AND**
30 **TERMINATION OF AUTHORITY**

31 **§3-601. Qualification**

32 Prior to receiving letters, a personal representative must qualify by filing with the
33 appointing court any required bond and a statement of acceptance of the duties of the
34 office.

35 **§3-602. Acceptance of appointment; consent to jurisdiction**

36 By accepting appointment, a personal representative submits personally to the
37 jurisdiction of the court in any proceeding relating to the estate that may be instituted by

1 any interested person. Notice of any proceeding must be delivered to the personal
2 representative, or mailed to the personal representative by ordinary first class mail at the
3 address listed in the application or petition for appointment or as thereafter reported to the
4 court and to the personal representative's address as then known to the petitioner.

5 **§3-603. Bond not required without court order; exceptions**

6 Bond is not required of a personal representative appointed in informal proceedings,
7 except upon the appointment of a special administrator, when an executor or other
8 personal representative is appointed to administer an estate under a will containing an
9 express requirement of bond or when bond is required under section 3-605. Bond may be
10 required by court order at the time of appointment of a personal representative appointed
11 in any formal proceeding except that bond is not required of a personal representative
12 appointed in formal proceedings if the will relieves the personal representative of bond,
13 unless bond has been requested by an interested party and the court is satisfied that it is
14 desirable, or as provided in section 3-619, subsection 7. Bond required by any will or
15 under this section may be dispensed with in formal proceedings upon determination by
16 the court that it is not necessary. Bond is not required of any personal representative
17 who, pursuant to statute, has deposited cash or collateral with an agency of this State to
18 secure performance of the personal representative's duties.

19 **§3-604. Bond amount; security; procedure; reduction**

20 If bond is required and the provisions of the will or order do not specify the amount,
21 unless stated in the application or petition, the person qualifying shall file a statement
22 under oath with the register indicating that person's best estimate of the value of the
23 personal estate of the decedent and of the income expected from the personal and real
24 estate during the next year, and that person shall execute and file a bond with the register,
25 or give other suitable security, in an amount not less than the estimate. The register shall
26 determine that the bond is duly executed by a corporate surety, or one or more individual
27 sureties whose performance is secured by pledge of personal property, mortgage on real
28 property or other adequate security. The register may permit the amount of the bond to
29 be reduced by the value of assets of the estate deposited with a domestic financial
30 institution, as defined in section 6-101, in a manner that prevents their unauthorized
31 disposition. On petition of the personal representative or another interested person the
32 court may excuse a requirement of bond, increase or reduce the amount of the bond,
33 release sureties or permit the substitution of another bond with the same or different
34 sureties.

35 **§3-605. Demand for bond by interested person**

36 Any person apparently having an interest in the estate worth in excess of \$5,000, or
37 any creditor having a claim in excess of \$5,000, may make a written demand that a
38 personal representative give bond. The demand must be filed with the register and a copy
39 mailed to the personal representative, if appointment and qualification have occurred.
40 Thereupon, bond is required, but the requirement ceases if the person demanding bond
41 ceases to be interested in the estate or if bond is excused as provided in section 3-603 or
42 3-604. After the personal representative has received notice and until the filing of the
43 bond or cessation of the requirement of bond, the personal representative shall refrain

1 from exercising any powers of the personal representative's office except as necessary to
2 preserve the estate. Failure of the personal representative to meet a requirement of bond
3 by giving suitable bond within 30 days after receipt of notice is cause for the personal
4 representative's removal and appointment of a successor personal representative.

5 **§3-606. Terms and conditions of bonds**

6 **1. Required terms and conditions.** The following requirements and provisions
7 apply to any bond required by this Part.

8 A. Bonds must name the State of Maine as obligee for the benefit of the persons
9 interested in the estate and must be conditioned upon the faithful discharge by the
10 fiduciary of all duties according to law.

11 B. Unless otherwise provided by the terms of the approved bond, sureties are jointly
12 and severally liable with the personal representative and with each other. The
13 address of sureties must be stated in the bond.

14 C. By executing an approved bond of a personal representative, the surety consents
15 to the jurisdiction of the court that issued letters to the primary obligor in any
16 proceedings pertaining to the fiduciary duties of the personal representative and
17 naming the surety as a party. Notice of any proceeding must be delivered to the
18 surety or mailed to the surety by registered or certified mail at the surety's address as
19 listed with the court where the bond is filed and to the surety's address as then known
20 to the petitioner.

21 D. On petition of a successor personal representative, any other personal
22 representative of the same decedent or any interested person, a proceeding in the
23 court may be initiated against a surety for breach of the obligation of the bond of the
24 personal representative.

25 E. The bond of the personal representative is not void after the first recovery but may
26 be proceeded against from time to time until the whole penalty is exhausted.

27 **2. Limitation on action against surety.** An action or proceeding may not be
28 commenced against the surety on any matter as to which an action or proceeding against
29 the primary obligor is barred by adjudication or limitation.

30 **§3-607. Order restraining personal representative**

31 On petition of any person who appears to have an interest in the estate, the court by
32 temporary order may restrain a personal representative from performing specified acts of
33 administration, disbursement or distribution, or exercise of any powers or discharge of
34 any duties of the personal representative's office, or make any other order to secure
35 proper performance of the personal representative's duty, if it appears to the court that the
36 personal representative otherwise may take some action that would jeopardize
37 unreasonably the interest of the applicant or of some other interested person. Persons
38 with whom the personal representative may transact business may be made parties.

1 **§3-608. Termination of appointment; general**

2 Termination of appointment of a personal representative occurs as indicated in
3 sections 3-609 to 3-612. Termination ends the right and power pertaining to the office of
4 personal representative as conferred by this Code or any will, except that a personal
5 representative, at any time prior to distribution or until restrained or enjoined by court
6 order, may perform acts necessary to protect the estate and may deliver the assets to a
7 successor representative. Termination does not discharge a personal representative from
8 liability for transactions or omissions occurring before termination, or relieve the personal
9 representative of the duty to preserve assets subject to the personal representative's
10 control and to account for and to deliver the assets. Termination does not affect the
11 jurisdiction of the court over the personal representative, but terminates the personal
12 representative's authority to represent the estate in any pending or future proceeding.

13 **§3-609. Termination of appointment; death or disability**

14 The death of a personal representative or the appointment of a conservator for the
15 estate of a personal representative terminates the personal representative's appointment.
16 Until appointment and qualification of a successor or special personal representative to
17 replace the deceased or protected personal representative, the personal representative of
18 the estate of the deceased or protected personal representative, if any, has the duty to
19 protect the estate possessed and being administered by the personal representative's
20 decedent or ward at the time the personal representative's appointment terminates, has the
21 power to perform acts necessary for protection and shall account for and deliver the estate
22 assets to a successor or special personal representative upon the successor personal
23 representative's appointment and qualification.

24 **§3-610. Termination of appointment; voluntary**

25 **1. One year after closing of estate by sworn statement.** An appointment of a
26 personal representative terminates as provided in section 3-1003, one year after the filing
27 of a closing statement.

28 **2. Upon court order closing an estate.** An order closing an estate as provided in
29 section 3-1001 or 3-1002 terminates an appointment of a personal representative.

30 **3. Resignation; effect.** A personal representative may resign by filing a written
31 statement of resignation with the register after the personal representative has given at
32 least 15 days' written notice to the persons known to be interested in the estate. If no one
33 applies or petitions for appointment of a successor representative within the time
34 indicated in the notice, the filed statement of resignation is ineffective as a termination of
35 appointment and in any event is effective only upon the appointment and qualification of
36 a successor representative and delivery of the assets to the successor representative.

37 **§3-611. Termination of appointment by removal; cause; procedure**

38 **1. Petition for removal of personal representative.** A person interested in the
39 estate may petition for removal of a personal representative for cause at any time. Upon
40 filing of the petition, the court shall fix a time and place for hearing. Notice must be

1 given by the petitioner to the personal representative and to other persons as the court
2 may order. Except as otherwise ordered as provided in section 3-607, after receipt of
3 notice of removal proceedings, the personal representative may not act except to account,
4 to correct maladministration or to preserve the estate. If removal is ordered, the court
5 also shall direct by order the disposition of the assets remaining in the name of, or under
6 the control of, the personal representative being removed.

7 **2. Grounds for removal.** Cause for removal exists when removal would be in the
8 best interests of the estate or if it is shown that a personal representative or the person
9 seeking the personal representative's appointment intentionally misrepresented material
10 facts in the proceedings leading to the appointment or that the personal representative has
11 disregarded an order of the court, has become incapable of discharging the duties of the
12 office, has mismanaged the estate or has failed to perform any duty pertaining to the
13 office. Unless the decedent's will directs otherwise, a personal representative appointed
14 at the decedent's domicile, incident to securing appointment as ancillary personal
15 representative or the appointment of a nominee as ancillary personal representative, may
16 obtain removal of another who was appointed personal representative in this State to
17 administer local assets.

18 **§3-612. Termination of appointment; change of testacy status**

19 Except as otherwise ordered in formal proceedings, the probate of a will subsequent
20 to the appointment of a personal representative in intestacy or under a will that is
21 superseded by formal probate of another will, or the vacation of an informal probate of a
22 will subsequent to the appointment of the personal representative under the will, does not
23 terminate the appointment of the personal representative although the personal
24 representative's powers may be reduced as provided in section 3-401. Termination occurs
25 upon appointment in informal or formal appointment proceedings of a person entitled to
26 appointment under the later assumption concerning testacy. If no request for new
27 appointment is made within 30 days after expiration of time for appeal from the order in
28 formal testacy proceedings, or from the informal probate, changing the assumption
29 concerning testacy, the previously appointed personal representative upon request may be
30 appointed personal representative under the subsequently probated will, or as in intestacy
31 as the case may be.

32 **§3-613. Successor personal representative**

33 Parts 3 and 4 of this Article govern proceedings for appointment of a personal
34 representative to succeed a personal representative whose appointment has been
35 terminated. After appointment and qualification, a successor personal representative may
36 be substituted in all actions and proceedings to which the former personal representative
37 was a party, and no notice, process or claim that was given or served upon the former
38 personal representative need be given to or served upon the successor in order to preserve
39 any position or right the person giving the notice or filing the claim may thereby have
40 obtained or preserved with reference to the former personal representative. Except as
41 otherwise ordered by the court, the successor personal representative has the powers and
42 duties in respect to the continued administration that the former personal representative
43 would have had if the appointment had not been terminated.

1 **§3-614. Special administrator; appointment**

2 A special administrator may be appointed:

3 **1. Informal proceedings.** Informally by the register on the application of any
4 interested person when necessary to protect the estate of a decedent prior to the
5 appointment of a general personal representative or if a prior appointment has been
6 terminated as provided in section 3-609; and

7 **2. Formal proceedings.** In a formal proceeding by order of the court on the petition
8 of any interested person and finding, after notice and hearing, that appointment is
9 necessary to preserve the estate or to secure its proper administration including its
10 administration in circumstances where a general personal representative cannot or should
11 not act. If it appears to the court that an emergency exists, appointment may be ordered
12 without notice.

13 **§3-615. Special administrator; who may be appointed**

14 **1. Named executor, if available.** If a special administrator is to be appointed
15 pending the probate of a will that is the subject of a pending application or petition for
16 probate, the person named executor in the will must be appointed if available and
17 qualified.

18 **2. Any proper person.** In cases other than those set out in subsection 1, any proper
19 person may be appointed special administrator.

20 **§3-616. Special administrator; appointed informally; powers and duties**

21 A special administrator appointed by the register in informal proceedings pursuant to
22 section 3-614, subsection 1 has the duty to collect and manage the assets of the estate, to
23 preserve them, to account for them and to deliver them to the general personal
24 representative upon the general personal representative's qualification. The special
25 administrator has the power of a personal representative under the Code necessary to
26 perform the special administrator's duties.

27 **§3-617. Special administrator; formal proceedings; power and duties**

28 A special administrator appointed by order of the court in any formal proceeding has
29 the power of a general personal representative except as limited in the appointment and
30 duties as prescribed in the order. The appointment may be for a specified time, to
31 perform particular acts or on other terms as the court may direct.

32 **§3-618. Termination of appointment; special administrator**

33 The appointment of a special administrator terminates in accordance with the
34 provisions of the order of appointment or on the appointment of a general personal
35 representative. In other cases, the appointment of a special administrator is subject to
36 termination as provided in sections 3-608 to 3-611.

1 **§3-619. Public administrators**

2 **1. Public administrators; appointment; powers and duties.** The Governor shall
3 appoint in each county for a term of 4 years, unless sooner removed, a public
4 administrator who shall, upon petition to the court and after notice and hearing, be
5 appointed to administer the estates of persons who die intestate within the county, or who
6 die intestate elsewhere leaving property within the county, and who are not known to
7 have within the state any heirs who can lawfully inherit the estate, and for whom no other
8 administration has been commenced. The public administrator has the same powers and
9 duties of a personal representative under supervised administration as provided in section
10 3-504 and, except as provided in subsection 7, shall give bond as provided for other
11 personal representatives in cases of ordinary administration under sections 3-603 to
12 3-606. If any person entitled to appointment as personal representative under section
13 3-203, prior to the appointment of the public administrator, files a petition for informal or
14 formal appointment as personal representative, the court shall withhold any appointment
15 of the public administrator pending denial of the petition for the appointment of the
16 private personal representative.

17 **2. Compensation.** The public administrator may be allowed fees and compensation
18 for the public administrator's services as in the case of ordinary administration as
19 provided in sections 3-719 to 3-721, except that no fee for the public administrator's own
20 services may be paid without prior approval by the court.

21 **3. Authority pending appointment.** Pending the appointment of the public
22 administrator, and in the absence of any local administration or any administration by a
23 domiciliary foreign personal representative under sections 4-204 and 4-205, the public
24 administrator may proceed to conserve the property of the estate when it appears
25 necessary or expedient.

26 **4. Termination.** If before the estate of a decedent in the hands of the public
27 administrator is fully settled any last will and testament of the decedent is granted
28 informal or formal probate, or if any person entitled under section 3-203 to appointment
29 as personal representative is informally or formally appointed, the appointment of the
30 public administrator is terminated as provided in section 3-608, and the public
31 administrator shall account for and deliver the assets of the estate to the private personal
32 representative or to the successors under the will as provided by law if no private
33 personal representative has been appointed.

34 **5. Decedent's assets disposed of as unclaimed property.** When there are assets
35 other than real property remaining in the hands of the public administrator after the
36 payment of the decedent's debts and all costs of administration and no heirs have been
37 discovered, the public administrator must be ordered by the court to deposit the assets
38 with the Treasurer of State, who shall receive the assets and dispose of them according to
39 Title 33, chapter 41. These assets must, for the purposes of Title 33, chapter 41, be
40 presumed unclaimed when the court orders the public administrator to deposit them with
41 the Treasurer of State.

42 **6. Notice to treasurer; annual audit.** In all cases where a public administrator is
43 appointed, the register shall immediately send to the Treasurer of State a copy of the

1 petition and the decree, and in all cases in which the public administrator is ordered to
2 pay the balance of the estate as provided in subsection 5 the court shall give notice to the
3 county treasurer of the amount and from what estate it is receivable. If the public
4 administrator neglects for 3 months after the order of the court to deposit the money, the
5 county treasurer shall petition the court for enforcement of the order or bring a civil
6 action upon any bond of the public administrator for the recovery of the money. The
7 records and accounts of the public administrator must be audited annually by the Office
8 of the State Auditor.

9 **7. Exemption from notice and bond requirements.** Estates administered under
10 this section having a value at the decedent's death not exceeding \$5,000 are exempt from
11 all notice and filing costs and from giving bond. The cost of notice must be paid by the
12 court.

13 **PART 7**

14 **DUTIES AND POWERS OF PERSONAL REPRESENTATIVES**

15 **§3-701. Time of accrual of duties and powers**

16 The duties and powers of a personal representative commence upon appointment.
17 The powers of a personal representative relate back in time to give acts by the person
18 appointed that are beneficial to the estate occurring prior to appointment the same effect
19 as those occurring after appointment. Subject to the priorities of Title 22, section
20 2843-A, prior to appointment, a person named executor in a will may carry out written
21 instructions of the decedent relating to the decedent's body, funeral and burial
22 arrangements. A personal representative may ratify and accept acts on behalf of the
23 estate done by others where the acts would have been proper for a personal
24 representative.

25 **§3-702. Priority among different letters**

26 A person to whom general letters are first issued has exclusive authority under the
27 letters until that person's appointment is terminated or modified. If through error general
28 letters are later issued to another, the first appointed representative may recover any
29 property of the estate in the hands of the representative subsequently appointed, but the
30 acts of the latter done in good faith before notice of the first letters are not void for want
31 of validity of appointment.

32 **§3-703. General duties; relation and liability to persons interested in estate;**
33 **standing to sue**

34 **1. General duties.** A personal representative is a fiduciary who shall observe the
35 standards of care applicable to trustees. A personal representative is under a duty to settle
36 and distribute the estate of the decedent in accordance with the terms of any probated and
37 effective will and this Code, and as expeditiously and efficiently as is consistent with the
38 best interests of the estate. The personal representative shall use the authority conferred
39 upon the personal representative by this Code, the terms of the will, if any, and any order
40 in proceedings to which the personal representative is party for the best interests of

1 successors to the estate. A personal representative is a fiduciary who shall observe the
2 standards of care applicable to trustees as described in Title 18-B, sections 802, 803, 805,
3 806 and 807 and Title 18-B, chapter 9, except as follows.

4 A. A personal representative, in developing an investment strategy, shall take into
5 account the expected duration of the period reasonably required to effect distribution
6 of the estate's assets.

7 B. Except as provided in section 3-906, subsection 1, paragraphs A and B, a personal
8 representative may make distribution of an estate's assets in cash or in kind, in
9 accordance with the devisees' best interests, and is not required either to liquidate the
10 estate's assets or to preserve them for distribution.

11 C. If all devisees whose devises are to be funded from the residue of an estate agree,
12 in a written instrument signed by each of them and presented to the personal
13 representative, on an investment manager to direct the investment of the estate's
14 residuary assets, the personal representative may, but need not, rely on the investment
15 advice of the investment manager so identified or delegate the investment
16 management of the estate's residuary assets to the investment manager and, in either
17 case, may pay reasonable compensation to the investment manager from the residue
18 of the estate. A personal representative who relies on the advice of, or delegates
19 management discretion to, an investment manager in accordance with the terms of
20 this section is not liable for the investment performance of the assets invested in the
21 discretion of, or in accordance with the advice of, the investment manager.

22 **2. Authority.** A personal representative may not be surcharged for acts of
23 administration or distribution if the conduct in question was authorized at the time.
24 Subject to other obligations of administration, an informally probated will is authority to
25 administer and distribute the estate according to its terms. An order of appointment of a
26 personal representative, whether issued in informal or formal proceedings, is authority to
27 distribute apparently intestate assets to the heirs of the decedent if, at the time of
28 distribution, the personal representative is not aware of a pending testacy proceeding, a
29 proceeding to vacate an order entered in an earlier testacy proceeding, a formal
30 proceeding questioning the personal representative's appointment or fitness to continue or
31 a supervised administration proceeding. This section does not affect the duty of the
32 personal representative to administer and distribute the estate in accordance with the
33 rights of claimants whose claims have been allowed, the surviving spouse, any minor and
34 dependent children and any pretermitted child of the decedent as described elsewhere in
35 this Code.

36 **3. Standing to sue.** Except as to proceedings that do not survive the death of the
37 decedent, a personal representative of a decedent domiciled in this State at the decedent's
38 death has the same standing to sue and be sued in the courts of this State and the courts of
39 any other jurisdiction as the decedent had immediately prior to death.

40 **§3-704. Personal representative to proceed without court order; exception**

41 A personal representative shall proceed expeditiously with the settlement and
42 distribution of a decedent's estate and, except as otherwise specified or ordered in regard
43 to a supervised personal representative, do so without adjudication, order or direction of

1 the court, but the personal representative may invoke the jurisdiction of the court in
2 proceedings authorized by this Code to resolve questions concerning the estate or its
3 administration.

4 **§3-705. Duty of personal representative; information to heirs and devisees**

5 Not later than 30 days after appointment every personal representative, except any
6 special administrator, shall give information of the appointment to the heirs and devisees,
7 including, if there has been no formal testacy proceeding and if the personal
8 representative was appointed on the assumption that the decedent died intestate, the
9 devisees in any will mentioned in the application for appointment of a personal
10 representative. The information must be delivered or sent by ordinary mail to each of the
11 heirs and devisees whose address is reasonably available to the personal representative.
12 The duty does not extend to require information to persons who have been adjudicated in
13 a prior formal testacy proceeding to have no interest in the estate. The information must
14 include a statement that the estate is being administered by the personal representative
15 under the Code without supervision by the court but that recipients are entitled to
16 information regarding the administration from the personal representative and may
17 petition the court in any matter relating to the estate, including distribution of assets and
18 expenses of administration. The information must include the name and address of the
19 personal representative, indicate that it is being sent to persons who have or may have
20 some interest in the estate being administered, indicate whether bond has been filed and
21 describe the court where papers relating to the estate are on file. The personal
22 representative's failure to give this information is a breach of duty to the persons
23 concerned but does not affect the validity of the personal representative's appointment,
24 powers or other duties. A personal representative may inform other persons of the
25 personal representative's appointment by delivery or ordinary first class mail.

26 **§3-706. Duty of personal representative; inventory and appraisal**

27 **1. Duty to file or mail inventory.** Within 3 months after appointment, a personal
28 representative who is not a special administrator or a successor to another personal
29 representative who has previously discharged this duty shall prepare and file with the
30 court or mail to all interested persons an inventory of property owned by the decedent at
31 the time of death, listing it with reasonable detail and indicating as to each listed item its
32 fair market value as of the date of the decedent's death and the type and amount of any
33 encumbrance that may exist with reference to any item. The inventory must also include
34 a schedule of credits of the decedent, with the names of the obligors, the amounts due, a
35 description of the nature of the obligation and the amount of all such credits, exclusive of
36 expenses and risk of settlement or collection.

37 **2. Inventory furnished on request.** If the personal representative filed the
38 inventory with the court pursuant to subsection 1, the personal representative shall furnish
39 the inventory to interested persons who request it. If the personal representative mailed
40 the inventory to all interested persons who requested it pursuant to subsection 1, the
41 personal representative may also file the inventory with the court.

42 **3. Failure to file, mail or furnish inventory; missing property.** When an
43 inventory has not been filed, mailed or furnished as required under subsection 1 or 2 and

1 an interested party makes a prima facie case that property that should have been
2 inventoried is now missing, the personal representative has the burden of proving by a
3 preponderance of the evidence that the specific property would properly be excluded
4 from the inventory.

5 **§3-707. Employment of appraisers**

6 The personal representative may employ a qualified and disinterested appraiser to
7 assist in ascertaining the fair market value as of the date of the decedent's death of any
8 asset the value of which may be subject to reasonable doubt. Different persons may be
9 employed to appraise different kinds of assets included in the estate. The names and
10 addresses of any appraiser must be indicated on the inventory with the item or items
11 appraised.

12 **§3-708. Duty of personal representative; supplementary inventory**

13 If any property not included in the original inventory comes to the knowledge of a
14 personal representative or if the personal representative learns that the value or
15 description indicated in the original inventory for any item is erroneous or misleading, the
16 personal representative shall make a supplementary inventory or appraisal showing
17 the market value as of the date of the decedent's death of the new item or the revised
18 market value or descriptions, and the appraisers or other data relied upon, if any, and file
19 the supplementary inventory or appraisal with the court or mail or furnish copies of
20 the supplementary inventory or appraisal or information about the supplementary
21 inventory or appraisal to persons interested in the new information.

22 **§3-709. Duty of personal representative; possession of estate**

23 Except as otherwise provided by a decedent's will, every personal representative has a
24 right to and shall take possession or control of the decedent's property, except that any
25 real property or tangible personal property may be left with or surrendered to the person
26 presumptively entitled to it until, in the judgment of the personal representative,
27 possession of the property by the personal representative will be necessary for purposes
28 of administration. The request by a personal representative for delivery of any property
29 possessed by an heir or devisee is conclusive evidence in any action against the heir or
30 devisee for possession of the property that the possession of the property by the personal
31 representative is necessary for purposes of administration. The personal representative
32 shall pay taxes on and take all steps reasonably necessary for the management, protection
33 and preservation of the estate in the personal representative's possession. The personal
34 representative may maintain an action to recover possession of property or to determine
35 the title of the property.

36 **§3-710. Power to avoid transfers**

37 The property liable for the payment of unsecured debts of a decedent includes all
38 property transferred by the decedent by any means that is in law void or voidable as
39 against the decedent's creditors, and, subject to prior liens, the right to recover this
40 property, so far as necessary for the payment of unsecured debts of the decedent, is
41 exclusively in the personal representative. The personal representative is not required to

1 institute such an action unless requested by creditors, who must pay or secure the cost and
2 expenses of litigation.

3 **§3-711. Powers of personal representatives; in general**

4 Until termination of the personal representative's appointment, a personal
5 representative has the same power over the title to property of the estate that an absolute
6 owner would have, in trust however, for the benefit of the creditors and others interested
7 in the estate. This power may be exercised without notice, hearing or order of court.

8 **§3-712. Improper exercise of power; breach of fiduciary duty**

9 If the exercise of power concerning the estate is improper, the personal representative
10 is liable to interested persons for damage or loss resulting from breach of the personal
11 representative's fiduciary duty to the same extent as a trustee of an express trust. The
12 rights of purchasers and others dealing with a personal representative must be determined
13 as provided in sections 3-713 and 3-714.

14 **§3-713. Sale, encumbrance or transaction involving conflict of interest; voidable;**
15 **exceptions**

16 Any sale or encumbrance to the personal representative, the personal representative's
17 spouse, agent or attorney, or any corporation or trust in which the personal representative
18 has a substantial beneficial interest, or any transaction that is affected by a substantial
19 conflict of interest on the part of the personal representative, is voidable by any person
20 interested in the estate except a person who has consented after fair disclosure, unless:

21 **1. Express authorization by decedent.** The will or a contract entered into by the
22 decedent expressly authorized the transaction; or

23 **2. Court approval.** The transaction is approved by the court after notice to
24 interested persons.

25 **§3-714. Persons dealing with personal representative; protection**

26 A person who in good faith either assists a personal representative or deals with the
27 personal representative for value is protected as if the personal representative's power was
28 properly exercised. The fact that a person knowingly deals with a personal representative
29 does not alone require the person to inquire into the existence of a power or the propriety
30 of its exercise. Except for restrictions on powers of supervised personal representatives
31 that are endorsed on letters as provided in section 3-504, no provision in any will or order
32 of court purporting to limit the power of a personal representative is effective except as to
33 persons with actual knowledge. A person is not bound to see to the proper application of
34 estate assets paid or delivered to a personal representative. The protection in this section
35 extends to instances in which some procedural irregularity or jurisdictional defect
36 occurred in proceedings leading to the issuance of letters, including a case in which the
37 alleged decedent is found to be alive. The protection in this section is not by substitution
38 for that provided by comparable provisions of the laws relating to commercial
39 transactions and laws simplifying transfers of securities by fiduciaries.

1 **§3-715. Transactions authorized for personal representatives; exceptions**

2 Except as restricted or otherwise provided by the will or by an order in a formal
3 proceeding and subject to the priorities stated in section 3-902, a personal representative,
4 acting reasonably for the benefit of the interested persons, may properly:

5 **1. Retain assets pending distribution.** Retain assets owned by the decedent
6 pending distribution or liquidation including those in which the representative is
7 personally interested or that are otherwise improper for trust investment;

8 **2. Receive assets.** Receive assets from fiduciaries, or other sources;

9 **3. Perform decedent's contracts.** Perform, compromise or refuse performance of
10 the decedent's contracts that continue as obligations of the estate, as the personal
11 representative may determine under the circumstances. In performing enforceable
12 contracts by the decedent to convey or lease land, the personal representative, among
13 other possible courses of action, may:

14 A. Execute and deliver a deed of conveyance for cash payment of all sums remaining
15 due or the purchaser's note for the sum remaining due secured by a mortgage or deed
16 of trust on the land; or

17 B. Deliver a deed in escrow with directions that the proceeds, when paid in
18 accordance with the escrow agreement, be paid to the successors of the decedent, as
19 designated in the escrow agreement;

20 **4. Satisfy charitable pledges.** Satisfy written charitable pledges of the decedent
21 irrespective of whether the pledges constituted binding obligations of the decedent or
22 were properly presented as claims, if in the judgment of the personal representative the
23 decedent would have wanted the pledges completed under the circumstances;

24 **5. Invest liquid assets.** If funds are not needed to meet debts and expenses currently
25 payable and are not immediately distributable, deposit or invest liquid assets of the estate,
26 including money received from the sale of other assets, in federally insured interest-
27 bearing accounts, readily marketable secured loan arrangements or other prudent
28 investments that would be reasonable for use by trustees generally;

29 **6. Acquire, sell, manage or abandon assets.** Acquire or dispose of an asset,
30 including land in this or another state, for cash or on credit, at public or private sale; and
31 manage, develop, improve, exchange, partition, change the character of or abandon an
32 estate asset;

33 **7. Make repairs or alterations.** Make ordinary or extraordinary repairs or
34 alterations in buildings or other structures, demolish any improvements and raze existing
35 or erect new party walls or buildings;

36 **8. Manage real estate.** Subdivide, develop or dedicate land to public use; make or
37 obtain the vacation of plats and adjust boundaries; adjust differences in valuation on
38 exchange or partition by giving or receiving considerations; or dedicate easements to
39 public use without consideration;

- 1 **9. Enter leases.** Enter for any purpose into a lease as lessor or lessee, with or
2 without option to purchase or renew, for a term within or extending beyond the period of
3 administration;
- 4 **10. Enter mineral leases.** Enter into a lease or arrangement for exploration and
5 removal of minerals or other natural resources or enter into a pooling or unitization
6 agreement;
- 7 **11. Abandon property.** Abandon property when, in the opinion of the personal
8 representative, it is valueless or is so encumbered or is in condition that it is of no benefit
9 to the estate;
- 10 **12. Vote securities.** Vote stocks or other securities in person or by general or
11 limited proxy;
- 12 **13. Pay sums chargeable against securities.** Pay calls, assessments and other sums
13 chargeable or accruing against or on account of securities, unless barred by the provisions
14 relating to claims;
- 15 **14. Hold security through nominee.** Hold a security in the name of a nominee or in
16 other form without disclosure of the interest of the estate, but the personal representative
17 is liable for any act of the nominee in connection with the security;
- 18 **15. Obtain insurance.** Insure the assets of the estate against damage, loss and
19 liability and the personal representative against liability as to 3rd persons;
- 20 **16. Borrow or advance money.** Borrow money with or without security to be
21 repaid from the estate assets or otherwise; and advance money for the protection of the
22 estate;
- 23 **17. Compromise claims.** Effect a fair and reasonable compromise with any debtor
24 or obligor or extend, renew or in any manner modify the terms of any obligation owing to
25 the estate. If the personal representative holds a mortgage, pledge or other lien upon
26 property of another person, the personal representative may, in lieu of foreclosure, accept
27 a conveyance or transfer of encumbered assets from the owner in satisfaction of the
28 indebtedness secured by lien;
- 29 **18. Pay expenses.** Pay taxes, assessments, compensation of the personal
30 representative and other expenses incident to the administration of the estate;
- 31 **19. Exercise stock rights.** Sell or exercise stock subscription or conversion rights;
32 consent, directly or through a committee or other agent, to the reorganization,
33 consolidation, merger, dissolution or liquidation of a corporation or other business
34 enterprise;
- 35 **20. Allocate income and expenses.** Allocate items of income or expense to either
36 estate income or principal, as permitted or provided by law;
- 37 **21. Employ and act through agents.** Employ persons, including attorneys,
38 auditors, investment advisors or agents, even if they are associated with the personal

1 representative, to advise or assist the personal representative in the performance of
2 administrative duties; act without independent investigation upon their recommendations;
3 and instead of acting personally, employ one or more agents to perform any act of
4 administration, whether or not discretionary;

5 **22. Prosecute or defend claims.** Prosecute or defend claims or proceedings in any
6 jurisdiction for the protection of the estate and of the personal representative in the
7 performance of the personal representative's duties;

8 **23. Alienate property.** Sell, mortgage or lease any real or personal property of the
9 estate or any interest in the property for cash or credit or for part cash and part credit,
10 with or without security for unpaid balances;

11 **24. Continue any business.** Continue any unincorporated business or venture in
12 which the decedent was engaged at the time of death;

13 A. In the same business form for a period of not more than 4 months from the date of
14 appointment of a general personal representative if continuation is a reasonable
15 means of preserving the value of the business including good will;

16 B. In the same business form for any additional period of time that may be approved
17 by order of the court in a formal proceeding to which the persons interested in the
18 estate are parties; or

19 C. Throughout the period of administration if the business is incorporated by the
20 personal representative and if none of the probable distributees of the business who
21 are competent adults object to its incorporation and retention in the estate;

22 **25. Incorporate any business.** Incorporate any business or venture in which the
23 decedent was engaged at the time of death;

24 **26. Contract without personal liability.** Provide for exoneration of the personal
25 representative from personal liability in any contract entered into on behalf of the estate;

26 **27. Distribute the estate.** Satisfy and settle claims and distribute the estate as
27 provided in this Code; and

28 **28. Environmental compliance.** Exercise any power described in section 1-110
29 relating to compliance with environmental laws.

30 **§3-716. Powers and duties of successor personal representative**

31 A successor personal representative has the same power and duty as the original
32 personal representative to complete the administration and distribution of the estate, as
33 expeditiously as possible, but the successor personal representative may not exercise any
34 power expressly made personal to the executor named in the will.

35 **§3-717. Corepresentatives; when joint action required**

36 If 2 or more persons are appointed corepresentatives and unless the will provides
37 otherwise, the concurrence of all is required on all acts connected with the administration

1 and distribution of the estate. This restriction does not apply when any corepresentative
2 receives and receipts for property due the estate, when the concurrence of all cannot
3 readily be obtained in the time reasonably available for emergency action necessary to
4 preserve the estate or when a corepresentative has been delegated to act for the others.
5 Persons dealing with a corepresentative if actually unaware that another has been
6 appointed to serve with that corepresentative or if advised by the personal representative
7 with whom they deal that the personal representative has authority to act alone for any of
8 the reasons mentioned in this section are as fully protected as if the person with whom
9 they dealt had been the sole personal representative.

10 **§3-718. Powers of surviving personal representative**

11 Unless the terms of the will otherwise provide, every power exercisable by personal
12 corepresentatives may be exercised by the one or more remaining after the appointment
13 of one or more is terminated, and if one of 2 or more nominated as coexecutors is not
14 appointed, those appointed may exercise all the powers incident to the office.

15 **§3-719. Compensation of personal representative**

16 A personal representative is entitled to reasonable compensation for the personal
17 representative's services. If a will provides for compensation of the personal
18 representative and there is no contract with the decedent regarding compensation, the
19 personal representative may renounce the provision before qualifying and be entitled to
20 reasonable compensation. A personal representative also may renounce the personal
21 representative's right to all or any part of the compensation. A written renunciation of fee
22 may be filed with the court.

23 **§3-720. Expenses in estate litigation**

24 If any personal representative or person nominated as personal representative defends
25 or prosecutes any proceeding in good faith, whether successful or not, the personal
26 representative or nominee is entitled to receive from the estate necessary expenses and
27 disbursements including reasonable attorney's fees incurred.

28 **§3-721. Proceedings for review of employment of agents and compensation of**
29 **personal representatives and employees of estate**

30 **1. Procedure.** After notice to all interested persons, on petition of an interested
31 person or on appropriate motion if administration is supervised, the propriety of
32 employment of any person by a personal representative, including any attorney, auditor,
33 investment advisor or other specialized agent or assistant, the reasonableness of the
34 compensation of any person so employed or the reasonableness of the compensation
35 determined by the personal representative for the personal representative's own services
36 may be reviewed by the court. Any person who has received excessive compensation
37 from an estate for services rendered may be ordered to make appropriate refunds.

38 **2. Reasonable fee factors.** Factors to be considered as guides in determining the
39 reasonableness of a fee include the following:

1 A. The time and labor required, the novelty and difficulty of the questions involved
2 and the skill requisite to perform the service properly;

3 B. The likelihood, if apparent to the personal representative, that the acceptance of
4 the particular employment will preclude the person employed from other
5 employment;

6 C. The fee customarily charged in the locality for similar services;

7 D. The amount involved and the results obtained;

8 E. The time limitations imposed by the personal representative or by the
9 circumstances; and

10 F. The experience, reputation and ability of the person performing the services.

11 **PART 8**

12 **CREDITORS' CLAIMS**

13 **§3-801. Notice to creditors**

14 **1. Notice by publication.** Unless notice has already been given under this section, a
15 personal representative upon appointment shall publish a notice to creditors announcing
16 the appointment and the personal representative's address and notifying creditors of the
17 estate to present their claims within 4 months after the date of the first publication of the
18 notice or be forever barred. The notice to creditors must be published once a week for 2
19 successive weeks in a newspaper of general circulation in the county in which the court
20 that appointed the personal representative is located.

21 **2. Notice by mail.** A personal representative may give written notice by mail or
22 other delivery to a creditor, notifying the creditor to present the creditor's claim within 4
23 months after the published notice, if given as provided in subsection 1, or within 60 days
24 after the mailing or other delivery of the notice, whichever is later, or be forever barred.
25 Written notice must be the notice described in subsection 1 or a similar notice.

26 **3. No liability for failure to give notice.** The personal representative is not liable to
27 a creditor or to a successor of the decedent for giving or failing to give notice under this
28 section.

29 **§3-802. Statutes of limitations**

30 **1. Applicability of statutes of limitations; waiver.** Unless an estate is insolvent,
31 the personal representative, with the consent of all successors whose interests would be
32 affected, may waive any defense of limitations available to the estate. If the defense is
33 not waived, no claim barred by a statute of limitations at the time of the decedent's death
34 may be allowed or paid.

35 **2. Suspension for 4 months after death.** The running of any statute of limitations
36 measured from some other event than death or the giving of notice to creditors is
37 suspended for 4 months after the decedent's death, but resumes thereafter as to claims not
38 barred by other laws.

1 **3. Commencement of action by presentation of claim.** For purposes of any statute
2 of limitations, the presentation of a claim pursuant to section 3-804 is equivalent to
3 commencement of a proceeding on the claim.

4 **§3-803. Limitations on presentation of claims**

5 **1. Claims arising before death.** All claims against a decedent's estate that arose
6 before the death of the decedent, including claims of the State and any subdivision of the
7 State, whether due or to become due, absolute or contingent, liquidated or unliquidated,
8 founded on contract, tort or other legal basis, if not barred earlier by another statute of
9 limitations or nonclaim statute, are barred against the estate, the personal representative
10 and the heirs and devisees and nonprobate transferees of the decedent, unless presented
11 within the earlier of the following:

12 A. Nine months after the decedent's death; or

13 B. The time provided by section 3-801, subsection 2 for creditors who are given
14 actual notice, and the time provided in section 3-801, subsection 1 for all creditors
15 barred by publication.

16 **2. Claim barred by nonclaim statute.** A claim described in subsection 1 that is
17 barred by the nonclaim statute of the decedent's domicile before the giving of notice to
18 creditors in this State is barred in this State.

19 **3. Claims arising after death.** All claims against a decedent's estate that arise at or
20 after the death of the decedent, including claims of the State and any subdivision of the
21 State, whether due or to become due, absolute or contingent, liquidated or unliquidated,
22 founded on contract, tort or other legal basis, are barred against the estate, the personal
23 representative and the heirs and devisees of the decedent, unless presented as follows:

24 A. A claim based on a contract with the personal representative, within 4 months
25 after performance by the personal representative is due; or

26 B. Any other claim, within the later of 4 months after it arises or the time specified in
27 subsection 1, paragraph A.

28 **4. Exceptions.** Nothing in this section affects or prevents:

29 A. Any proceeding to enforce any mortgage, pledge or other lien upon property of
30 the estate;

31 B. To the limits of the insurance protection only, any proceeding to establish liability
32 of the decedent or the personal representative for which the decedent or the personal
33 representative is protected by liability insurance;

34 C. Collection of compensation for services rendered and reimbursement for expenses
35 advanced by the personal representative or by the attorney or accountant for the
36 personal representative of the estate; or

37 D. The State from filing and enforcing a claim for Medicaid reimbursement under
38 Title 22, section 14. Notwithstanding subsection 1, paragraph A, if this claim is filed
39 within 4 months of published or actual notice of creditors, the claim is considered
40 timely filed.

1 **§3-804. Manner of presentation of claims**

2 Claims against a decedent's estate may be presented as described in this section.

3 **1. Written statement of claim.** The claimant may deliver or mail to the personal
4 representative a written statement of the claim indicating its basis, the name and address
5 of the claimant and the amount claimed, or may file a written statement of the claim, in
6 the form prescribed by rule, with the clerk of the court. The claim is deemed presented
7 on the first to occur of receipt of the written statement of claim by the personal
8 representative or the filing of the claim with the court. If a claim is not yet due, the date
9 when it will become due must be stated. If the claim is contingent or unliquidated, the
10 nature of the uncertainty must be stated. If the claim is secured, the security must be
11 described. Failure to describe correctly the security, the nature of any uncertainty and the
12 due date of a claim not yet due does not invalidate the presentation made.

13 **2. Proceeding on claim.** The claimant may commence a proceeding against the
14 personal representative in any court where the personal representative may be subjected
15 to jurisdiction to obtain payment of the claimant's claim against the estate, but the
16 commencement of the proceeding must occur within the time limited for presenting the
17 claim. No presentation of claim is required in regard to matters claimed in proceedings
18 against the decedent that were pending at the time of death.

19 **3. Time limit for proceeding after disallowance.** If a claim is presented under
20 subsection 1, no proceeding on the claim may be commenced more than 60 days after the
21 personal representative has mailed a notice of disallowance; but, in the case of a claim
22 that is not presently due or that is contingent or unliquidated, the personal representative
23 may consent to an extension of the 60-day period or, to avoid injustice, the court on
24 petition may order an extension of the 60-day period, but in no event may the extension
25 run beyond the applicable statute of limitations.

26 **4. Presenting claims before administration.** When a decedent's estate has not been
27 commenced at the time a claimant wishes to present a claim, a claim is deemed presented
28 when the claimant files with the clerk of the court a written statement of claim meeting
29 the requirements of subsection 1 and a demand for notice pursuant to section 3-204. The
30 provisions of subsection 3 apply upon the appointment of a personal representative.

31 **§3-805. Classification of claims**

32 **1. Priority of claims.** If the applicable assets of the estate are insufficient to pay all
33 claims in full, the personal representative shall make payment in the following order:

34 A. Costs and expenses of administration;

35 B. Reasonable funeral expenses;

36 C. Debts and taxes with preference under federal law;

37 D. Medicaid benefits recoverable under Title 22, section 14, subsection 2-I and
38 reasonable and necessary medical and hospital expenses of the last illness of the
39 decedent, including compensation of persons attending the decedent;

1 E. Debts and taxes with preference under other laws of this State; and

2 F. All other claims.

3 **2. No priority within class or for claims not due.** Preference may not be given in
4 the payment of any claim over any other claim of the same class, and a claim due and
5 payable is not entitled to a preference over claims not due.

6 **§3-806. Allowance of claims**

7 **1. Allowance or disallowance by personal representative.** As to claims presented
8 in the manner described in section 3-804 within the time limit prescribed in section
9 3-803, the personal representative may mail a notice to any claimant stating that the claim
10 has been disallowed. If, after allowing or disallowing a claim, the personal representative
11 changes the decision concerning the claim, the personal representative shall notify the
12 claimant. The personal representative may not change a disallowance of a claim after the
13 time for the claimant to file a petition for allowance or to commence a proceeding on the
14 claim has run and the claim has been barred. Every claim that is disallowed in whole or
15 in part by the personal representative is barred so far as not allowed unless the claimant
16 files a petition for allowance in the court or commences a proceeding against the personal
17 representative not later than 60 days after the mailing of the notice of disallowance or
18 partial allowance if the notice warns the claimant of the impending bar. Failure of the
19 personal representative to mail notice to a claimant of action on the claim for 60 days
20 after the time for original presentation of the claim has expired has the effect of a notice
21 of allowance.

22 **2. Change of claim status by personal representative.** After allowing or
23 disallowing a claim, the personal representative may change the allowance or
24 disallowance as provided in this subsection. The personal representative may prior to
25 payment change the allowance to a disallowance in whole or in part, but not after
26 allowance by a court order or judgment or an order directing payment of the claim. The
27 personal representative shall notify the claimant of the change to disallowance, and the
28 disallowed claim is then subject to bar as provided in subsection 1. The personal
29 representative may change a disallowance to an allowance, in whole or in part, until it is
30 barred under subsection 1; after it is barred, it may be allowed and paid only if the estate
31 is solvent and all successors whose interests would be affected consent.

32 **3. Allowance by court.** Upon the petition of the personal representative or of a
33 claimant in a proceeding for the purpose, the court may allow in whole or in part any
34 claim or claims presented to the personal representative or filed with the clerk of the court
35 in due time and not barred by subsection 1. Notice in this proceeding must be given to
36 the claimant, the personal representative and those other persons interested in the estate as
37 the court may direct by order entered at the time the proceeding is commenced.

38 **4. Judgment of another court; effect.** A judgment in a proceeding in another court
39 against a personal representative to enforce a claim against a decedent's estate is an
40 allowance of the claim.

41 **5. Interest.** Unless otherwise provided in any judgment in another court entered
42 against the personal representative, allowed claims bear prejudgment interest at the rate

1 specified in Title 14, section 1602-B for the period commencing 60 days after the time for
2 original presentation of the claim has expired unless based on a contract making a
3 provision for interest, in which case they bear interest in accordance with that provision.

4 A. Interest may not accrue on any allowed claims, however allowed, against an
5 insolvent estate, except to the extent that insurance coverage or other nonprobate
6 assets are available to pay the claim in full.

7 B. To the extent that an allowed claim against an insolvent estate is secured by
8 property, the value of which, as determined under section 3-809, is greater than the
9 amount of the claim, the holder of the claim may receive interest on the principal
10 amount of the claim and any reasonable fees, costs or charges provided for under an
11 agreement under which the claim arose.

12 **§3-807. Payment of claims**

13 **1. Payment upon expiration of limitations period.** Upon the expiration of the
14 earlier of the time limitations provided in section 3-803 for the presentation of claims, the
15 personal representative shall proceed to pay the claims allowed against the estate in the
16 order of priority prescribed, after making provision for homestead, family and support
17 allowances, for claims already presented that have not yet been allowed or whose
18 allowance has been appealed, and for unbarred claims that may yet be presented,
19 including costs and expenses of administration. By petition to the court in a proceeding
20 for the purpose, or by appropriate motion if the administration is supervised, a claimant
21 whose claim has been allowed but not paid may secure an order directing the personal
22 representative to pay the claim to the extent that funds of the estate are available to pay it.

23 **2. Earlier payment; liability of personal representative.** The personal
24 representative at any time may pay any just claim that has not been barred, with or
25 without formal presentation, but the personal representative is personally liable to any
26 other claimant whose claim is allowed and who is injured by its payment if:

27 A. Payment was made before the expiration of the time limit stated in subsection 1
28 and the personal representative failed to require the payee to give adequate security
29 for the refund of any of the payment necessary to pay other claimants; or

30 B. Payment was made, due to the negligence or willful fault of the personal
31 representative, in a manner that deprives the injured claimant of priority.

32 **§3-808. Individual liability of personal representative**

33 **1. Contractual liability.** Unless otherwise provided in the contract, a personal
34 representative is not individually liable on a contract properly entered into in a fiduciary
35 capacity in the course of administration of the estate unless the personal representative
36 fails to reveal the representative capacity and identify the estate in the contract.

37 **2. Liability for ownership or control of property; torts.** A personal representative
38 is individually liable for obligations arising from ownership or control of the estate or for
39 torts committed in the course of administration of the estate only if the personal
40 representative is personally at fault.

1 **3. Proceedings against personal representative in fiduciary capacity.** Claims
2 based on contracts entered into by a personal representative in a fiduciary capacity, on
3 obligations arising from ownership or control of the estate or on torts committed in the
4 course of estate administration may be asserted against the estate by proceeding against
5 the personal representative in a fiduciary capacity, whether or not the personal
6 representative is individually liable.

7 **4. Allocating liability between estate and personal representative.** Issues of
8 liability as between the estate and the personal representative individually may be
9 determined in a proceeding for accounting, surcharge or indemnification or other
10 appropriate proceeding.

11 **§3-809. Secured claims**

12 Payment of a secured claim is upon the basis of the amount allowed if the creditor
13 surrenders the creditor's security; otherwise payment is upon the basis of one of the
14 following:

15 **1. Security exhausted.** If the creditor exhausts the creditor's security before
16 receiving payment, unless precluded by other law, upon the amount of the claim allowed
17 less the fair value of the security; or

18 **2. Security not exhausted.** If the creditor does not have the right to exhaust the
19 creditor's security or has not done so, upon the amount of the claim allowed less the value
20 of the security determined by converting it into money according to the terms of the
21 agreement pursuant to which the security was delivered to the creditor or by the creditor
22 and personal representative by agreement, arbitration, compromise or litigation.

23 **§3-810. Claims not due and contingent or unliquidated claims**

24 **1. Claim due or certain before distribution.** If a claim that will become due at a
25 future time or a contingent or unliquidated claim becomes due or certain before the
26 distribution of the estate and if the claim has been allowed or established by a proceeding,
27 it is paid in the same manner as presently due and absolute claims of the same class.

28 **2. Other cases.** In other cases the personal representative or, on petition of the
29 personal representative or the claimant in a special proceeding for the purpose, the court
30 may provide for payment as follows:

31 A. If the claimant consents, the claimant may be paid the present or agreed value of
32 the claim, taking any uncertainty into account; or

33 B. Arrangement for future payment or possible payment on the happening of the
34 contingency or on liquidation may be made by creating a trust, giving a mortgage,
35 obtaining a bond or security from a distributee or otherwise.

36 **§3-811. Counterclaims**

37 In allowing a claim the personal representative may deduct any counterclaim that the
38 estate has against the claimant. In determining a claim against an estate a court shall
39 reduce the amount allowed by the amount of any counterclaims and, if the counterclaims

1 exceed the claim, render a judgment against the claimant in the amount of the excess. A
2 counterclaim, liquidated or unliquidated, may arise from a transaction other than that
3 upon which the claim is based. A counterclaim may give rise to relief exceeding in
4 amount or different in kind from that sought in the claim.

5 **§3-812. Execution and levies prohibited**

6 No execution may issue upon nor may any levy be made against any property of the
7 estate under any judgment against a decedent or a personal representative, but this section
8 may not be construed to prevent the enforcement of mortgages, pledges or liens upon real
9 or personal property in an appropriate proceeding.

10 **§3-813. Compromise of claims**

11 When a claim against the estate has been presented in any manner, the personal
12 representative may, if it appears for the best interest of the estate, compromise the claim,
13 whether due or not due, absolute or contingent, liquidated or unliquidated.

14 **§3-814. Encumbered assets**

15 If any assets of the estate are encumbered by mortgage, pledge, lien or other security
16 interest, the personal representative may pay the encumbrance or any part of the
17 encumbrance, renew or extend any obligation secured by the encumbrance or convey or
18 transfer the assets to the creditor in satisfaction of the lien, in whole or in part, whether or
19 not the holder of the encumbrance has presented a claim, if it appears to be for the best
20 interest of the estate. Payment of an encumbrance does not increase the share of the
21 distributee entitled to the encumbered assets unless the distributee is entitled to
22 exoneration.

23 **§3-815. Administration in more than one state; duty of personal representative**

24 **1. Estate assets subject to all claims, allowances and charges.** All assets of estates
25 being administered in this State are subject to all claims, allowances and charges existing
26 or established against the personal representative wherever appointed.

27 **2. Estate insufficient; claimants to receive equal proportion of claims.** If the
28 estate either in this State or as a whole is insufficient to cover all family exemptions and
29 allowances determined by the law of the decedent's domicile, prior charges and claims
30 after satisfaction of the exemptions, allowances and charges, each claimant whose claim
31 has been allowed either in this State or elsewhere in administrations of which the personal
32 representative is aware is entitled to receive payment of an equal proportion of the
33 claimant's claim. If a preference or security in regard to a claim is allowed in another
34 jurisdiction but not in this State, the creditor so benefited is to receive dividends from
35 local assets only upon the balance of the creditor's claim after deducting the amount of
36 the benefit.

37 **3. Local assets apply first to claims allowed in this State.** In case the family
38 exemptions and allowances, prior charges and claims of the entire estate exceed the total
39 value of the portions of the estate being administered separately and this State is not the
40 state of the decedent's last domicile, the claims allowed in this State must be paid their

1 proportion if local assets are adequate for the purpose, and the balance of local assets
2 must be transferred to the domiciliary personal representative. If local assets are not
3 sufficient to pay all claims allowed in this State the amount to which they are entitled,
4 local assets must be marshalled so that each claim allowed in this State is paid its
5 proportion as far as possible, after taking into account all dividends on claims allowed in
6 this State from assets in other jurisdictions.

7 **§3-816. Final distribution to domiciliary representative**

8 The estate of a nonresident decedent being administered by a personal representative
9 appointed in this State must, if there is a personal representative of the decedent's
10 domicile willing to receive it, be distributed to the domiciliary personal representative for
11 the benefit of the successors of the decedent unless:

12 **1. Maine law governs.** By virtue of the decedent's will, if any, and applicable
13 choice of law provisions, the successors are identified pursuant to the law of this State
14 without reference to the law of the decedent's domicile;

15 **2. No domiciliary personal representative exists.** The personal representative of
16 this State, after reasonable inquiry, is unaware of the existence or identity of a domiciliary
17 personal representative; or

18 **3. Court order.** The court orders otherwise in a proceeding for a closing order
19 under section 3-1001 or incident to the closing of a supervised administration.

20 In other cases, distribution of the estate of a decedent must be made in accordance
21 with the other Parts of this Article.

22 **§3-817. Survival of actions**

23 **1. Survival of actions.** No personal action or cause of action is lost by the death of
24 either party, but the same survives for and against the personal representative of the
25 deceased, except that actions or causes of action for the recovery of penalties and fines
26 under criminal statutes do not survive the death of the defendant. A personal
27 representative may seek relief from a judgment in an action to which the deceased was a
28 party to the same extent that the deceased might have done so.

29 **2. Death of plaintiff or defendant.** When the only plaintiff or defendant dies while
30 an action that survives is pending, or after its commencement and before entry of
31 judgment, the decedent's personal representative may appear and enter the action or any
32 appeal that has been made, and suggest on the record the death of the party. If the
33 personal representative does not appear within 90 days after the appointment, the
34 personal representative may be cited to appear, and after due notice judgment may be
35 entered against the personal representative by dismissal or default if no such appearance
36 is made.

37 **3. Death of one of several plaintiffs or one of several defendants.** When either of
38 several plaintiffs or defendants in an action that survives dies, the death may be suggested
39 on the record, and the personal representative of the deceased may appear or be cited to
40 appear as provided in subsection 2. The action may be further prosecuted or defended by

1 the survivors and the personal representative jointly or by either of them. The survivors,
2 if any, on both sides of the action may testify as witnesses.

3 **4. Death of judgment creditor.** When a judgment creditor dies before the first
4 execution issues or before an execution issued in the judgment creditor's lifetime is fully
5 satisfied, the execution may be issued or be effective in favor of the deceased judgment
6 creditor's personal representative, but an execution may not be issued or be effective
7 beyond the time within which it would have been effective or issued if the party had not
8 died.

9 **5. Execution in favor of deceased judgment creditor.** An execution issued under
10 subsection 4 must set forth the fact that the judgment creditor has died since the rendition
11 of the judgment and that the substituted party is the personal representative of the
12 decedent's estate.

13 **6. Liability of personal representative.** The personal representative proceeding
14 under this section is liable, and shall hold any recovered property or award, in a
15 representative capacity, except as otherwise provided in section 3-808.

16 **§3-818. Damages limited to actual damages**

17 In any tort action against the personal representative of a decedent's estate, in the
18 personal representative's representative capacity, the plaintiff may recover only the value
19 of the goods taken or damage actually sustained.

20 **PART 9**

21 **SPECIAL PROVISIONS RELATING TO DISTRIBUTION**

22 **§3-901. Successors' rights if no administration**

23 In the absence of administration, the heirs and devisees are entitled to the estate in
24 accordance with the terms of a probated will or the laws of intestate succession. Devisees
25 may establish title by the probated will to devised property. Persons entitled to property
26 by homestead allowance, exemption or intestacy may establish title by proof of the
27 decedent's ownership and death and their relationship to the decedent. Successors take
28 subject to all charges incident to administration, including the claims of creditors and
29 allowances of surviving spouse and dependent children, and subject to the rights of others
30 resulting from abatement, retainer, advancement and ademption.

31 **§3-902. Distribution; order in which assets appropriated; abatement**

32 **1. Order in which assets appropriated; abatement.** Except as provided in
33 subsection 2 and except as provided in connection with the share of the surviving spouse
34 who elects to take an elective share, shares of distributees abate, without any preference
35 or priority as between real and personal property, in the following order: property not
36 disposed of by the will, residuary devises, general devises and specific devises. For
37 purposes of abatement, a general devise charged on any specific property or fund is a
38 specific devise to the extent of the value of the property on which it is charged, and upon
39 the failure or insufficiency of the property on which it is charged, a general devise to the

1 extent of the failure or insufficiency. Abatement within each classification is in
2 proportion to the amounts of property each of the beneficiaries would have received if
3 full distribution of the property had been made in accordance with the terms of the will.

4 **2. Intention of the testator controls.** If the will expresses an order of abatement or
5 if the testamentary plan or the express or implied purpose of the devise would be defeated
6 by the order of abatement stated in subsection 1, the shares of the distributees abate as
7 may be found necessary to give effect to the intention of the testator.

8 **3. Adjustments.** If the subject of a preferred devise is sold or used incident to
9 administration, abatement must be achieved by appropriate adjustments in or contribution
10 from other interests in the remaining assets.

11 **§3-903. Right of retainer**

12 The amount of a noncontingent indebtedness of a successor to the estate if due, or its
13 present value if not due, must be offset against the successor's interest, but the successor
14 has the benefit of any defense that would be available to the debtor in a direct proceeding
15 for recovery of the debt. The debt constitutes a lien on the successor's interest in favor of
16 the estate, having priority over any attachment or transfer of the interest by the successor.

17 **§3-904. Interest on general pecuniary devise**

18 General pecuniary devises bear interest at the legal rate of 5% per year beginning one
19 year after the first appointment of a personal representative until payment, unless a
20 contrary intent is indicated in the will.

21 **§3-905. Penalty clause for contest**

22 A provision in a will purporting to penalize any interested person for contesting the
23 will or instituting other proceedings relating to the estate is unenforceable if probable
24 cause exists for instituting proceedings.

25 **§3-906. Distribution in kind; valuation; method**

26 **1. Distribution in kind; valuation; distribution of residuary estate.** Unless a
27 contrary intention is indicated by the will, the distributable assets of a decedent's estate
28 must be distributed in kind to the extent possible through application of the following
29 provisions.

30 A. A specific devisee is entitled to distribution of the thing devised to that devisee,
31 and a spouse or child who has selected particular assets of an estate as provided in
32 section 2-403 must receive the items selected.

33 B. Any homestead or family allowance or devise of a stated sum of money may be
34 satisfied by value in kind, in the personal representative's discretion, as long as:

35 (1) The person entitled to the payment has not demanded payment in cash;

36 (2) The property distributed in kind is valued at fair market value as of the date
37 of its distribution; and

1 (3) No residuary devisee has requested that the asset to be distributed remain a
2 part of the residue of the estate or, if a residuary devisee has requested that the
3 asset to be distributed remain a part of the residue of the estate, there are
4 insufficient other assets to which no residuary devisee has made such a request to
5 permit satisfaction of the estate's obligations and funding of all pecuniary devises
6 made under the decedent's will.

7 C. For the purpose of valuation under paragraph B, securities regularly traded on
8 recognized exchanges, if distributed in kind, are valued at the price for the last sale of
9 like securities traded on the business day prior to distribution or, if there was no sale
10 on that day, at the median between amounts bid and offered at the close of that day.
11 Assets consisting of sums owed the decedent or the estate by solvent debtors as to
12 which there is no known dispute or defense are valued at the sum due with accrued
13 interest or discounted to the date of distribution. For assets that do not have readily
14 ascertainable values, a valuation as of a date not more than 30 days prior to the date
15 of distribution, if otherwise reasonable, controls. For purposes of facilitating
16 distribution, the personal representative may ascertain the value of the assets as of the
17 time of the proposed distribution in any reasonable way, including the employment of
18 qualified appraisers, even if the assets may have been previously appraised.

19 D. The residuary estate may be distributed by the personal representative in cash or
20 in kind, in accordance with the best interests of the residuary devisees. Residuary
21 assets may be distributed, at the personal representative's discretion, in pro rata or non
22 pro rata shares, except that residuary assets not distributed pro rata must be valued as
23 of the date on which they are distributed.

24 **2. Right of distributee to object.** After the probable charges against the estate are
25 known, the personal representative may mail or deliver a proposal for distribution to all
26 persons who have a right to object to the proposed distribution. The right of any
27 distributee to object to the proposed distribution on the basis of the kind or value of asset
28 the distributee is to receive, if not waived earlier in writing, terminates if the distributee
29 fails to object in writing received by the personal representative within 30 days after
30 mailing or delivery of the proposal.

31 **§3-907. Distribution in kind; evidence**

32 If distribution in kind is made, the personal representative shall execute an instrument
33 or deed of distribution assigning, transferring or releasing the assets to the distributee as
34 evidence of the distributee's title to the property.

35 **§3-908. Distribution; right or title of distributee**

36 Proof that a distributee has received an instrument or deed of distribution of assets in
37 kind, or payment in distribution, from a personal representative, is conclusive evidence
38 that the distributee has succeeded to the interest of the estate in the distributed assets, as
39 against all persons interested in the estate, except that the personal representative may
40 recover the assets or their value if the distribution was improper.

1 **§3-909. Improper distribution; liability of distributee**

2 Unless the distribution or payment no longer can be questioned because of
3 adjudication, estoppel or limitation, a distributee of property improperly distributed or
4 paid, or a claimant who was improperly paid, is liable to return the property improperly
5 received and its income since distribution if the distributee or claimant has the property.
6 If the distributee or claimant does not have the property, then the distributee or claimant
7 is liable to return the value as of the date of disposition of the property improperly
8 received and income and gain received by the distributee or claimant.

9 **§3-910. Purchasers from distributees protected**

10 If property distributed in kind or a security interest in the property is acquired for
11 value by a purchaser from or lender to a distributee who has received an instrument or
12 deed of distribution from the personal representative, or is acquired by a purchaser from
13 or lender to a transferee from a distributee, the purchaser or lender takes title free of
14 rights of any interested person in the estate and incurs no personal liability to the estate,
15 or to any interested person, whether or not the distribution was proper or supported by
16 court order or the authority of the personal representative was terminated before
17 execution of the instrument or deed. This section protects a purchaser from or lender to a
18 distributee who, as personal representative, has executed a deed of distribution to the
19 personal representative, as well as a purchaser from or lender to any other distributee or
20 transferee. To be protected under this provision, a purchaser or lender need not inquire
21 whether a personal representative acted properly in making the distribution in kind, even
22 if the personal representative and the distributee are the same person, or whether the
23 authority of the personal representative had terminated before the distribution. Any
24 recorded instrument described in this section on which the register of deeds notes by an
25 appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the
26 transfer was made for value.

27 **§3-911. Partition for purpose of distribution**

28 When 2 or more heirs or devisees are entitled to distribution of undivided interests in
29 any real or personal property of the estate, the personal representative or one or more of
30 the heirs or devisees may petition the court prior to the formal or informal closing of the
31 estate to make partition. After notice to the interested heirs or devisees, the court shall
32 partition the property in the same manner as provided by the law for civil actions of
33 partition. The court may direct the personal representative to sell any property that cannot
34 be partitioned without prejudice to the owners and that cannot conveniently be allotted to
35 any one party.

36 **§3-912. Private agreements among successors to decedent binding on personal**
37 **representative**

38 Subject to the rights of creditors and taxing authorities, competent successors may
39 agree among themselves to alter the interests, shares or amounts to which they are
40 entitled under the will of the decedent, or under the laws of intestacy, in any way that
41 they provide in a written contract executed by all who are affected by its provisions. The
42 personal representative shall abide by the terms of the agreement subject to the personal

1 representative's obligation to administer the estate for the benefit of creditors, to pay all
2 taxes and costs of administration and to carry out the responsibilities of the office for the
3 benefit of any successors of the decedent who are not parties. Personal representatives of
4 decedents' estates are not required to see to the performance of trusts if the trustee of such
5 a trust is another person who is willing to accept the trust. Accordingly, trustees of a
6 testamentary trust are successors for the purposes of this section. Nothing in this section
7 relieves trustees of any duties owed to beneficiaries of trusts.

8 **§3-913. Distributions to trustee**

9 **1. Personal representative authority to require bond.** If the trust instrument does
10 not excuse the trustee from giving bond, the personal representative may petition the
11 appropriate court to require that the trustee post bond if the personal representative
12 apprehends that distribution might jeopardize the interests of persons who are not able to
13 protect themselves, and the personal representative may withhold distribution until the
14 court has acted.

15 **2. Personal representative not negligent for failing to require bond.** An
16 inference of negligence on the part of the personal representative may not be drawn from
17 the personal representative's failure to exercise the authority conferred by subsection 1.

18 **§3-914. Disposition of unclaimed assets**

19 If an heir, devisee or claimant cannot be found, the personal representative shall
20 distribute the share of the missing person to the person's conservator, if any; otherwise it
21 must be disposed of according to Title 33, chapter 41.

22 **§3-915. Distribution to person under disability**

23 **1. Discharge according to will.** A personal representative may discharge the
24 personal representative's obligation to distribute to any person under legal disability by
25 distributing in a manner expressly provided in the will.

26 **2. Discharge under section 5-103 or to conservator.** Unless contrary to an express
27 provision in the will, a personal representative may discharge the personal
28 representative's obligation to distribute to a minor or person under other disability as
29 authorized by section 5-103 or any other statute. If the personal representative knows
30 that a conservator has been appointed or that a proceeding for appointment of a
31 conservator is pending, the personal representative is authorized to distribute only to the
32 conservator.

33 **3. Discharge to attorney in fact or close relative.** If the heir or devisee is under
34 disability other than minority, a personal representative is authorized to distribute to:

35 A. An attorney in fact who has authority under a power of attorney to receive
36 property for that person; or

37 B. The spouse, parent or other close relative with whom the person under disability
38 resides if the distribution is of amounts not exceeding \$10,000 a year or property not

1 exceeding \$10,000 in value, unless the court authorizes a larger amount or greater
2 value.

3 Persons receiving money or property for the person with a disability are obligated to
4 apply the money or property to the support of that person, but may not pay themselves
5 except by way of reimbursement for out-of-pocket expenses for goods and services
6 necessary for the support of the person with a disability. Excess sums must be preserved
7 for future support of the person with a disability. The personal representative is not
8 responsible for the proper application of money or property distributed pursuant to this
9 subsection.

10 **§3-916. Uniform Estate Tax Apportionment Act**

11 **1. Short title.** This section may be known and cited as the Uniform Estate Tax
12 Apportionment Act.

13 **2. Definitions.** As used in this section, unless the context otherwise indicates, the
14 following terms have the following meanings.

15 A. "Apportionable estate" means the value of the gross estate as finally determined
16 for purposes of the estate tax to be apportioned reduced by:

17 (1) Any claim or expense allowable as a deduction for purposes of the tax;

18 (2) The value of any interest in property that, for purposes of the tax, qualifies
19 for a marital or charitable deduction or otherwise is deductible or is exempt; and

20 (3) Any amount added to the decedent's gross estate because of a gift tax on
21 transfers made before death.

22 B. "Estate tax" means a federal, state or foreign tax imposed because of the death of
23 an individual and interest and penalties associated with the tax. The term does not
24 include an inheritance tax, income tax or generation-skipping transfer tax other than a
25 generation-skipping transfer tax incurred on a direct skip taking effect at death.

26 C. "Gross estate" means, with respect to an estate tax, all interests in property subject
27 to the tax.

28 D. "Person" means an individual, corporation, business trust, estate, trust,
29 partnership, limited liability company, association, joint venture, public corporation,
30 government, governmental subdivision, agency or instrumentality or any other legal
31 or commercial entity.

32 E. "Ratable" or "ratably" means apportioned or allocated pro rata according to the
33 relative values of interests to which the term is to be applied.

34 F. "Time-limited interest" means an interest in property that terminates on a lapse of
35 time or on the occurrence or nonoccurrence of an event or that is subject to the
36 exercise of discretion that could transfer a beneficial interest to another person. The
37 term does not include a cotenancy unless the cotenancy itself is a time-limited
38 interest.

39 G. "Value" means, with respect to an interest in property, fair market value as finally
40 determined for purposes of the estate tax that is to be apportioned, reduced by any

1 outstanding debt secured by the interest without reduction for taxes paid or required
2 to be paid or for any special valuation adjustment.

3 **3. Apportionment by will or other dispositive instrument.** This subsection
4 applies when estate tax is apportioned expressly and unambiguously by a will, revocable
5 trust or other dispositive instrument.

6 A. Except as otherwise provided in paragraph C:

7 (1) To the extent that a provision of a decedent's will expressly and
8 unambiguously directs the apportionment of an estate tax, the tax must be
9 apportioned accordingly;

10 (2) Any portion of an estate tax not apportioned pursuant to subparagraph (1)
11 must be apportioned in accordance with any provision of a revocable trust of
12 which the decedent was the settlor that expressly and unambiguously directs the
13 apportionment of an estate tax. If conflicting apportionment provisions appear in
14 2 or more revocable trust instruments, the provision in the most recently dated
15 instrument prevails. For purposes of this subparagraph:

16 (a) A trust is revocable if it was revocable immediately after the trust
17 instrument was executed, even if the trust subsequently becomes irrevocable;
18 and

19 (b) The date of an amendment to a revocable trust instrument is the date of
20 the amended instrument only if the amendment contains an apportionment
21 provision; and

22 (3) If any portion of an estate tax is not apportioned pursuant to subparagraph (1)
23 or (2), and a provision in any other dispositive instrument expressly and
24 unambiguously directs that any interest in the property disposed of by the
25 instrument is or is not to be applied to the payment of the estate tax attributable to
26 the interest disposed of by the instrument, the provision controls the
27 apportionment of the tax to that interest.

28 B. Subject to paragraph C, and unless the decedent expressly and unambiguously
29 directs the contrary:

30 (1) If an apportionment provision directs that a person receiving an interest in
31 property under an instrument is to be exonerated from the responsibility to pay an
32 estate tax that would otherwise be apportioned to the interest:

33 (a) The tax attributable to the exonerated interest must be apportioned
34 among the other persons receiving interests passing under the instrument; or

35 (b) If the values of the other interests are less than the tax attributable to the
36 exonerated interest, the deficiency must be apportioned ratably among the
37 other persons receiving interests in the apportionable estate that are not
38 exonerated from apportionment of the tax;

39 (2) If an apportionment provision directs that an estate tax is to be apportioned to
40 an interest in property a portion of which qualifies for a marital or charitable
41 deduction, the estate tax must first be apportioned ratably among the holders of
42 the portion that does not qualify for a marital or charitable deduction and then

1 apportioned ratably among the holders of the deductible portion to the extent that
2 the value of the nondeductible portion is insufficient;

3 (3) Except as otherwise provided in subparagraph (4), if an apportionment
4 provision directs that an estate tax be apportioned to property in which one or
5 more time-limited interests exist, other than interests in specified property under
6 subsection 7, the tax must be apportioned to the principal of that property,
7 regardless of the deductibility of some of the interests in that property; and

8 (4) If an apportionment provision directs that an estate tax is to be apportioned to
9 the holders of interests in property in which one or more time-limited interests
10 exist and a charity has an interest that otherwise qualifies for an estate tax
11 charitable deduction, the tax must first be apportioned, to the extent feasible, to
12 interests in property that have not been distributed to the persons entitled to
13 receive the interests.

14 C. A provision that apportions an estate tax is ineffective to the extent that it
15 increases the tax apportioned to a person having an interest in the gross estate over
16 which the decedent had no power to transfer immediately before the decedent
17 executed the instrument in which the apportionment direction was made. For
18 purposes of this subsection, a testamentary power of appointment is a power to
19 transfer the property that is subject to the power.

20 **4. Statutory apportionment of estate taxes.** To the extent that apportionment of an
21 estate tax is not controlled by an instrument described in subsection 3 and except as
22 otherwise provided in subsections 6 and 7:

23 A. Subject to paragraphs B, C and D, the estate tax is apportioned ratably to each
24 person that has an interest in the apportionable estate;

25 B. A generation-skipping transfer tax incurred on a direct skip taking effect at death
26 is charged to the person to whom the interest in property is transferred;

27 C. If property is included in the decedent's gross estate pursuant to Section 2044 of
28 the United States Internal Revenue Code of 1986, as amended, or any similar estate
29 tax provision, the difference between the total estate tax for which the decedent's
30 estate is liable and the amount of estate tax for which the decedent's estate would
31 have been liable if the property had not been included in the decedent's gross estate is
32 apportioned ratably among the holders of interests in the property. The balance of the
33 tax, if any, is apportioned ratably to each other person having an interest in the
34 apportionable estate; and

35 D. Except as otherwise provided in subsection 3, paragraph B, subparagraph (4) and
36 except as to property to which subsection 7 applies, an estate tax apportioned to
37 persons holding interests in property subject to a time-limited interest must be
38 apportioned, without further apportionment, to the principal of that property.

39 **5. Credits and deferrals.** Except as otherwise provided in subsections 6 and 7, this
40 subsection applies to credits and deferrals of estate taxes.

1 A. A credit resulting from the payment of gift taxes or from estate taxes paid on
2 property previously taxed inures ratably to the benefit of all persons to whom the
3 estate tax is apportioned.

4 B. A credit for state or foreign estate taxes inures ratably to the benefit of all persons
5 to whom the estate tax is apportioned, except that the amount of a credit for a state or
6 foreign tax paid by a beneficiary of the property on which the state or foreign tax was
7 imposed, directly or by a charge against the property, inures to the benefit of the
8 beneficiary.

9 C. If payment of a portion of an estate tax is deferred because of the inclusion in the
10 gross estate of a particular interest in property, the benefit of the deferral inures
11 ratably to the persons to whom the estate tax attributable to the interest is
12 apportioned. The burden of any interest charges incurred on a deferral of taxes and
13 the benefit of any tax deduction associated with the accrual or payment of the interest
14 charge are allocated ratably among the persons receiving an interest in the property.

15 **6. Insulated property; advancement of tax.** This subsection applies when the
16 estate includes property that is unavailable for payment of estate tax due to impossibility
17 or impracticability.

18 A. As used in this subsection, unless the context otherwise indicates, the following
19 terms have the following meanings.

20 (1) "Advanced fraction" means a fraction that has as its numerator the amount of
21 the advanced tax and as its denominator the value of the interests in insulated
22 property to which that tax is attributable.

23 (2) "Advanced tax" means the aggregate amount of estate tax attributable to
24 interests in insulated property that is required to be advanced by uninsulated
25 holders under paragraph C.

26 (3) "Insulated property" means property subject to a time-limited interest that is
27 included in the apportionable estate but is unavailable for payment of an estate
28 tax because of impossibility or impracticability.

29 (4) "Uninsulated holder" means a person who has an interest in uninsulated
30 property.

31 (5) "Uninsulated property" means property included in the apportionable estate
32 other than insulated property.

33 B. If an estate tax is to be advanced pursuant to paragraph C by persons holding
34 interests in uninsulated property subject to a time-limited interest other than property
35 to which subsection 7 applies, the tax must be advanced, without further
36 apportionment, from the principal of the uninsulated property.

37 C. Subject to subsection 9, paragraphs B and D, an estate tax attributable to interests
38 in insulated property must be advanced ratably by uninsulated holders. If the value of
39 an interest in uninsulated property is less than the amount of estate taxes otherwise
40 required to be advanced by the holder of that interest, the deficiency must be
41 advanced ratably by the persons holding interests in properties that are excluded from

1 the apportionable estate under subsection 2, paragraph A, subparagraph (2) as if those
2 interests were in uninsulated property.

3 D. A court having jurisdiction to determine the apportionment of an estate tax may
4 require a beneficiary of an interest in insulated property to pay all or part of the estate
5 tax otherwise apportioned to the interest if the court finds that it would be
6 substantively more equitable for that beneficiary to bear the tax liability personally
7 than for that part of the tax to be advanced by uninsulated holders.

8 E. When a distribution of insulated property is made, each uninsulated holder may
9 recover from the distributee a ratable portion of the advanced fraction of the property
10 distributed. To the extent that undistributed insulated property ceases to be insulated,
11 each uninsulated holder may recover from the property a ratable portion of the
12 advanced fraction of the total undistributed property.

13 F. Upon a distribution of insulated property for which, pursuant to paragraph D, the
14 distributee becomes obligated to make a payment to uninsulated holders, a court may
15 award an uninsulated holder a recordable lien on the distributee's property to secure
16 the distributee's obligation to that uninsulated holder.

17 **7. Apportionment and recapture of special elective benefits.** The reduction in
18 estate tax due to election of a special elective benefit must be apportioned in accordance
19 with this subsection.

20 A. As used in this subsection, unless the context otherwise indicates, the following
21 terms have the following meanings.

22 (1) "Special elective benefit" means a reduction in an estate tax obtained by an
23 election for:

24 (a) A reduced valuation of specified property that is included in the gross
25 estate;

26 (b) A deduction from the gross estate, other than a marital or charitable
27 deduction, allowed for specified property; or

28 (c) An exclusion from the gross estate of specified property.

29 (2) "Specified property" means property for which an election has been made for
30 a special elective benefit.

31 B. If an election is made for one or more special elective benefits, an initial
32 apportionment of a hypothetical estate tax must be computed as if no election for any
33 of those benefits had been made. The aggregate reduction in estate tax resulting from
34 all elections made must be allocated among holders of interests in the specified
35 property in the proportion that the amount of deduction, reduced valuation or
36 exclusion attributable to each holder's interest bears to the aggregate amount of
37 deductions, reduced valuations and exclusions obtained by the decedent's estate from
38 the elections. If the estate tax initially apportioned to the holder of an interest in
39 specified property is reduced to zero, any excess amount of reduction reduces ratably
40 the estate tax apportioned to other persons that receive interests in the apportionable
41 estate.

1 C. An additional estate tax imposed to recapture all or part of a special elective
2 benefit must be charged to the persons that are liable for the additional tax under the
3 law providing for the recapture.

4 **8. Securing payment of estate tax from property in possession of fiduciary.** A
5 fiduciary may ensure that a distributee will pay the distributee's share of the estate tax
6 through one of the following methods.

7 A. A fiduciary may defer a distribution of property until the fiduciary is satisfied that
8 adequate provision for payment of the estate tax has been made.

9 B. A fiduciary may withhold from a distributee an amount equal to the amount of
10 estate tax apportioned to an interest of the distributee.

11 C. As a condition to a distribution, a fiduciary may require the distributee to provide
12 a bond or other security for the portion of the estate tax apportioned to the distributee.

13 **9. Collection of estate tax by fiduciary.** A fiduciary responsible for payment of an
14 estate tax may collect the tax due using the following methods.

15 A. A fiduciary responsible for payment of an estate tax may collect from any person
16 the tax apportioned to and the tax required to be advanced by the person.

17 B. Except as otherwise provided in subsection 6, any estate tax due from a person
18 that cannot be collected from the person may be collected by the fiduciary from other
19 persons in the following order of priority:

20 (1) Any person having an interest in the apportionable estate that is not
21 exonerated from the tax;

22 (2) Any other person having an interest in the apportionable estate; and

23 (3) Any person having an interest in the gross estate.

24 C. A domiciliary fiduciary may recover from an ancillary personal representative the
25 estate tax apportioned to the property controlled by the ancillary personal
26 representative.

27 D. The total tax collected from a person pursuant to this section may not exceed the
28 value of the person's interest.

29 **10. Right of reimbursement.** A person may obtain reimbursement of estate tax as
30 provided in this subsection.

31 A. A person required under subsection 9 to pay an estate tax greater than the amount
32 due from the person under subsection 3 or 4 has a right to reimbursement from
33 another person to the extent that the other person has not paid the tax required by
34 subsection 3 or 4 and a right to reimbursement ratably from other persons to the
35 extent that each has not contributed a portion of the amount collected under
36 subsection 9, paragraph B.

37 B. A fiduciary may enforce the right of reimbursement under paragraph A on behalf
38 of the person that is entitled to the reimbursement and shall take reasonable steps to
39 do so if requested by the person.

1 **11. Action to determine or enforce section.** A fiduciary, transferee or beneficiary
2 of the gross estate may maintain an action for declaratory judgment to have a court
3 determine and enforce this section.

4 **12. Delayed application.** The applicability of subsections 3 to 7 is governed by this
5 subsection.

6 A. Subsections 3 to 7 do not apply to the estate of a decedent who dies on or within 3
7 years after January 1, 2019 nor to the estate of a decedent who dies more than 3 years
8 after January 1, 2019 if the decedent continuously lacked testamentary capacity from
9 the expiration of the 3-year period until the date of death.

10 B. For the estate of a decedent who dies on or after January 1, 2019 to which
11 subsections 3 to 7 do not apply, estate taxes must be apportioned pursuant to the law
12 in effect immediately before January 1, 2019.

13 **PART 10**

14 **CLOSING ESTATES**

15 **§3-1001. Formal proceedings terminating administration; testate or intestate; order**
16 **of general protection**

17 **1. Formal proceedings terminating administration.** A personal representative or
18 any interested person may petition for an order of complete settlement of the estate. The
19 personal representative may petition at any time and any other interested person may
20 petition after one year from the appointment of the original personal representative except
21 that no petition under this section may be entertained until the time for presenting claims
22 that arose prior to the death of the decedent has expired. The petition may request the
23 court to determine testacy, if not previously determined, to consider the final account or
24 compel or approve an accounting and distribution, to construe any will or determine heirs
25 and to adjudicate the final settlement and distribution of the estate. After notice to all
26 interested persons and hearing, the court may enter an order or orders on appropriate
27 conditions, determining the persons entitled to distribution of the estate and, as
28 circumstances require, approving settlement and directing or approving distribution of the
29 estate and discharging the personal representative from further claim or demand of any
30 interested person.

31 **2. Omitted parties.** If one or more heirs or devisees were omitted as parties in, or
32 were not given notice of, a previous formal testacy proceeding, the court, on proper
33 petition for an order of complete settlement of the estate under this section, and after
34 notice to the omitted or unnotified persons and other interested parties determined to be
35 interested on the assumption that the previous order concerning testacy is conclusive as to
36 those given notice of the earlier proceeding, may determine testacy as it affects the
37 omitted persons and confirm or alter the previous order of testacy as it affects all
38 interested persons as appropriate in the light of the new proofs. In the absence of
39 objection by an omitted or unnotified person, evidence received in the original testacy
40 proceeding constitutes prima facie proof of due execution of any will previously admitted
41 to probate or of the fact that the decedent left no valid will if the prior proceedings
42 determined this fact.

1 **§3-1002. Formal proceedings terminating testate administration; order construing**
2 **will without adjudicating testacy**

3 A personal representative administering an estate under an informally probated will
4 or any devisee under an informally probated will may petition for an order of settlement
5 of the estate that will not adjudicate the testacy status of the decedent. The personal
6 representative may petition at any time, and a devisee may petition after one year, from
7 the appointment of the original personal representative, except that no petition under this
8 section may be entertained until the time for presenting claims that arose prior to the
9 death of the decedent has expired. The petition may request the court to consider the
10 final account or compel or approve an accounting and distribution, to construe the will
11 and to adjudicate final settlement and distribution of the estate. After notice to all
12 devisees and the personal representative and hearing, the court may enter an order or
13 orders, on appropriate conditions, determining the persons entitled to distribution of the
14 estate under the will and, as circumstances require, approving settlement and directing or
15 approving distribution of the estate and discharging the personal representative from
16 further claim or demand of any devisee who is a party to the proceeding and those the
17 devisee represents. If it appears that a part of the estate is intestate, the proceedings must
18 be dismissed or amendments made to meet the provisions of section 3-1001.

19 **§3-1003. Closing estates; by sworn statement of personal representative**

20 **1. Closing estate by sworn statement of personal representative.** Unless
21 prohibited by order of the court and except for estates being administered in supervised
22 administration proceedings, a personal representative may close an estate by filing with
23 the court no earlier than 6 months after the date of original appointment of a general
24 personal representative for the estate a verified statement stating that the personal
25 representative, or a previous personal representative, has:

26 A. Determined that the time limited for presentation of creditors' claims has expired;

27 B. Fully administered the estate of the decedent by making payment, settlement or
28 other disposition of all claims that were presented, expenses of administration and
29 estate, inheritance and other death taxes, except as specified in the statement, and that
30 the assets of the estate have been distributed to the persons entitled. If any claims
31 remain undischarged, the statement must state whether the personal representative
32 has distributed the estate subject to possible liability with the agreement of the
33 distributees or it shall state in detail other arrangements that have been made to
34 accommodate outstanding liabilities; and

35 C. Sent a copy of the statement to all distributees of the estate and to all creditors or
36 other claimants of whom the personal representative is aware whose claims are
37 neither paid nor barred and has furnished a full account in writing of the personal
38 representative's administration to the distributees whose interests are affected thereby.

39 **2. Termination of personal representative appointment.** If no proceedings
40 involving the personal representative are pending in the court one year after the closing
41 statement is filed, the appointment of the personal representative terminates.

1 **§3-1004. Liability of distributees to claimants**

2 After assets of an estate have been distributed and subject to section 3-1006, an
3 undischarged claim not barred may be prosecuted in a proceeding against one or more
4 distributees. A distributee is not liable to claimants for amounts received as exempt
5 property or homestead or family allowances or for amounts in excess of the value of the
6 distribution as of the time of distribution. As between distributees, each bears the cost of
7 satisfaction of unbarred claims as if the claim had been satisfied in the course of
8 administration. Any distributee who fails to notify other distributees of the demand made
9 by the claimant in sufficient time to permit them to join in any proceeding in which the
10 claim was asserted loses the right of contribution against other distributees.

11 **§3-1005. Limitations on proceedings against personal representative**

12 Unless previously barred by adjudication and except as provided in the closing
13 statement, the rights of successors and of creditors whose claims have not otherwise been
14 barred against the personal representative for breach of fiduciary duty are barred unless a
15 proceeding to assert those rights is commenced within 6 months after the filing of the
16 closing statement. The rights barred by this section do not include rights to recover from
17 a personal representative for fraud, misrepresentation or inadequate disclosure related to
18 the settlement of the decedent's estate.

19 **§3-1006. Limitations on actions and proceedings against distributees**

20 Unless previously adjudicated in a formal testacy proceeding or in a proceeding
21 settling the accounts of a personal representative or otherwise barred, the claim of any
22 claimant to recover from a distributee who is liable to pay the claim, and the right of an
23 heir or devisee, or of a successor personal representative acting in the heir's or devisee's
24 behalf, to recover property improperly distributed or its value from any distributee is
25 forever barred at the later of 3 years after the decedent's death or one year after the time
26 of its distribution, but all claims of creditors of the decedent are barred 9 months after the
27 decedent's death. This section does not bar an action to recover property or value
28 received as the result of fraud.

29 **§3-1007. Certificate discharging liens securing fiduciary performance**

30 After the personal representative's appointment has terminated, the personal
31 representative, the personal representative's sureties or any successor of either, upon the
32 filing of a verified application showing, so far as is known by the applicant, that no action
33 concerning the estate is pending in any court, is entitled to receive a certificate from the
34 register that the personal representative appears to have fully administered the estate in
35 question. The certificate evidences discharge of any lien on any property given to secure
36 the obligation of the personal representative in lieu of bond or any surety, but does not
37 preclude action against the personal representative or the surety.

38 **§3-1008. Subsequent administration**

39 If other property of the estate is discovered after an estate has been settled and the
40 personal representative discharged or after one year after a closing statement has been

1 filed, the court upon petition of any interested person and upon notice as it directs may
2 appoint the same or a successor personal representative to administer the subsequently
3 discovered estate. If a new appointment is made, unless the court orders otherwise, the
4 provisions of this Code apply as appropriate, but no claim previously barred may be
5 asserted in the subsequent administration.

6 **PART 11**

7 **COMPROMISE OF CONTROVERSIES**

8 **§3-1101. Effect of approval of agreements involving trusts, inalienable interests or**
9 **interests of 3rd persons**

10 A compromise of any controversy as to admission to probate of any instrument
11 offered for formal probate as the will of a decedent, the construction, validity or effect of
12 any governing instrument, the rights or interests in the estate of the decedent, of any
13 successor or the administration of the estate, if approved in a formal proceeding in the
14 court for that purpose, is binding on all the parties thereto including those unborn,
15 unascertained or who could not be located. An approved compromise is binding even
16 though it may affect a trust or an inalienable interest. A compromise does not impair the
17 rights of creditors or of taxing authorities who are not parties to it.

18 **§3-1102. Procedure for securing court approval of compromise**

19 The procedure for securing court approval of a compromise is as follows.

20 **1. Written, signed agreement.** The terms of the compromise must be set forth in an
21 agreement in writing that must be executed by all competent persons and parents or legal
22 guardians who have both actual custody and legal responsibility for a minor child acting
23 for any minor child who has beneficial interests or claims that will or may be affected by
24 the compromise. Execution is not required by any person whose identity cannot be
25 ascertained or whose whereabouts are unknown and cannot reasonably be ascertained.

26 **2. Submission to court for approval.** Any interested person, including the personal
27 representative or a trustee, then may submit the agreement to the court for its approval
28 and for execution by the personal representative, the trustee of every affected
29 testamentary trust and other fiduciaries and representatives.

30 **3. Hearing and order.** After notice to all interested persons or their representatives,
31 including the personal representative of the estate and all affected trustees of trusts, the
32 court, if it finds that the contest or controversy is in good faith and that the effect of the
33 agreement upon the interests of persons represented by fiduciaries or other
34 representatives is just and reasonable, shall make an order approving the agreement and
35 directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor
36 children represented only by their parents are bound only if their parents join with other
37 competent persons in execution of the compromise. Upon the making of the order and
38 the execution of the agreement, all further disposition of the estate must be in accordance
39 with the terms of the agreement.

40 **PART 12**

1 **COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY**
2 **ADMINISTRATION PROCEDURES FOR SMALL ESTATES**

3 **§3-1201. Collection of personal property by affidavit**

4 1. Affidavit; duty to deliver property. Thirty days after the death of a decedent,
5 any person indebted to the decedent or having possession of personal property or an
6 instrument evidencing a debt, obligation, stock or chose in action belonging to the
7 decedent shall make payment of the indebtedness or deliver the personal property or an
8 instrument evidencing a debt, obligation, stock or chose in action to a person claiming to
9 be the successor of the decedent upon being presented an affidavit made by or on behalf
10 of the successor stating that:

11 A. The value of the entire estate, wherever located, less liens and encumbrances,
12 does not exceed \$50,000;

13 B. Thirty days have elapsed since the death of the decedent;

14 C. No application or petition for the appointment of a personal representative is
15 pending or has been granted in any jurisdiction; and

16 D. The claiming successor is entitled to payment or delivery of the property.

17 2. Securities. A transfer agent of any security shall change the registered ownership
18 on the books of a corporation from the decedent to the successor or successors upon the
19 presentation of an affidavit as provided in subsection 1.

20 **§3-1202. Effect of affidavit**

21 The person paying, delivering, transferring or issuing personal property or the
22 evidence of personal property pursuant to affidavit is discharged and released to the same
23 extent as if the person dealt with a personal representative of the decedent. The person is
24 not required to see to the application of the personal property or evidence of personal
25 property or to inquire into the truth of any statement in the affidavit. If any person to
26 whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal
27 property or evidence of personal property, it may be recovered or its payment, delivery,
28 transfer or issuance compelled upon proof of their right in a proceeding brought for the
29 purpose by or on behalf of the persons entitled thereto. Any person to whom payment,
30 delivery, transfer or issuance is made is answerable and accountable to any personal
31 representative of the estate or to any other person having a superior right.

32 **§3-1203. Small estates; summary administrative procedure**

33 If it appears from the inventory and appraisal that the value of the entire estate, less
34 liens and encumbrances, does not exceed homestead allowance, exempt property, family
35 allowance, costs and expenses of administration, reasonable funeral expenses and
36 reasonable and necessary medical and hospital expenses of the last illness of the
37 decedent, the personal representative, without giving notice to creditors, may
38 immediately disburse and distribute the estate to the persons entitled to the estate and file
39 a closing statement as provided in section 3-1204.

1 **§3-1204. Small estates; closing by sworn statement of personal representative**

2 **1. Verified statement; contents.** Unless prohibited by order of the court and except
3 for estates being administered by supervised personal representatives, a personal
4 representative may close an estate administered under the summary procedures of section
5 3-1203 by filing with the court, at any time after disbursement and distribution of the
6 estate, a verified statement stating that:

7 A. To the best knowledge of the personal representative, the value of the entire
8 estate, less liens and encumbrances, did not exceed homestead allowance, exempt
9 property, family allowance, costs and expenses of administration, reasonable funeral
10 expenses and reasonable, necessary medical and hospital expenses of the last illness
11 of the decedent;

12 B. The personal representative has fully administered the estate by disbursing and
13 distributing it to the persons entitled thereto; and

14 C. The personal representative has sent a copy of the closing statement to all
15 distributees of the estate and to all creditors or other claimants of whom the personal
16 representative is aware whose claims are neither paid nor barred and has furnished a
17 full account in writing of the administration to the distributees whose interests are
18 affected.

19 **2. Termination of personal representative appointment.** If no actions or
20 proceedings involving the personal representative are pending in the court one year after
21 the closing statement is filed, the appointment of the personal representative terminates.

22 **3. Effect of verified statement.** A closing statement filed under this section has the
23 same effect as one filed under section 3-1003.

24 **§3-1205. Social security payments**

25 If not less than 30 days after the death of a Maine resident entitled at the time of the
26 resident's death to a monthly benefit or benefits under Title II of the Social Security Act,
27 all or part of the amount of such benefit or benefits not in excess of \$1,000 is paid by the
28 United States to the surviving spouse, one or more of the decedent's children or
29 descendants of the deceased children, the decedent's father or mother or the decedent's
30 brother or sister, preference being given in the order named if more than one request for
31 payment has been made by or for such individuals, upon an affidavit made and filed with
32 the federal Department of Health and Human Services by the surviving spouse or other
33 relative by whom or on whose behalf request for payment is made; and if the affidavit
34 shows the date of death of the decedent, the relationship of the affiant to the decedent,
35 that no personal representative for the decedent has been appointed and qualified and that,
36 to the affiant's knowledge, there exists at the time of filing of the affidavit no relative of a
37 closer degree of kindred to the decedent than the affiant, then such payment pursuant to
38 the affidavit is deemed to be a payment to the legal representative of the decedent and,
39 regardless of the truth or falsity of the statements made in the affidavit, constitutes a full
40 discharge and release of the United States from any further claim for such payment to the
41 same extent as if such payment had been made to the personal representative of the
42 decedent's estate.

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Maine Uniform Probate Code Comment (§3-101)

The provision permitting an executed will to be introduced as evidence of a devise after the 3-year period is deleted in this section and replaced with exceptions to the 3-year limitation period found in section 3-108, subsection 1, paragraph D.

Maine Uniform Probate Code Comment (§3-102)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-103)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-104)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-105)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-106)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-107)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-108)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-109)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-110)

This section retains the provisions of former Title 18-A, section 3-110 as a nonuniform provision, and this does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-201)

1 This section does not constitute a substantive change to Maine law.

2 **Maine Uniform Probate Code Comment (§3-202)**

3 This section does not constitute a substantive change to Maine law.

4 **Maine Uniform Probate Code Comment (§3-203)**

5 This section deviates from the Uniform Probate Code in subsections 1, 3 and 4. In
6 subsection 1, this section adds the decedent's domestic partner and the State Tax Assessor as
7 paragraphs E and H respectively in keeping with prior Maine law. In subsection 3, this
8 section does not include the uniform language that references "a person who would be
9 entitled to letters but for the person's age" and does not include the language in the next
10 sentence that references a person "18 years of age or older." The language is not needed in
11 Maine because a person aged 18 or over may serve as a personal representative in Maine.
12 The default age under the Uniform Probate Code requires that a person be at least 21 years
13 old to serve as a personal representative. Finally, in subsection 4, this section deviates from
14 the Uniform Probate Code by adding the right of an agent under a power of attorney that
15 expressly grants the agent the authority to do so, to exercise the same right to nominate, to
16 object to another's appointment or to participate in determining the preference of a majority in
17 interest of the heirs and devisees that the protected person or ward would have if qualified for
18 appointment.

19 **Maine Uniform Probate Code Comment (§3-204)**

20 This section does not constitute a substantive change to Maine law.

21 **Maine Uniform Probate Code Comment (§3-301)**

22 This section does not constitute a substantive change to Maine law.

23 **Maine Uniform Probate Code Comment (§3-302)**

24 This section does not constitute a substantive change to Maine law.

25 **Maine Uniform Probate Code Comment (§3-303)**

26 This section does not constitute a substantive change to Maine law.

27 **Maine Uniform Probate Code Comment (§3-304)**

28 This section does not constitute a substantive change to Maine law.

29 **Maine Uniform Probate Code Comment (§3-305)**

30 This section does not constitute a substantive change to Maine law.

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Maine Uniform Probate Code Comment (§3-306)

Every personal representative, except a special administrator, is required to provide notice and information, within 30 days of appointment, as required in section 3-705.

Maine Uniform Probate Code Comment (§3-307)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-308)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-309)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-310)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-311)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-401)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-402)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-403)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-404)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-405)

This section does not constitute a substantive change to Maine law.

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Maine Uniform Probate Code Comment (§3-406)

Subsection 1, addressing self-proved wills, does not constitute a substantive change to Maine law. Subsection 2 clarifies that an affidavit of an attesting witness is an acceptable means of establishing proper execution if an attesting witness is not in the State and able to testify. Subsection 2 also adds a rebuttable presumption that the events recited in a witnessed attestation clause occurred.

Maine Uniform Probate Code Comment (§3-407)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-408)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-409)

This section does not constitute a substantive change to Maine law. This section retains the reference to "a foreign jurisdiction," a reference that does not appear in the Uniform Probate Code.

Maine Uniform Probate Code Comment (§3-410)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-411)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-412)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-413)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-414)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-501)

This section does not constitute a substantive change to Maine law.

1 **Maine Uniform Probate Code Comment (§3-502)**

2 This section does not constitute a substantive change to Maine law.

3 **Maine Uniform Probate Code Comment (§3-503)**

4 This section does not constitute a substantive change to Maine law.

5 **Maine Uniform Probate Code Comment (§3-504)**

6 This section does not constitute a substantive change to Maine law.

7 **Maine Uniform Probate Code Comment (§3-505)**

8 This section does not constitute a substantive change to Maine law.

9 **Maine Uniform Probate Code Comment (§3-601)**

10 This section does not constitute a substantive change to Maine law.

11 **Maine Uniform Probate Code Comment (§3-602)**

12 This section does not constitute a substantive change to Maine law.

13 **Maine Uniform Probate Code Comment (§3-603)**

14 This section retains as a nonuniform provision the provision of former Title 18-A, section
15 3-603 concerning the exemption for a "public administration" for estates without heirs and for
16 which no estate administration has commenced, as detailed in Title 18-C, section 3-619,
17 subsection 7.

18 **Maine Uniform Probate Code Comment (§3-604)**

19 This section does not constitute a substantive change to Maine law.

20 **Maine Uniform Probate Code Comment (§3-605)**

21 The threshold financial interest for requesting a bond is increased from \$1,000 to \$5,000.

22 **Maine Uniform Probate Code Comment (§3-606)**

23 This section does not constitute a substantive change to Maine law.

24 **Maine Uniform Probate Code Comment (§3-607)**

1 Maine does not adopt Uniform Probate Code section 607(b) (additional requirement that
2 a court schedule a hearing within 10 days). This section does not constitute a substantive
3 change to former Title 18-A, section 3-607.

4 **Maine Uniform Probate Code Comment (§3-608)**

5 This section does not constitute a substantive change to Maine law.

6 **Maine Uniform Probate Code Comment (§3-609)**

7 This section does not constitute a substantive change to Maine law.

8 **Maine Uniform Probate Code Comment (§3-610)**

9 This section does not constitute a substantive change to Maine law.

10 **Maine Uniform Probate Code Comment (§3-611)**

11 This section does not constitute a substantive change to Maine law.

12 **Maine Uniform Probate Code Comment (§3-612)**

13 This section does not constitute a substantive change to Maine law.

14 **Maine Uniform Probate Code Comment (§3-613)**

15 This section does not constitute a substantive change to Maine law.

16 **Maine Uniform Probate Code Comment (§3-614)**

17 This section does not constitute a substantive change to Maine law.

18 **Maine Uniform Probate Code Comment (§3-615)**

19 This section does not constitute a substantive change to Maine law.

20 **Maine Uniform Probate Code Comment (§3-616)**

21 This section does not constitute a substantive change to Maine law.

22 **Maine Uniform Probate Code Comment (§3-617)**

23 This section does not constitute a substantive change to Maine law.

24 **Maine Uniform Probate Code Comment (§3-618)**

1 This section does not constitute a substantive change to Maine law.

2 **Maine Uniform Probate Code Comment (§3-619)**

3 This section, concerning public administration, has no counterpart in the Uniform Probate
4 Code. This section retains the provisions of former Title 18-A, section 3-619 as a nonuniform
5 provision. It does not constitute a substantive change to Maine law except that it raises the
6 threshold from \$200 to \$5,000.

7 **Maine Uniform Probate Code Comment (§3-701)**

8 This section clarifies that the ability of a person named as personal representative to carry
9 out written instructions of the decedent relating to the decedent's body, funeral and burial
10 arrangements is subject to the provisions of Title 22, section 2843-A governing the custody of
11 remains of a deceased person.

12 **Maine Uniform Probate Code Comment (§3-702)**

13 This section does not constitute a substantive change to Maine law.

14 **Maine Uniform Probate Code Comment (§3-703)**

15 This section does not constitute a substantive change to Maine law.

16 **Maine Uniform Probate Code Comment (§3-704)**

17 This section does not constitute a substantive change to Maine law.

18 **Maine Uniform Probate Code Comment (§3-705)**

19 This section adds the Uniform Probate Code's additional information requirements from
20 the personal representative to heirs, including intestate heirs, and devisees in any will
21 mentioned in the application for appointment.

22 Also, this section does not retain the former Title 18-A, section 3-705 requirement that
23 the personal representative provide information to heirs and devisees "in any purported will
24 whose existence ... [was] known to the personal representative."

25 **Maine Uniform Probate Code Comment (§3-706)**

26 This section does not constitute a substantive change to Maine law. A personal
27 representative has the option of filing the inventory with the court but must furnish the
28 inventory to interested persons who request it. A personal representative has no mandatory
29 obligation to mail the inventory to interested persons who do not request it. The language as
30 adopted in Maine represents a deviation from the uniform language by requiring the personal
31 representative to mail the inventory only to interested persons who request it.

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Maine Uniform Probate Code Comment (§3-707)

This section tracks the Uniform Probate Code and requires appraisal of "any asset the value of which may be subject to reasonable doubt."

Maine Uniform Probate Code Comment (§3-708)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-709)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-710)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-711)

This section does not retain the requirement under former Title 18-A, section 3-711 that the personal representative provide a 10-day notice for sale of real estate.

Maine Uniform Probate Code Comment (§3-712)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-713)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-714)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-715)

This section does not constitute a substantive change to Maine law. The additional language in subsection 28 provides a reference to an applicable section concerning fiduciaries in Article 1.

Maine Uniform Probate Code Comment (§3-716)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-717)

1 This section does not constitute a substantive change to Maine law.

2 **Maine Uniform Probate Code Comment (§3-718)**

3 This section does not constitute a substantive change to Maine law.

4 **Maine Uniform Probate Code Comment (§3-719)**

5 This section does not constitute a substantive change to Maine law.

6 **Maine Uniform Probate Code Comment (§3-720)**

7 This section does not constitute a substantive change to Maine law.

8 **Maine Uniform Probate Code Comment (§3-721)**

9 This section does not constitute a substantive change to Maine law.

10 **Maine Uniform Probate Code Comment (§3-802)**

11 This section does not constitute a substantive change to Maine law.

12 **Maine Uniform Probate Code Comment (§3-807)**

13 This section does not constitute a substantive change to Maine law.

14 **Maine Uniform Probate Code Comment (§3-808)**

15 This section does not constitute a substantive change to Maine law.

16 **Maine Uniform Probate Code Comment (§3-809)**

17 This section does not constitute a substantive change to Maine law.

18 **Maine Uniform Probate Code Comment (§3-810)**

19 This section does not constitute a substantive change to Maine law.

20 **Maine Uniform Probate Code Comment (§3-811)**

21 This section does not constitute a substantive change to Maine law.

22 **Maine Uniform Probate Code Comment (§3-812)**

23 This section does not constitute a substantive change to Maine law.

1 **Maine Uniform Probate Code Comment (§3-813)**

2 This section does not constitute a substantive change to Maine law.

3 **Maine Uniform Probate Code Comment (§3-814)**

4 This section does not constitute a substantive change to Maine law.

5 **Maine Uniform Probate Code Comment (§3-815)**

6 This section does not constitute a substantive change to Maine law.

7 **Maine Uniform Probate Code Comment (§3-816)**

8 This section does not constitute a substantive change to Maine law.

9 **Maine Uniform Probate Code Comment (§3-817)**

10 This section, concerning survival of actions, has no counterpart in the Uniform Probate
11 Code. This section retains the provisions of former Title 18-A, section 3-817. It does not
12 constitute a substantive change to Maine law.

13 **Maine Uniform Probate Code Comment (§3-818)**

14 This section, concerning damages being limited to actual damages, has no counterpart in
15 the Uniform Probate Code. This section retains the provisions of former Title 18-A, section
16 3-818 as a nonuniform provision. This section does not constitute a substantive change to
17 Maine law.

18 **Maine Uniform Probate Code Comment (§3-903)**

19 This section does not constitute a substantive change to Maine law.

20 **Maine Uniform Probate Code Comment (§3-904)**

21 This section retains language from former Title 18-A, section 3-904 that requires interest
22 at the rate of 5% for underproductive property. This section does not constitute a substantive
23 change to Maine law.

24 **Maine Uniform Probate Code Comment (§3-905)**

25 This section does not constitute a substantive change to Maine law.

26 **Maine Uniform Probate Code Comment (§3-906)**

27 This section does not constitute a substantive change to Maine law.

1 **Maine Uniform Probate Code Comment (§3-907)**

2 This section does not constitute a substantive change to Maine law.

3 **Maine Uniform Probate Code Comment (§3-908)**

4 This section does not constitute a substantive change to Maine law.

5 **Maine Uniform Probate Code Comment (§3-909)**

6 This section does not constitute a substantive change to Maine law.

7 **Maine Uniform Probate Code Comment (§3-910)**

8 This section does not constitute a substantive change to Maine law.

9 **Maine Uniform Probate Code Comment (§3-911)**

10 This section does not constitute a substantive change to Maine law.

11 **Maine Uniform Probate Code Comment (§3-912)**

12 This section does not constitute a substantive change to Maine law.

13 **Maine Uniform Probate Code Comment (§3-913)**

14 This section does not constitute a substantive change to Maine law.

15 **Maine Uniform Probate Code Comment (§3-914)**

16 This section does not constitute a substantive change to Maine law.

17 **Maine Uniform Probate Code Comment (§3-915)**

18 This section adds to former Title 18-A, section 3-915 options and guidance for making a
19 distribution to a person under disability.

20 **Maine Uniform Probate Code Comment (§3-916)**

21 This section adds Uniform Estate Tax Apportionment Act amendments to former Title
22 18-A, section 3-916.

23 **Maine Uniform Probate Code Comment (§3-1001)**

24 This section does not constitute a substantive change to Maine law.

1 **Maine Uniform Probate Code Comment (§3-1002)**

2 This section does not constitute a substantive change to Maine law.

3 **Maine Uniform Probate Code Comment (§3-1003)**

4 This section does not retain the former Title 18-A, section 3-1003 requirement that the
5 personal representative also provide a closing statement to all persons who would have a
6 claim to succession under the testacy status, meaning persons who, for various reasons, were
7 affected by ademption, abatement, mistake or fraud.

8 **Maine Uniform Probate Code Comment (§3-1004)**

9 This section does not constitute a substantive change to Maine law.

10 **Maine Uniform Probate Code Comment (§3-1005)**

11 This section does not constitute a substantive change to Maine law.

12 **Maine Uniform Probate Code Comment (§3-1007)**

13 This section does not constitute a substantive change to Maine law.

14 **Maine Uniform Probate Code Comment (§3-1008)**

15 This section does not constitute a substantive change to Maine law.

16 **Maine Uniform Probate Code Comment (§3-1101)**

17 This section expands the application of former Title 18-A, section 3-1101 from "any
18 probated will" to "any governing instrument."

19 **Maine Uniform Probate Code Comment (§3-1102)**

20 This section does not constitute a substantive change to Maine law.

21 **Maine Uniform Probate Code Comment (§3-1201)**

22 This section increases the maximum size of a small estate that can be closed using the
23 affidavit process from \$20,000, as in former Title 18-A, section 3-1201, to \$25,000. It also
24 eliminates the former Title 18-A, section 3-1201 restriction to tangible personal property,
25 thereby including all accounts of financial institutions.

26 **Maine Uniform Probate Code Comment (§3-1202)**

27 This section does not constitute a substantive change to Maine law.

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Maine Uniform Probate Code Comment (§3-1203)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-1204)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§3-1205)

This section retains the provisions of former Title 18-A, section 3-1205, which concerns post-mortem social security payment issues, as a nonuniform provision. This section does not constitute a substantive change to Maine law.

ARTICLE 4

FOREIGN PERSONAL REPRESENTATIVE; ANCILLARY

PART 1

DEFINITIONS

§4-101. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Local administration. "Local administration" means administration by a personal representative appointed in this State pursuant to appointment proceedings described in Article 3.

2. Local personal representative. "Local personal representative" includes any personal representative appointed in this State pursuant to appointment proceedings described in Article 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 4-205.

3. Resident creditor. "Resident creditor" means a person domiciled in or doing business in this State who is, or could be, a claimant against an estate of a nonresident decedent.

PART 2

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

1 **§4-201. Payment of debt and delivery of property to domiciliary foreign personal**
2 **representative without local administration**

3 At any time after the expiration of 60 days from the death of a nonresident decedent,
4 any person indebted to the estate of the nonresident decedent or having possession or
5 control of personal property or of an instrument evidencing a debt, obligation, stock or
6 chase in action belonging to the estate of the nonresident decedent may pay the debt or
7 deliver the personal property or the instrument evidencing the debt, obligation, stock or
8 chase in action to the domiciliary foreign personal representative of the nonresident
9 decedent upon being presented with proof of the domiciliary foreign personal
10 representative's appointment and an affidavit made by or on behalf of the representative
11 stating:

12 **1. Date of death.** The date of the death of the nonresident decedent;

13 **2. No local administration.** That no local administration, or application or petition
14 for local administration, is pending in this State; and

15 **3. Personal representative authority.** That the domiciliary foreign personal
16 representative is entitled to payment or delivery.

17 **§4-202. Payment or delivery discharges**

18 Payment or delivery made in good faith on the basis of the proof of authority and
19 affidavit releases the debtor or person having possession of the personal property to the
20 same extent as if payment or delivery had been made to a local personal representative.

21 **§4-203. Resident creditor notice**

22 Payment or delivery under section 4-201 may not be made if a resident creditor of the
23 nonresident decedent has notified the debtor of the nonresident decedent or the person
24 having possession of the personal property belonging to the nonresident decedent that the
25 debt should not be paid nor the property delivered to the domiciliary foreign personal
26 representative.

27 **§4-204. Proof of authority; bond**

28 If no local administration or application or petition for local administration is pending
29 in this State, a domiciliary foreign personal representative may file with a court in this
30 State in a county in which property belonging to the decedent is located authenticated
31 copies of the foreign personal representative's appointment and of any official bond the
32 foreign personal representative has given.

33 **§4-205. Powers**

34 A domiciliary foreign personal representative who has complied with section 4-204
35 may exercise as to assets in this State all powers of a local personal representative and
36 may maintain actions and proceedings in this State subject to any conditions imposed
37 upon nonresident parties generally.

1 **§4-206. Power of representatives in transition**

2 The power of a domiciliary foreign personal representative under section 4-201 or
3 4-205 may be exercised only if there is no administration or application for
4 administration pending in this State. An application or petition for local administration of
5 the estate terminates the power of the foreign personal representative to act under section
6 4-205, but the local court may allow the foreign personal representative to exercise
7 limited powers to preserve the estate. A person who, before receiving actual notice of a
8 pending local administration, has changed position in reliance upon the powers of a
9 foreign personal representative may not be prejudiced by reason of the application or
10 petition for, or grant of, local administration. The local personal representative is subject
11 to all duties and obligations that have accrued by virtue of the exercise of the powers by
12 the foreign personal representative and may be substituted for the foreign personal
13 representative in any action or proceedings in this State.

14 **§4-207. Ancillary and other local administrations; provisions governing**

15 In respect to a nonresident decedent, the provisions of Article 3 govern:

16 **1. Court proceedings in this State.** Proceedings, if any, in a court of this State for
17 probate of the will, appointment, removal, supervision and discharge of the local personal
18 representative and any other order concerning the estate; and

19 **2. Rights of local personal representative and parties.** The status, powers, duties
20 and liabilities of any local personal representative and the rights of claimants, purchasers,
21 distributees and others in regard to a local administration.

22 **PART 3**

23 **JURISDICTION OVER FOREIGN REPRESENTATIVES**

24 **§4-301. Jurisdiction by act of foreign personal representative**

25 A foreign personal representative submits personally to the jurisdiction of the courts
26 of this State in any proceeding relating to the estate by:

27 **1. Filing appointment with court.** Filing authenticated copies of the foreign
28 personal representative's appointment as provided in section 4-204;

29 **2. Receiving estate assets.** Receiving payment of money or taking delivery of
30 personal property under section 4-201.

31 Jurisdiction under this subsection is limited to the money or value of personal property
32 collected; or

33 **3. Acting as personal representative within State.** Doing any act as a personal
34 representative in this State that would have given the State jurisdiction over the foreign
35 personal representative as an individual.

1 **§4-302. Jurisdiction by act of decedent**

2 In addition to jurisdiction conferred by section 4-301, a foreign personal
3 representative is subject to the jurisdiction of the courts of this State to the same extent
4 that the decedent was subject to jurisdiction immediately prior to death.

5 **§4-303. Service on foreign personal representative**

6 Service of process may be made upon the foreign personal representative in such
7 manner as the Supreme Judicial Court shall by rule provide.

8 **PART 4**

9 **JUDGMENTS AND PERSONAL REPRESENTATIVE**

10 **§4-401. Effect of adjudication for or against personal representative**

11 An adjudication rendered in any jurisdiction in favor of or against any personal
12 representative of the estate is as binding on the local personal representative as if the local
13 personal representative were a party to the adjudication.

14 **Maine Uniform Probate Code Comment (§4-101)**

15 This section does not constitute a substantive change to Maine law.

16 **Maine Uniform Probate Code Comment (§4-201)**

17 This section does not constitute a substantive change to Maine law.

18 **Maine Uniform Probate Code Comment (§4-202)**

19 This section does not constitute a substantive change to Maine law.

20 **Maine Uniform Probate Code Comment (§4-203)**

21 This section does not constitute a substantive change to Maine law.

22 **Maine Uniform Probate Code Comment (§4-204)**

23 This section removes the requirement under former Title 18-A, section 4-204 that a
24 foreign personal representative file proof of current authority in addition to authenticated
25 copies of the appointment and any official bond given.

26 **Maine Uniform Probate Code Comment (§4-205)**

27 This section does not constitute a substantive change to Maine law.

28 **Maine Uniform Probate Code Comment (§4-206)**

1 This section does not constitute a substantive change to Maine law.

2 **Maine Uniform Probate Code Comment (§4-207)**

3 This section does not constitute a substantive change to Maine law.

4 **Maine Uniform Probate Code Comment (§4-301)**

5 This section does not constitute a substantive change to Maine law.

6 **Maine Uniform Probate Code Comment (§4-302)**

7 This section does not constitute a substantive change to Maine law.

8 **Maine Uniform Probate Code Comment (§4-303)**

9 This section retains the provisions of former Title 18-A, section 4-303 as a
10 nonuniform provision.

11 **Maine Uniform Probate Code Comment (§4-401)**

12 This section does not constitute a substantive change to Maine law.

13 **ARTICLE 5**

14 **UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT**

15 **PART 1**

16 **GENERAL PROVISIONS**

17 **§5-101. Short title**

18 This Article may be known and cited as "the Uniform Guardianship and Protective
19 Proceedings Act."

20 **§5-102. Definitions**

21 As used in this Article, unless the context otherwise indicates, the following terms
22 have the following meanings.

23 **1. Best interest of the minor.** "Best interest of the minor" means the best interest as
24 determined under Title 19-A, section 1653, subsection 3.

25 **2. Court.** "Court" means any one of the several courts of probate in this State as
26 described in Title 4, section 201.

1 **3. Legal representative.** "Legal representative" includes the attorney for the
2 respondent, a representative payee, a guardian or conservator acting for a respondent in
3 this State or elsewhere, a trustee or custodian of a trust or custodianship of which the
4 respondent is a beneficiary and an agent designated under a power of attorney, whether
5 for health care or property, in which the respondent is identified as the principal.

6 **4. Parent.** "Parent" means a person who has established a parent-child relationship
7 with the child under Title 19-A, chapter 61 and whose parental rights have not been
8 terminated.

9 **5. Respondent.** "Respondent" means an individual for whom the appointment of a
10 guardian or conservator or other protective order is sought.

11 **§5-103. Facility of transfer**

12 **1. Transfer of money or personal property to minor.** Unless a person required to
13 transfer money or personal property to a minor knows that a conservator has been
14 appointed or that a proceeding for appointment of a conservator of the estate of the minor
15 is pending, the person may do so, as to an amount or value not exceeding \$10,000 a year,
16 by transferring it to:

17 A. A person who has the care and custody of the minor and with whom the minor
18 resides;

19 B. A guardian of the minor;

20 C. A custodian under the Maine Uniform Transfers to Minors Act;

21 D. A financial institution as a deposit in an interest-bearing account or certificate in
22 the sole name of the minor and giving notice of the deposit to the minor; or

23 E. The minor, if married.

24 **2. Responsibility for proper application.** A person who transfers money or
25 property in compliance with this section is not responsible for its proper application.

26 **3. For benefit of minor; no personal financial benefit.** A guardian or other person
27 who receives money or property for a minor under subsection 1, paragraph A or B may
28 apply it only to the support, care, education, health and welfare of the minor and may not
29 derive a personal financial benefit except for reimbursement for necessary expenses. Any
30 excess must be preserved for the future support, care, education, health and welfare of the
31 minor, and any balance must be transferred to the minor upon emancipation or attaining
32 majority.

33 **§5-104. Delegation of power by parent or guardian**

34 **1. Delegation; up to 12 months.** A parent or a guardian of a minor or incapacitated
35 person, by a power of attorney, may delegate to another person, for a period not
36 exceeding 12 months, any power regarding care, custody or property of the minor or
37 ward, except the power to consent to marriage, adoption or termination of parental rights
38 to the minor. A delegation of powers by a court-appointed guardian becomes effective
39 only when the power of attorney is filed with the court. A delegation of powers under

1 this section does not deprive the parent or guardian of any parental or legal authority
2 regarding the care and custody of the minor or incapacitated person.

3 **2. National Guard or Reserves; extension.** Notwithstanding subsection 1, unless
4 otherwise stated in the power of attorney, if the parent or guardian is a member of the
5 National Guard or Reserves of the United States Armed Forces under an order to active
6 duty for a period of more than 30 days, a power of attorney that would otherwise expire is
7 automatically extended until 30 days after the parent or guardian is no longer under that
8 active duty order or until an order of the court so provides.

9 This subsection applies only if the parent's or guardian's service is in support of:

10 A. An operational mission for which members of the reserve components have been
11 ordered to active duty without their consent; or

12 B. Forces activated during a period of war declared by the United States Congress or
13 a period of national emergency declared by the President of the United States or the
14 United States Congress.

15 **3. Temporary care of minor.** This subsection applies when a parent or guardian
16 executes a power of attorney under subsection 1 for the purpose of providing for the
17 temporary care of a minor.

18 A. The execution of a power of attorney under subsection 1, without other evidence,
19 does not constitute abandonment, abuse or neglect. A parent or guardian of a minor
20 may not execute a power of attorney with the intention of permanently avoiding or
21 divesting the parent or guardian of parental and legal responsibility for the care of the
22 minor. Upon the expiration or termination of the power of attorney, the minor must
23 be returned to the custody of the parent or guardian as soon as reasonably possible
24 unless otherwise ordered by the court.

25 B. Unless the power of attorney is terminated, the agent named in the power of
26 attorney shall exercise parental or legal authority on a continuous basis without
27 compensation from the State for the duration of the power of attorney authorized by
28 subsection 1. Nothing in this subsection disqualifies the agent from applying for and
29 receiving benefits from any state or federal program of assistance for the minor or the
30 agent. Nothing in this subsection prevents individuals or religious, community or
31 other charitable organizations from voluntarily providing the agent with support
32 related to the care of the minor while the minor is in the temporary care of the agent.

33 C. A minor may not be considered placed in foster care or in any way a ward of the
34 State by virtue of the parent's or guardian's execution of a power of attorney
35 authorized by subsection 1. The agent named in the power of attorney may not be
36 considered a family foster home by virtue of the parent's or guardian's execution of a
37 power of attorney authorized by subsection 1 and is not subject to any laws regarding
38 the licensure or regulation of family foster homes unless licensed as a family foster
39 home. Nothing in this subsection disqualifies the agent from being or becoming a
40 family foster home licensed by the State or prevents the placement of the minor in the
41 agent's care if the minor enters state custody.

1 D. An organization, other than an organization whose primary purpose is to provide
2 free legal services, that is exempt from federal income taxation under Section 501(a)
3 of the United States Internal Revenue Code of 1986 as an organization described by
4 Section 501(c)(3) and that assists parents or guardians with the process of executing a
5 power of attorney for the temporary care of a minor shall ensure that a background
6 check is conducted for the agent and any adult members of the agent's household,
7 whether by completing the background check directly or by verifying that a current
8 background check has already been conducted. The background check must include
9 the following sources, and the results must be shared with the parent or guardian and
10 the proposed agent:

11 (1) A screening for child and adult abuse, neglect or exploitation cases in the
12 records of the Department of Health and Human Services; and

13 (2) A criminal history record check that includes information obtained from the
14 Federal Bureau of Investigation.

15 The organization shall maintain records on the training and background checks of
16 agents, including the content and dates of training and full transcripts of background
17 checks, for a period of not less than 5 years after the minor attains 18 years of age.
18 The organization shall make the records available to a parent or guardian executing a
19 power of attorney under this subsection and to the ombudsman under Title 22, section
20 4087-A and any local, state or federal authority conducting an investigation involving
21 the agent, the parent or guardian or the minor.

22 E. An employee or volunteer for an organization described in paragraph D may not
23 further assist with a process that results in the completion of a power of attorney for
24 the temporary care of a minor if the background checks conducted pursuant to
25 paragraph D, subparagraphs (1) and (2) disclose any substantiated allegations of child
26 abuse, neglect or exploitation or any crimes that would disqualify the agent from
27 becoming a licensed family foster home in the State.

28 F. The following penalties apply to violations of this subsection.

29 (1) An organization that knowingly fails to perform or verify the background
30 checks or fails to share the background check information as required by this
31 subsection is subject to a civil penalty not to exceed \$5,000, payable to the State
32 and recoverable in a civil action.

33 (2) An organization or an employee or volunteer of an organization that continues
34 to assist a parent, guardian or agent in completing a power of attorney under this
35 subsection if the background checks conducted pursuant to paragraph D disclose
36 any substantiated allegations of child abuse, neglect or exploitation or any crimes
37 that would disqualify the agent from becoming a licensed family foster home is
38 subject to a civil penalty not to exceed \$5,000, payable to the State and
39 recoverable in a civil action.

40 (3) An organization or an employee or volunteer of an organization that
41 knowingly fails to maintain records or to disclose information as required by this
42 subsection is subject to a civil penalty not to exceed \$5,000, payable to the State
43 and recoverable in a civil action.

1 **§5-105. Subject matter jurisdiction**

2 **1. Guardianship, protective proceedings for minors; exception.** Except to the
3 extent the guardianship is subject to the Uniform Child Custody Jurisdiction and
4 Enforcement Act and Title 4, section 152, subsection 5-A, the court has jurisdiction over
5 guardianship for minors domiciled or present in this State. The court has jurisdiction
6 over protective proceedings for minors domiciled in or having property located in this
7 State.

8 **2. Guardianship, protective proceedings for adults.** The court has jurisdiction
9 over guardianship and protective proceedings for an adult as provided in the Uniform
10 Adult Guardianship and Protective Proceedings Jurisdiction Act.

11 **§5-106. Transfer of jurisdiction**

12 **1. Rules for transfer of jurisdiction.** Except as otherwise provided in subsection 2,
13 the following rules apply.

14 A. After the appointment of a guardian or conservator or entry of another protective
15 order, the court making the appointment or entering the order may transfer the
16 proceeding to a court in another county in this State or to another state if the court is
17 satisfied that a transfer will serve the best interest of the ward or protected person.

18 B. If a guardianship or protective proceeding is pending in another state or a foreign
19 country and a petition for guardianship or protective proceeding is filed in a court in
20 this State, the court in this State shall notify the original court and, after consultation
21 with the original court, assume or decline jurisdiction, whichever is in the best
22 interest of the ward or protected person.

23 C. A guardian, conservator or like fiduciary appointed in another state may petition
24 the court for appointment as a guardian or conservator in this State if venue in this
25 State is or will be established. The appointment may be made upon proof of
26 appointment in the other state and presentation of a certified copy of the portion of
27 the court record in the other state specified by the court in this State. Notice of
28 hearing on the petition, together with a copy of the petition, must be given to the
29 ward or protected person, if the ward or protected person has attained 14 years of age,
30 and to the persons who would be entitled to notice if the regular procedures for
31 appointment of a guardian or conservator under this Article were applicable. The
32 court shall make the appointment in this State unless the court concludes that the
33 appointment would not be in the best interest of the ward or protected person. On the
34 filing of an acceptance of office and any required bond, the court shall issue
35 appropriate letters of guardianship or conservatorship. Not later than 14 days after an
36 appointment, the guardian or conservator shall send or deliver a copy of the order of
37 appointment to the ward or protected person, if the ward or protected person has
38 attained 14 years of age, and to all persons given notice of the hearing on the petition.

39 **2. Adult subject to transfer provisions of this Article.** Subsection 1 does not
40 apply to a guardianship or protective proceeding for an adult who is subject to the transfer
41 provisions of this Article.

1 **§5-107. Venue**

2 **1. Guardianship for minor.** Venue for a guardianship proceeding for a minor is in
3 the county of this State in which the minor resides or is present at the time the proceeding
4 is commenced.

5 **2. Guardianship for incapacitated person.** Venue for a guardianship proceeding
6 for an incapacitated person is in the county of this State in which the respondent resides
7 and, if the respondent has been admitted to an institution by order of a court of competent
8 jurisdiction, in the county in which the court is located. Venue for the appointment of an
9 emergency or a temporary substitute guardian of an incapacitated person is also in the
10 county in which the incapacitated person is present.

11 **3. Protective proceeding.** Venue for a protective proceeding is in the county of this
12 State in which the respondent resides, whether or not a guardian has been appointed in
13 another place or, if the respondent does not reside in this State, in any county of this State
14 in which property of the respondent is located.

15 **4. Where first brought; exceptions.** If a proceeding under this Article is brought in
16 more than one county in this State, the court of the county in which the proceeding is first
17 brought has the exclusive right to proceed unless that court determines that venue is
18 properly in another court or that the interests of justice otherwise require that the
19 proceeding be transferred.

20 **§5-108. Letters of appointment**

21 Upon the guardian's filing of an acceptance of appointment, the court shall issue
22 appropriate letters of guardianship. Upon the conservator's filing of an acceptance of
23 appointment and any required bond, the court shall issue appropriate letters of
24 conservatorship. Letters of guardianship must indicate whether the guardian was
25 appointed by the court, a parent or the spouse. Any limitation on the powers of a
26 guardian or conservator or of the assets subject to a conservatorship must be endorsed on
27 the guardian's or conservator's letters.

28 **§5-109. Effect of acceptance of appointment**

29 By accepting appointment, a guardian or conservator submits personally to the
30 jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.
31 The petitioner shall send or deliver notice of any proceeding to the guardian or
32 conservator at the guardian's or conservator's address shown in the court records and at
33 any other address then known to the petitioner.

34 **§5-110. Termination of or change in guardian's or conservator's appointment**

35 **1. Termination of appointment.** The appointment of a guardian or conservator
36 terminates upon the death, resignation or removal of the guardian or conservator or upon
37 termination of the guardianship or conservatorship. A resignation of a guardian or
38 conservator is effective when approved by the court. A parental or spousal appointment
39 as guardian under an informally probated will terminates if the will is later denied probate
40 in a formal proceeding. Termination of the appointment of a guardian or conservator does

1 not affect the liability of either for previous acts or the obligation to account for money
2 and other assets of the ward or protected person.

3 **2. Petition for removal or permission to resign.** A ward, protected person or
4 person interested in the welfare of a ward or protected person may petition for removal of
5 a guardian or conservator on the ground that removal would be in the best interest of the
6 ward or protected person or for other good cause. A guardian or conservator may petition
7 for permission to resign. A petition for removal or permission to resign may include a
8 request for appointment of a successor guardian or conservator.

9 **3. Appointment of additional, successor guardian or conservator.** The court may
10 appoint an additional guardian or conservator at any time to serve immediately or upon
11 some other designated event, and may appoint a successor guardian or conservator in the
12 event of a vacancy or make the appointment in contemplation of a vacancy to serve if a
13 vacancy occurs. An additional or successor guardian or conservator may file an
14 acceptance of appointment at any time after the appointment, but not later than 30 days
15 after the occurrence of the vacancy or other designated event. The additional or
16 successor guardian or conservator becomes eligible to act on the occurrence of the
17 vacancy or designated event, or the filing of the acceptance of appointment, whichever
18 last occurs. A successor guardian or conservator succeeds to the predecessor's powers,
19 and a successor conservator succeeds to the predecessor's title to the protected person's
20 assets.

21 **4. Court appointment of attorney for ward, guardian, petitioner.** If, at any time
22 in the proceeding, the court determines that the interests of the ward are, or may be,
23 inadequately represented, the court may appoint an attorney to represent the ward, giving
24 consideration to the preference of the ward if the ward is 14 or more years of age. In a
25 contested action, the court also may appoint counsel for any indigent guardian or
26 petitioner.

27 **5. Termination without consent, best interest; subsequent petitions.** The court
28 may not terminate the guardianship in the absence of the guardian's consent unless the
29 court finds by a preponderance of the evidence that the termination is in the best interest
30 of the ward. The petitioner has the burden of showing by a preponderance of the
31 evidence that termination of the guardianship is in the best interest of the ward. If the
32 court does not terminate the guardianship, the court may dismiss subsequent petitions for
33 termination of the guardianship unless there has been a substantial change of
34 circumstances.

35 **6. Parent's petition to terminate guardianship; burden of proof.** A party
36 opposing a parent's petition to terminate a guardianship bears the burden of proving by a
37 preponderance of the evidence that the parent seeking to terminate the guardianship is
38 currently unfit to regain custody of the child. If the party opposing termination of the
39 guardianship fails to meet its burden of proof on the question of the parent's fitness to
40 regain custody, the court shall terminate the guardianship and make any further order that
41 may be appropriate.

1 **§5-201. Appointment and status of guardian**

2 A person becomes a guardian of a minor by parental appointment or upon
3 appointment by the court. The guardianship status continues until terminated, without
4 regard to the location of the guardian or minor ward. This section does not apply to
5 permanency guardians appointed in District Court child protective proceedings under
6 Title 22, section 4038-C. If a minor has a permanency guardian, the court may not
7 appoint another guardian without leave of the District Court in which the child protective
8 proceeding is pending.

9 **§5-202. Parental appointment of guardian**

10 **1. Appointment by parent.** A guardian may be appointed by will or other signed
11 writing by a parent for any minor child the parent has or may have in the future. The
12 appointment may specify the desired limitations on the powers to be given to the
13 guardian. The appointing parent may revoke or amend the appointment before
14 confirmation by the court.

15 **2. Petition to confirm selection, terminate right to object.** Upon petition of an
16 appointing parent and a finding that the appointing parent will likely become unable to
17 care for the child within 2 years, and after notice as provided in section 5-205, subsection
18 1, the court, before the appointment becomes effective, may confirm the parent's selection
19 of a guardian and terminate the rights of others to object.

20 **3. Appointment effective.** Subject to section 5-203, the appointment of a guardian
21 becomes effective upon the appointing parent's death, an adjudication that the parent is an
22 incapacitated person or a written determination by a physician who has examined the
23 parent that the parent is no longer able to care for the child, whichever first occurs.

24 **4. Acceptance of appointment.** The guardian becomes eligible to act upon the
25 filing of an acceptance of appointment, which must be filed within 30 days after the
26 guardian's appointment becomes effective. The guardian shall:

27 A. File the acceptance of appointment and a copy of the will with the court of the
28 county in which the will was or could be probated or, in the case of another
29 appointing instrument, file the acceptance of appointment and the appointing
30 instrument with the court of the county in which the minor resides or is present; and

31 B. Give written notice of the acceptance of appointment to the appointing parent, if
32 living, the minor, if the minor has attained 14 years of age, and a person other than
33 the parent having care and custody of the minor.

34 **5. Notice of right to object.** Unless the appointment was previously confirmed by
35 the court, the notice given under subsection 4, paragraph B must include a statement of
36 the right of those notified to terminate the appointment by filing a written objection in the
37 court as provided in section 5-203.

38 **6. Petition to confirm appointment.** Unless the appointment was previously
39 confirmed by the court, within 30 days after filing the notice and the appointing

1 instrument, a guardian shall petition the court for confirmation of the appointment, giving
2 notice in the manner provided in section 5-205, subsection 1.

3 **7. Parental rights not superseded; priority.** The appointment of a guardian by a
4 parent does not supersede the parental rights of either parent. If both parents are dead or
5 have been adjudged incapacitated persons, an appointment by the last parent who died or
6 was adjudged incapacitated has priority. An appointment by a parent that is effected by
7 filing the guardian's acceptance under a will probated in the state of the testator's domicile
8 is effective in this State.

9 **8. Relation back of powers.** The powers of a guardian who timely complies with
10 the requirements of subsections 4 and 6 relate back to give acts by the guardian that are of
11 benefit to the minor and occurred on or after the date the appointment became effective
12 the same effect as those that occurred after the filing of the acceptance of the
13 appointment.

14 **9. Termination of authority.** The authority of a guardian appointed under this
15 section terminates upon the first to occur of the appointment of a guardian by the court or
16 the giving of written notice to the guardian of the filing of an objection pursuant to
17 section 5-203.

18 **§5-203. Objection by minor or others to parental appointment**

19 Until the court has confirmed an appointee under section 5-202, a minor who is the
20 subject of an appointment by a parent and who has attained 14 years of age, the other
21 parent or a person other than a parent or guardian having care or custody of the minor
22 may prevent or terminate the appointment at any time by filing a written objection in the
23 court in which the appointing instrument is filed and giving notice of the objection to the
24 guardian and any other persons entitled to notice of the acceptance of the appointment.
25 An objection may be withdrawn and if withdrawn is of no effect. The objection does not
26 preclude judicial appointment of the person selected by the parent. The court may treat
27 the filing of an objection as a petition for the appointment of an emergency or a
28 temporary guardian under section 5-204 and proceed accordingly.

29 **§5-204. Judicial appointment of guardian; conditions for appointment**

30 **1. Petition.** A minor or a person interested in the welfare of a minor may petition for
31 appointment of a guardian.

32 **2. Appointment.** The court may appoint a guardian for a minor if the court finds the
33 appointment is in the minor's best interest and finds:

34 A. That the parents consent;

35 B. That all parental rights have been terminated; or

36 C. By clear and convincing evidence that the parents are unwilling or unable to
37 exercise their parental rights.

38 **3. Priority for appointment.** If a guardian is appointed by a parent pursuant to
39 section 5-202 and the appointment has not been prevented or terminated under section

1 5-203, that appointee has priority for appointment. However, the court may proceed with
2 another appointment upon a finding that the appointee under section 5-202 has failed to
3 accept the appointment within 30 days after notice of the guardianship proceeding.

4 **4. Temporary guardian.** If necessary, the court may appoint a temporary guardian,
5 with the status of an ordinary guardian of a minor, but the authority of a temporary
6 guardian may not last longer than 6 months, except as provided in subsection 5.

7 Notice of hearing on the petition for the appointment of a temporary guardian must be as
8 provided under section 5-111 and section 5-205, except that the notice must be given at
9 least 5 days before the hearing, and notice need not be given to any person whose address
10 and present whereabouts are unknown and cannot be ascertained by due diligence. Upon
11 a showing of good cause, the court may waive service of the notice of hearing on any
12 person, other than the minor, if the minor is at least 14 years of age.

13 **5. Parent member of National Guard or Reserves.** If one of the parents of a
14 minor is a member of the National Guard or the Reserves of the United States Armed
15 Forces under an order to active duty for a period of more than 30 days, a temporary
16 guardianship that would otherwise expire is automatically extended until 30 days after the
17 parent is no longer under that active duty order or until an order of the court so provides.
18 This subsection applies only if the parent's service is in support of:

19 A. An operational mission for which members of the reserve components have been
20 ordered to active duty without their consent; or

21 B. Forces activated during a period of war declared by the United States Congress or
22 a period of national emergency declared by the President of the United States or the
23 United States Congress.

24 **6. Appointment of counsel.** A nonconsenting parent whose parental rights have not
25 been terminated is entitled to court-appointed legal counsel if indigent. In a contested
26 action, the court may also appoint counsel for any indigent guardian or petitioner when a
27 parent or legal custodian has counsel.

28 **7. Child support.** In a proceeding on a petition for judicial appointment of a
29 guardian, the court may order a parent to pay child support in accordance with Title 19-A,
30 Part 3. When the Department of Health and Human Services provides child support
31 enforcement services, the Commissioner of Health and Human Services may designate
32 employees of the department who are not attorneys to represent the department in court if
33 a hearing is held. The commissioner shall ensure that appropriate training is provided to
34 all employees who are designated to represent the department under this subsection.

35 **8. Limited guardian.** If the court appoints a limited guardian, the court shall
36 specify the duties and powers of the guardian, as required in section 5-108 and section
37 5-206, and any parental rights and responsibilities retained by the parent of the minor.

38 **§5-205. Judicial appointment of guardian; procedure**

39 **1. Petition; notice of hearing.** After a petition for appointment of a guardian is
40 filed, the court shall schedule a hearing, and the petitioner shall give notice of the time
41 and place of the hearing, together with a copy of the petition, to:

- 1 A. The minor, if the minor has attained 14 years of age and is not the petitioner;
- 2 B. Any person alleged to have had the primary care and custody of the minor during
- 3 the 60 days before the filing of the petition;
- 4 C. Each living parent of the minor or, if there is none, the adult nearest in kinship
- 5 who can be found;
- 6 D. Any person nominated as guardian by the minor if the minor has attained 14 years
- 7 of age;
- 8 E. Any appointee of a parent whose appointment has not been prevented or
- 9 terminated under section 5-203; and
- 10 F. Any guardian or conservator currently acting for the minor in this State or
- 11 elsewhere.

12 **2. Appointment; other disposition.** The court, after the hearing scheduled pursuant
13 to subsection 1, shall make the appointment of a guardian if the court finds that a
14 qualified person seeks appointment, venue is proper, the required notices have been
15 given, the conditions of section 5-204, subsection 2 have been met and the best interest of
16 the minor will be served by the appointment. In other cases, the court may dismiss the
17 proceeding or make any other disposition of the matter that will serve the best interest of
18 the minor.

19 **3. Court-appointed attorney.** If the court determines at any stage of the
20 proceeding, before or after appointment, that the interests of the minor are or may be
21 inadequately represented, the court may appoint an attorney to represent the minor, giving
22 consideration to the choice of the minor if the minor has attained 14 years of age.

23 **§5-206. Judicial appointment of guardian; priority of minor's nominee; limited**
24 **guardianship**

25 **1. Appointment of guardian or coguardians.** The court shall appoint as guardian
26 or coguardians of a minor a person or persons whose appointment will be in the best
27 interest of the minor. The court shall appoint a person or persons nominated by the
28 minor, if the minor has attained 14 years of age, unless the court finds the appointment
29 will be contrary to the best interest of the minor.

30 **2. Limited powers of guardian or coguardian.** In the interest of developing self-
31 reliance of a ward or for other good cause, the court, at the time of appointment or later,
32 on the court's own motion or on motion of the minor or other interested person, may limit
33 the powers of a guardian or coguardian otherwise granted by this Part and thereby create
34 a limited guardianship. Following the same procedure, the court may grant additional
35 powers or withdraw powers previously granted.

36 **§5-207. Duties of guardian**

37 **1. Duties and responsibilities of a parent.** Except as otherwise limited by the
38 court, a guardian of a minor ward has the duties and responsibilities of a parent regarding
39 the ward's support, care, education, health and welfare. A guardian shall act at all times
40 in the ward's best interest and exercise reasonable care, diligence and prudence.

- 1 **2. Specific duties and responsibilities.** A guardian shall:
- 2 A. Become or remain personally acquainted with the ward and maintain sufficient
- 3 contact with the ward to know of the ward's capacities, limitations, needs,
- 4 opportunities and physical and mental health;
- 5 B. Take reasonable care of the ward's personal effects and bring a protective
- 6 proceeding if necessary to protect other property of the ward;
- 7 C. Expend money of the ward that has been received by the guardian for the ward's
- 8 current needs for support, care, education, health and welfare;
- 9 D. Conserve any excess money of the ward for the ward's future needs, but if a
- 10 conservator has been appointed for the estate of the ward, the guardian shall pay the
- 11 money at least quarterly to the conservator to be conserved for the ward's future
- 12 needs;
- 13 E. Report the condition of the ward and account for money and other assets in the
- 14 guardian's possession or subject to the guardian's control, as ordered by the court on
- 15 application of any person interested in the ward's welfare or as required by court rule;
- 16 and
- 17 F. Inform the court of any change in the ward's custodial dwelling or address.

18 **§5-208. Powers of guardian**

- 19 1. Powers of a parent. Except as otherwise limited by the court, a guardian of a
- 20 minor ward has the powers of a parent regarding the ward's support, care, education,
- 21 health and welfare.
- 22 **2. Specific powers.** A guardian may:
- 23 A. Apply for and receive money for the support of the ward otherwise payable to the
- 24 ward's parent, guardian or custodian under the terms of any statutory system of
- 25 benefits or insurance or any private contract, devise, trust, conservatorship or
- 26 custodianship;
- 27 B. If otherwise consistent with the terms of any order by a court of competent
- 28 jurisdiction relating to custody of the ward, take custody of the ward and establish the
- 29 ward's place of custodial dwelling, but may establish or move the ward's custodial
- 30 dwelling outside the State only upon express authorization of the court;
- 31 C. If a conservator for the estate of a ward has not been appointed with existing
- 32 authority, commence a proceeding, including an administrative proceeding, or take
- 33 other appropriate action to compel a person to support the ward or to pay money for
- 34 the benefit of the ward;
- 35 D. Except as limited by section 5-707, consent to medical or other care, treatment or
- 36 service for the ward;
- 37 E. Consent to the marriage of the ward; and
- 38 F. If reasonable under all of the circumstances, delegate to the ward certain
- 39 responsibilities for decisions affecting the ward's well-being.

1 **3. Consent to adoption.** The court may specifically authorize the guardian to
2 consent to the adoption of the ward.

3 **4. Powers of coguardians.** If coguardians are appointed, the powers of the
4 guardians are joint and several, unless limited by the appointing document.

5 **§5-209. Rights and immunities of guardian**

6 **1. Reasonable compensation and reimbursement.** A guardian is entitled to
7 reasonable compensation for services as guardian and to reimbursement for room, board
8 and clothing provided by the guardian to the ward, but only as approved by the court. If a
9 conservator, other than the guardian or a person who is affiliated with the guardian, has
10 been appointed for the estate of the ward, reasonable compensation and reimbursement to
11 the guardian may be approved and paid by the conservator without order of the court.

12 **2. Personal liability.** A guardian need not use the guardian's personal funds for the
13 ward's expenses. A guardian is not liable to a 3rd person for acts of the ward solely by
14 reason of the guardianship. A guardian is not liable for injury to the ward resulting from
15 the negligence or act of a 3rd person providing medical or other care, treatment or service
16 for the ward except to the extent that a parent would be liable under the circumstances.

17 **§5-210. Termination of guardianship; other proceedings after appointment**

18 **1. Termination of guardianship.** A guardianship of a minor terminates upon the
19 minor's death, adoption, emancipation, marriage or attainment of majority or as ordered
20 by the court.

21 **2. Petition for order.** A ward or a person interested in the welfare of a ward may
22 petition for any order that is in the best interest of the ward. The petitioner shall give
23 notice of the hearing on the petition to the ward, if the ward has attained 14 years of age
24 and is not the petitioner, the guardian and any other person as ordered by the court.

25 **§5-211. Transitional arrangement for minors**

26 In issuing, modifying or terminating an order of guardianship for a minor, the court
27 may enter an order providing for transitional arrangements for the minor if the court
28 determines that such arrangements will assist the minor with a transition of custody and
29 are in the best interest of the minor. Orders providing for transitional arrangements may
30 include, but are not limited to, rights of contact, housing, counseling or rehabilitation.

31 **PART 3**

32 **GUARDIANSHIP OF INCAPACITATED PERSON**

33 **§5-301. Appointment and status of guardian**

34 A person becomes a guardian of an incapacitated person by a parental, spousal or
35 domestic partner appointment or upon appointment by the court. The guardianship
36 continues until terminated, without regard to the location of the guardian or ward.

1 **§5-302. Appointment of guardian by will or other writing**

2 **1. Appointment by parent.** A parent, by will or other signed writing, may appoint a
3 guardian for an unmarried child who the parent believes is an incapacitated person,
4 specify desired limitations on the powers to be given to the guardian and revoke or amend
5 the appointment before confirmation by the court.

6 **2. Appointment by spouse or domestic partner.** An individual, by will or other
7 signed writing, may appoint a guardian for the individual's spouse or domestic partner
8 who the appointing spouse or domestic partner believes is an incapacitated person,
9 specify desired limitations on the powers to be given to the guardian and revoke or amend
10 the appointment before confirmation by the court.

11 **3. Written objection; petition for emergency, limited or unlimited guardian.**
12 The incapacitated person, the person having care or custody of the incapacitated person if
13 other than the appointing parent, spouse or domestic partner or the adult nearest in
14 kinship to the incapacitated person may file a written objection to an appointment, unless
15 the court has confirmed the appointment under subsection 4. The filing of the written
16 objection terminates the appointment. An objection may be withdrawn and, if
17 withdrawn, is of no effect. The objection does not preclude judicial appointment of the
18 person selected by the parent, spouse or domestic partner. Notice of the objection must
19 be given to the guardian and any other person entitled to notice of the acceptance of the
20 appointment. The court may treat the filing of an objection as a petition for the
21 appointment of an emergency guardian under section 5-312 or for the appointment of a
22 limited or unlimited guardian under section 5-304 and proceed accordingly.

23 **4. Court confirmation of certain appointees' selection of successor.** Upon
24 petition of the appointing parent, spouse or domestic partner and a finding that the
25 appointing parent, spouse or domestic partner will likely become unable to care for the
26 incapacitated person within 2 years and after notice as provided in this section, the court,
27 before the appointment becomes effective, may confirm the appointing parent's, spouse's
28 or domestic partner's selection of a guardian and terminate the rights of others to object.

29 **§5-303. Appointment of guardian by will or other writing; effectiveness;**
30 **acceptance; confirmation**

31 **1. Appointment effective.** The appointment of a guardian under section 5-302
32 becomes effective upon the death of the appointing parent, spouse or domestic partner,
33 the adjudication of incapacity of the appointing parent, spouse or domestic partner or a
34 written determination by a physician who has examined the appointing parent, spouse or
35 domestic partner that the appointing parent, spouse or domestic partner is no longer able
36 to care for the incapacitated person, whichever first occurs.

37 **2. Acceptance of appointment.** A guardian appointed under section 5-302 becomes
38 eligible to act upon the filing of an acceptance of appointment, which must be filed within
39 30 days after the guardian's appointment becomes effective. The guardian shall:

40 **A. File the notice of acceptance of appointment and a copy of the will with the court**
41 **of the county in which the will was or could be probated or, in the case of another**

1 appointing instrument, file the acceptance of appointment and the appointing
2 instrument with the court in the county in which the incapacitated person resides or is
3 present; and

4 B. Give written notice of the acceptance of appointment to the appointing parent,
5 spouse or domestic partner, if living, the incapacitated person, a person having care
6 or custody of the incapacitated person other than the appointing parent, spouse or
7 domestic partner and the adult nearest in kinship.

8 **3. Notice of right to object.** Unless the appointment was previously confirmed by
9 the court, the notice given under subsection 2, paragraph B must include a statement of
10 the right of those notified to terminate the appointment by filing a written objection as
11 provided in section 5-302.

12 **4. Acceptance under will probated in another state.** An appointment effected by
13 filing the guardian's acceptance under a will probated in the state of the testator's domicile
14 is effective in this State.

15 **5. Petition to confirm appointment.** Unless the appointment was previously
16 confirmed by the court, within 30 days after filing the notice and the appointing
17 instrument, a guardian appointed under section 5-302 shall file a petition in the court for
18 confirmation of the appointment. Notice of the filing must be given in the manner
19 provided in section 5-309.

20 **6. Termination of authority.** The authority of a guardian appointed under section
21 5-302 terminates upon the appointment of a guardian by the court or the giving of written
22 notice to the guardian of the filing of an objection pursuant to section 5-302, whichever
23 first occurs.

24 **7. Appointment not a determination of incapacity.** The appointment of a guardian
25 under this section is not a determination of incapacity.

26 **8. Relation back of powers.** The powers of a guardian who timely complies with
27 the requirements of subsections 2 and 5 relate back to give acts by the guardian that are of
28 benefit to the incapacitated person and occurred on or after the date the appointment
29 became effective the same effect as those that occurred after the filing of the acceptance
30 of appointment.

31 **§5-304. Judicial appointment of guardian; petition**

32 **1. Petition for determination of incapacity and appointment.** An individual or a
33 person interested in the individual's welfare may petition for a determination of
34 incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian
35 for the individual.

36 **2. Petition contents.** The petition under subsection 1 must set forth the petitioner's
37 name, residence, current address if different from residence, relationship to the
38 respondent and interest in the appointment and, to the extent known, state or contain the
39 following with respect to the respondent and the relief requested:

1 A. The respondent's name, age, principal residence, current street address and, if
2 different, the address of the dwelling in which it is proposed that the respondent will
3 reside if the appointment is made;

4 B. The name and address of the respondent's:

5 (1) Spouse or, if the respondent has none, an adult with whom the respondent
6 has resided for more than 6 months before the filing of the petition; and

7 (2) Adult children or, if the respondent has none, the respondent's parents and
8 adult brothers and sisters or, if the respondent has none, at least one of the adults
9 nearest in kinship to the respondent who can be found or, if none, an adult friend
10 if any can be found;

11 C. The name and address of any person responsible for care or custody of the
12 respondent;

13 D. The name and address of any legal representative of the respondent;

14 E. The name and address of any person nominated as guardian by the respondent;

15 F. The name and address of any proposed guardian and the reason why the proposed
16 guardian should be selected;

17 G. The reason why guardianship is necessary, including a brief description of the
18 nature and extent of the respondent's alleged incapacity;

19 H. If an unlimited guardianship is requested, the reason why limited guardianship is
20 inappropriate and, if a limited guardianship is requested, the powers to be granted to
21 the limited guardian; and

22 I. A general statement of the respondent's property with an estimate of its value,
23 including any insurance or pension, and the source and amount of any other
24 anticipated income or receipts.

25 **3. Plan.** The person nominated or proposed to serve as guardian shall file a plan
26 that, as relevant, must include, but is not limited to, the type of proposed living
27 arrangement for the respondent, how the respondent's financial needs will be met, how
28 the respondent's medical and other remedial needs will be met and how the respondent's
29 social needs will be met and a plan for the respondent's continuing contact with relatives
30 and friends.

31 **4. Examination of respondent; report to court.** The respondent must be examined
32 by a physician, a psychologist or other individual who is qualified to evaluate the
33 respondent's alleged impairment. The person who examines the respondent shall submit
34 a report in writing to the court, providing diagnoses, a description of the respondent's
35 actual mental and functional limitations, including the ability to receive and evaluate
36 information, make decisions and communicate decisions, and prognoses.

37 **§5-305. Judicial appointment of guardian; preliminaries to hearing**

38 **1. Hearing date; appointment of visitor.** Upon receipt of a petition to establish a
39 guardianship, the court shall set a date and time for hearing the petition and appoint a
40 visitor. The duties and reporting requirements of the visitor are limited to the relief

1 requested in the petition. The visitor must be an individual having training or experience
2 in the type of incapacity alleged.

3 **2. Court-appointed attorney.** The court shall appoint an attorney to represent the
4 respondent in the proceeding if:

5 A. Requested by the respondent;

6 B. Recommended by the visitor; or

7 C. The court determines that the respondent needs representation.

8 **3. Duties of visitor.** The visitor shall interview the respondent in person outside the
9 presence of the person or persons seeking guardianship and, to the extent that the
10 respondent is able to understand:

11 A. Explain to the respondent the substance of the petition, the nature, purpose and
12 effect of the proceeding, the respondent's rights at the hearing and the general powers
13 and duties of a guardian;

14 B. Determine the respondent's views about the proposed guardian, the proposed
15 guardian's powers and duties and the scope and duration of the proposed
16 guardianship;

17 C. Inform the respondent of the right to employ and consult with an attorney at the
18 respondent's own expense and the right to request a court-appointed attorney; and

19 D. Inform the respondent that all costs and expenses of the proceeding, including
20 respondent's attorney's fees, will be paid from the respondent's estate.

21 **4. Additional duties of visitor.** In addition to the duties imposed by subsection 3,
22 the visitor shall:

23 A. Interview the petitioner and the proposed guardian;

24 B. Visit the respondent's present dwelling and any dwelling in which the respondent
25 will live if the appointment is made;

26 C. Obtain information from any physician or other person who is known to have
27 treated, advised or assessed the respondent's relevant physical or mental condition;
28 and

29 D. Make any other investigation the court directs.

30 **5. Report to court.** The visitor shall promptly file a report in writing with the court,
31 which must include:

32 A. A recommendation as to whether an attorney should be appointed to represent the
33 respondent;

34 B. The respondent's medical conditions, cognitive functioning, everyday functioning,
35 values and preferences, risks and levels of supervision needed and any means to
36 enhance the respondent's capacity;

1 C. A statement of the qualifications of the proposed guardian, together with a
2 statement as to whether the respondent approves or disapproves of the proposed
3 guardian, and the powers and duties proposed or the scope of the guardianship;

4 D. A statement as to whether the proposed dwelling meets the respondent's
5 individual needs;

6 E. A recommendation as to whether a professional evaluation or further evaluation is
7 necessary; and

8 F. Any other matters the court directs.

9 **§5-306. Judicial appointment of guardian; professional evaluation**

10 At or before a hearing under this Part, the court may order a professional evaluation
11 of the respondent and shall order the evaluation if the respondent so demands or if
12 necessary to satisfy the requirements of section 5-304, subsection 4. The cost of the
13 evaluation must be paid from the estate of the allegedly incapacitated person if the court
14 is satisfied sufficient funds are available. If the court orders the evaluation, the
15 respondent must be examined by a physician, psychologist or other individual appointed
16 by the court who is qualified to evaluate the respondent's alleged impairment. The
17 examiner shall promptly file a written report with the court. Unless otherwise directed by
18 the court, the report must contain:

19 **1. Description of cognitive and functional limitations.** A description of the nature,
20 type and extent of the respondent's specific cognitive and functional limitations, including
21 the ability to receive and evaluate information, make decisions and communicate
22 decisions;

23 **2. Evaluation of mental and physical condition; additional evaluations.** An
24 evaluation of the respondent's mental and physical condition and, if appropriate,
25 educational potential, adaptive behavior and social skills;

26 **3. Prognosis; recommendation.** A prognosis for improvement and a
27 recommendation as to the appropriate treatment or habilitation plan; and

28 **4. Date of assessment or examination.** The date of any assessment or examination
29 upon which the report is based.

30 **§5-307. Confidentiality of records**

31 The written report of a visitor under section 5-305 and any professional evaluation
32 under section 5-306 are confidential and must be sealed upon filing. The person who
33 files the visitor's report or a professional evaluation must provide notice of filing and a
34 copy of the report or evaluation to the respondent at the time of filing.

35 **1. Copies available without limitation.** Copies of the report under section 5-305 or
36 evaluation under section 5-306 are available to:

37 A. The court; and

38 B. The respondent without limitation as to use.

1 **2. Copies available with limitations; objection by respondent.** Unless the
2 respondent files an objection with the court within 10 days of receiving a copy of the
3 report or evaluation under subsection 1, with a showing of good cause, copies of the
4 report are available to:

5 A. The petitioner, the visitor and the petitioner's and respondent's attorneys for
6 purposes of the proceeding; and

7 B. Other persons for such purposes as the court may order for good cause.

8 **§5-308. Judicial appointment of guardian; presence and rights at hearing**

9 **1. Attendance; rights.** Unless excused by the court for good cause, the proposed
10 guardian shall attend the hearing. In contested proceedings, the respondent and witnesses
11 shall attend the hearing in person, unless excused by the court for good cause. The
12 respondent may present evidence and subpoena witnesses and documents; examine
13 witnesses, including any court-appointed physician, psychologist or other individual
14 qualified to evaluate the alleged impairment, and the visitor; and otherwise participate in
15 the hearing. The hearing may be held in a location convenient to the respondent or may
16 be held by telephonic or other electronic conferencing and may be closed upon the
17 request of the respondent and a showing of good cause. The court may allow any
18 interested person to attend a hearing by telephonic or other electronic conferencing,
19 subject however to the requirement that in contested cases the respondent and witnesses
20 shall attend in person unless excused by the court for good cause.

21 **2. Permission to participate.** Any person may request permission to participate in
22 the proceeding. The court may grant the request, with or without hearing, upon
23 determining that the best interest of the respondent will be served. The court may attach
24 appropriate conditions to the participation.

25 **§5-309. Notice**

26 **1. Served personally on respondent; notice contents; failure.** A copy of a petition
27 for guardianship and notice of the hearing on the petition must be served personally on
28 the respondent. The notice must:

29 A. Include a statement informing the respondent of the respondent's right to attend
30 the hearing in uncontested proceedings and of the respondent's obligation to be
31 present at the hearing in contested proceedings unless excused by the court;

32 B. Inform the respondent of the respondent's rights at the hearing; and

33 C. Include a description of the nature, purpose and consequences of an appointment.

34 A failure to serve the respondent with a notice substantially complying with this
35 subsection precludes the court from granting the petition.

36 **2. Notice to persons in petition.** In a proceeding to establish a guardianship, notice
37 of the hearing must be given to the persons listed in the petition. Failure to give notice
38 under this subsection does not preclude the appointment of a guardian or the making of a
39 protective order.

1 **3. Notice on petition for order after appointment.** Notice of the hearing on a
2 petition for an order after appointment of a guardian, together with a copy of the petition,
3 must be given to the ward, the guardian and any other person the court directs.

4 **4. Notice and copy of report.** A guardian shall give notice of the filing of the
5 guardian's report, together with a copy of the report, to the ward and any other person the
6 court directs. The notice must be delivered or sent within 14 days after the filing of the
7 report.

8 **§5-310. Who may be guardian; priorities**

9 **1. Priority for appointment.** Subject to subsection 3, the court in appointing a
10 guardian shall consider persons otherwise qualified in the following order of priority:

11 A. A guardian, other than a temporary or emergency guardian, currently acting for
12 the respondent in this State or elsewhere;

13 B. A person nominated as guardian by the respondent, including the respondent's
14 most recent nomination made in a durable power of attorney, if at the time of the
15 nomination the respondent had sufficient capacity to express a preference;

16 C. An agent appointed by the respondent under the Uniform Health Care Decisions
17 Act;

18 D. The spouse or domestic partner of the respondent or an individual nominated by
19 will or other signed writing of a deceased spouse or deceased domestic partner;

20 E. An adult child of the respondent;

21 F. A parent of the respondent or an individual nominated by will or other signed
22 writing of a deceased parent;

23 G. An adult with whom the respondent has resided for more than 6 months before
24 the filing of the petition; and

25 H. A person nominated by the person who is caring for the respondent or paying
26 benefits to the respondent.

27 **2. Equal priority.** With respect to persons having equal priority pursuant to
28 subsection 1, the court shall select the one the court considers best qualified. The court,
29 acting in the best interest of the respondent, may decline to appoint a person having
30 priority and appoint a person having a lower priority or no priority.

31 **3. Disqualification; exception.** An owner, operator or employee of a long-term care
32 institution at which a respondent is receiving care may not be appointed as guardian
33 unless related to the respondent by blood, marriage or adoption or unless a domestic
34 partner of the respondent.

35 **§5-311. Findings; order of appointment**

36 **1. Required findings for appointment; protective order.** The court may:

37 A. Appoint a limited or unlimited guardian or coguardians for a respondent only if
38 the court finds by clear and convincing evidence that:

- 1 (1) The respondent is an incapacitated person;
2 (2) The respondent's identified needs cannot be met by less restrictive means,
3 including use of reasonably available appropriate technological assistance; and
4 (3) The appointment is necessary or desirable; or

5 B. With appropriate findings, treat the petition as one for a protective order under
6 section 5-401, enter any other appropriate order or dismiss the proceeding.

7 **2. Limited guardian unless specific findings.** The court shall appoint a limited
8 guardian unless the court makes specific findings why the appointment of an unlimited
9 guardian is appropriate and grant to a guardian only those powers necessitated by the
10 ward's limitations and demonstrated needs and make appointive and other orders that will
11 encourage the development of the ward's maximum self-reliance and independence.

12 **3. Copy of order of appointment and right to request termination or**
13 **modification.** Within 14 days after an appointment, a guardian shall send or deliver to
14 the ward and to all other persons given notice of the hearing on the petition a copy of the
15 order of appointment, together with a notice of the right to request termination or
16 modification.

17 **§5-312. Emergency guardian**

18 **1. Petition; appointment.** If the court finds that compliance with the procedures of
19 this Part will likely result in substantial harm to a respondent's health, safety or welfare,
20 and that no other person appears to have authority and willingness to act in the
21 circumstances, the court, on petition by a person interested in the respondent's welfare,
22 may appoint an emergency guardian whose authority may not exceed 6 months and who
23 may exercise only the powers specified in the order. A petition for emergency
24 guardianship must be accompanied by an affidavit that sets forth the factual basis for the
25 emergency and the specific powers requested by the proposed guardian.

26 **2. Notice before petition.** Prior to filing a petition under this section, notice must be
27 provided as follows.

28 A. The petitioner shall provide notice orally or in writing to the following:

29 (1) The allegedly incapacitated person and the person's spouse, parents, adult
30 children and any domestic partner known to the court;

31 (2) Any person who is serving as guardian or conservator or who has care and
32 custody of the allegedly incapacitated person; and

33 (3) In case no other person is notified under subparagraph (1), at least one of the
34 closest adult relatives of the allegedly incapacitated person or, if none, an adult
35 friend, if any can be found.

36 B. Notice under paragraph A must include the following information:

37 (1) The temporary authority that the petitioner is requesting;

38 (2) Location and telephone number of the court in which the petition is being
39 filed; and

1 (3) The name of the petitioner and the intended date of filing.

2 C. The petitioner shall state in the affidavit required under this subsection the date,
3 time, location and method of providing the required notice under paragraph A and to
4 whom the notice was provided. The court shall make a determination as to the
5 adequacy of the method of providing notice and whether the petitioner complied with
6 the notice requirements of this subsection. The requirements of section 5-309 do not
7 apply to this section.

8 D. Notice is not required under this subsection in the following circumstances:

9 (1) Giving notice would place the allegedly incapacitated person at substantial
10 risk of abuse, neglect or exploitation;

11 (2) Notice, if provided, would not be effective; or

12 (3) The court determines that there is good cause not to provide notice.

13 E. If, prior to filing the petition, the petitioner did not provide notice as required
14 under this subsection, the petitioner must state in the affidavit the reasons for not
15 providing notice. If notice has not been provided, the court shall make a
16 determination as to the sufficiency of the reason for not providing notice before
17 issuing a temporary order.

18 **3. Reasonable notice of hearing.** Except as otherwise provided in subsection 4,
19 reasonable notice of the time and place of a hearing on the petition must be given to the
20 respondent and the respondent's spouse, parents, adult children, any domestic partner
21 known to the court and any other persons as the court directs.

22 **4. Notice after appointment of emergency guardian.** If the court appoints an
23 emergency guardian without notice as provided in subsection 2, notice of the appointment
24 must be given within 48 hours after the appointment to the persons specified in
25 subsection 2.

26 **5. Visitor; duties of visitor; rights of respondent; report to court.** If the court
27 takes action to appoint an emergency guardian, then the court, within 2 days, excluding
28 Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or
29 guardian ad litem to visit the respondent and make a report to the court within 10 days of
30 the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall
31 serve the respondent with a copy of the order appointing the emergency guardian and
32 shall explain the meaning and consequences of the appointment. The visitor or guardian
33 ad litem shall inquire of the respondent whether that person wishes to contest any aspect
34 of the emergency guardianship or seek any limitation of the emergency guardian's
35 powers. The visitor or guardian ad litem shall advise the respondent of that person's right
36 to be represented in the proceeding by counsel of that person's own choice or by counsel
37 appointed by the court. The visitor or guardian ad litem shall also interview the
38 emergency guardian, except in cases where the court itself has taken action to exercise
39 the powers of an emergency guardian. In the report to the court, the visitor or guardian
40 ad litem shall inform the court that the respondent has received a copy of the order
41 appointing the emergency guardian. The visitor or guardian ad litem shall advise the
42 court if circumstances indicate the respondent wishes to contest any aspect of the

1 emergency guardianship or seek a limitation of the emergency guardian's powers and
2 whether the respondent is already represented by counsel. The visitor or guardian ad
3 litem shall also advise the court whether any issue exists with respect to whether the
4 appointment of the emergency guardian is in the respondent's best interest.

5 **6. Expedited hearing on appropriateness of appointment.** If it comes to the
6 court's attention, through the report of the visitor or guardian ad litem or otherwise, that
7 the respondent wishes to contest any aspect of the emergency guardianship or seek a
8 limitation of the emergency guardian's powers, or that an issue exists with respect to
9 whether the emergency guardianship is in the respondent's best interest, the court shall
10 hold an expedited hearing on the appropriateness of the appointment within 40 days after
11 the appointment. The court may continue the expedited hearing if the petitioner and the
12 attorney for the respondent, or, if there is no attorney, the visitor or the guardian ad litem,
13 agree to such a continuance. The court may continue the hearing on its own motion due
14 to circumstances beyond the control of the court and the parties as long as the hearing is
15 held within 60 days of the signing of the order. If the appointment of a guardian is
16 contested by the respondent and the person is not already represented by an attorney, the
17 court shall appoint counsel to represent the respondent in the proceeding. The cost of the
18 appointment of the visitor, guardian ad litem or attorney must be paid from the estate of
19 the respondent if the court is satisfied that sufficient funds are available. At the hearing,
20 the petitioner has the burden of showing by clear and convincing evidence that
21 emergency guardianship continues to be necessary to provide the person with continuing
22 care, protection or support pending a final hearing.

23 **7. Notice of expedited hearing.** Notice of the expedited hearing under subsection 6
24 must be served as provided in section 5-309, except that the notice must be given at least
25 5 days before the expedited hearing, and notice need not be served on any person whose
26 address or present whereabouts is unknown and cannot be ascertained by due diligence.
27 The court may waive service of the notice of the expedited hearing on any person, other
28 than the respondent, upon a showing of good cause.

29 **8. Appointment not a determination of incapacity.** Appointment of an emergency
30 guardian, with or without notice, is not a determination of the respondent's incapacity.

31 **9. Removal of emergency guardian.** The court may remove an emergency
32 guardian at any time. An emergency guardian shall make any report the court requires.
33 In other respects, the provisions of this Article concerning guardians apply to an
34 emergency guardian.

35 **§5-313. Temporary substitute guardian**

36 **1. Appointment; powers; notice.** If the court finds that a guardian is not effectively
37 performing the guardian's duties and that the welfare of the ward requires immediate
38 action, the court may appoint a temporary substitute guardian for the ward for a specified
39 period not exceeding 6 months. Except as otherwise ordered by the court, a temporary
40 substitute guardian so appointed has the powers set forth in the previous order of
41 appointment, except that a temporary substitute guardian may not seek the involuntary
42 hospitalization of the ward in any institution outside the State. The authority of any
43 unlimited or limited guardian previously appointed by the court is suspended as long as a

1 temporary substitute guardian has authority. If an appointment is made without previous
2 notice to the ward or the affected guardian, the court, within 5 days after the appointment,
3 shall inform the ward or guardian of the appointment.

4 **2. Removal of temporary substitute guardian.** The court may remove a temporary
5 substitute guardian at any time. A temporary substitute guardian shall make any report
6 the court requires. In other respects, the provisions of this Article concerning guardians
7 apply to a temporary substitute guardian.

8 **§5-314. Duties of guardian**

9 **1. Decisions; best interest; reasonable care, diligence and prudence.** Except as
10 otherwise limited by the court, a guardian shall make decisions regarding the ward's
11 support, care, education, health and welfare. A guardian shall exercise authority only as
12 necessitated by the ward's limitations and, to the extent possible, shall encourage the ward
13 to participate in decisions, act on the ward's own behalf and develop or regain the
14 capacity to manage the ward's personal affairs. A guardian, in making decisions, shall
15 consider the expressed desires and personal values of the ward to the extent known to the
16 guardian. A guardian at all times shall act in the ward's best interest and exercise
17 reasonable care, diligence and prudence.

18 **2. Specific duties.** A guardian shall:

19 A. Become or remain personally acquainted with the ward and maintain sufficient
20 contact with the ward to know of the ward's capacities, limitations, needs,
21 opportunities and physical and mental health;

22 B. Take reasonable care of the ward's personal effects and bring protective
23 proceedings if necessary to protect the property of the ward;

24 C. Expend money of the ward that has been received by the guardian for the ward's
25 current needs for support, care, education, health and welfare;

26 D. Conserve any excess money of the ward for the ward's future needs. But if a
27 conservator has been appointed for the estate of the ward, the guardian shall pay the
28 money to the conservator, at least quarterly, to be conserved for the ward's future
29 needs;

30 E. Immediately notify the court if the ward's condition has changed so that the ward
31 is capable of exercising rights previously removed; and

32 F. Inform the court of any change in the ward's custodial dwelling or address.

33 **§5-315. Powers of guardian**

34 **1. Specific powers.** Except as otherwise limited by the court, a guardian may:

35 A. Apply for and receive money payable to the ward or the ward's guardian or
36 custodian for the support of the ward under the terms of any statutory system of
37 benefits or insurance or any private contract, devise, trust, conservatorship or
38 custodianship;

1 B. If otherwise consistent with the terms of any order by a court of competent
2 jurisdiction relating to custody of the ward, take custody of the ward and establish the
3 ward's place of custodial dwelling, but may establish or move the ward's place of
4 dwelling outside this State only upon express authorization of the court;

5 C. If a conservator for the estate of the ward has not been appointed with existing
6 authority, commence a proceeding, including an administrative proceeding, or take
7 other appropriate action to compel a person to support the ward or to pay money for
8 the benefit of the ward;

9 D. Except as limited by section 5-707, consent to medical or other care, treatment or
10 service for the ward;

11 E. Consent to the marriage or divorce of the ward; and

12 F. If reasonable under all of the circumstances, delegate to the ward certain
13 responsibilities for decisions affecting the ward's well-being.

14 **2. Consent to adoption.** The court may specifically authorize the guardian to
15 consent to the adoption of the ward.

16 **3. Powers of coguardians.** If coguardians are appointed, the powers of the
17 guardians are joint and several, unless limited by the appointing document.

18 **§5-316. Rights and immunities of guardian; limitations**

19 **1. Reasonable compensation and reimbursement.** A guardian is entitled to
20 reasonable compensation for services as guardian based on the factors set forth in section
21 3-721, subsection 2 and to reimbursement for room, board and clothing provided to the
22 ward, but only as approved by order of the court. If a conservator, other than the
23 guardian or one who is affiliated with the guardian, has been appointed for the estate of
24 the ward, reasonable compensation and reimbursement to the guardian may be approved
25 and paid by the conservator without order of the court.

26 **2. Personal liability.** A guardian need not use the guardian's personal funds for the
27 ward's expenses. A guardian is not liable to a 3rd person for acts of the ward solely by
28 reason of the relationship. A guardian who exercises reasonable care in choosing a 3rd
29 person to provide medical or other care, treatment or service for the ward is not liable for
30 injury to the ward resulting from the wrongful conduct of the 3rd party.

31 **3. Power of attorney for health care.** A guardian, without authorization of the
32 court, may not revoke a power of attorney for health care made pursuant to the Uniform
33 Health Care Decisions Act of which the ward is the principal. If a power of attorney for
34 health care made pursuant to the Uniform Health Care Decisions Act is in effect, absent
35 an order of the court to the contrary, a health care decision of the agent takes precedence
36 over that of a guardian.

37 **4. Commitment of ward.** A guardian may not initiate the commitment of a ward to
38 a psychiatric hospital except in accordance with the State's statutes and procedure for
39 involuntary civil commitment.

1 **§5-317. Reports; monitoring of guardianship**

2 **1. Reports; within 30 days and annually.** Within 30 days after appointment, a
3 guardian shall report to the court in writing on the condition of the ward and account for
4 money and other assets in the guardian's possession or subject to the guardian's control.
5 A guardian shall report at least annually or as otherwise specified by the court or
6 provided by court rule. A report must state or contain:

7 A. The current mental, physical and social condition of the ward;

8 B. The living arrangements for all addresses of the ward during the reporting period;

9 C. The medical, educational, vocational and other services provided to the ward and
10 the guardian's opinion as to the adequacy of the ward's care;

11 D. A summary of the guardian's visits with the ward and activities on the ward's
12 behalf and the extent to which the ward has participated in decision making;

13 E. If the ward is institutionalized, whether the guardian considers the current plan for
14 care, treatment or habilitation to be in the ward's best interest;

15 F. Plans for future care; and

16 G. A recommendation as to the need for continued guardianship and any
17 recommended changes in the scope of the guardianship.

18 **2. Appoint visitor.** The court may appoint a visitor to review a report, interview the
19 ward or guardian and make any other investigation the court directs.

20 **3. System for monitoring guardianships.** The court may establish a system for
21 monitoring guardianships, including the filing and review of annual reports.

22 **4. Report as directed.** Notwithstanding the requirements of subsection 1, a
23 guardian appointed before January 1, 2019 is required to report only as directed by the
24 court.

25 **§5-318. Termination or modification of guardianship**

26 **1. Termination.** A guardianship terminates upon the death of the ward or upon
27 order of the court.

28 **2. Petition to terminate; termination or modification.** On petition of a ward, a
29 guardian or another person interested in the ward's welfare, the court may terminate a
30 guardianship if the ward no longer needs the assistance or protection of a guardian. A
31 request for this order may be made by informal letter to the court and any person who
32 knowingly interferes with transmission of this kind of request to the court may be
33 adjudged guilty of contempt of court. The court may modify the type of appointment or
34 powers granted to the guardian if the extent of protection or assistance previously granted
35 is currently excessive or insufficient or the ward's capacity to provide for support, care,
36 education, health and welfare has so changed as to warrant that action.

1 If an allegedly incapacitated adult files voluntary written consent to the appointment of a
2 conservator with the court or appears in court and consents to the appointment, unless the
3 court finds the consent suspect, the court may appoint a conservator as requested upon a
4 finding by a preponderance of the evidence that the individual is unable to manage
5 property and business affairs because of an impairment in the ability to receive and
6 evaluate information or make or communicate informed decisions, even with the use of
7 reasonably available appropriate technological assistance. For the purposes of this
8 subsection, voluntary written consent is valid only if the consent was obtained by a
9 visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person
10 and the allegedly incapacitated person gave the consent outside the presence of the person
11 or persons seeking conservatorship.

12 **§5-402. Jurisdiction over business affairs of protected person**

13 After the service of notice in a proceeding seeking a conservatorship or other
14 protective order and until termination of the proceeding, the court in which the petition is
15 filed has:

16 **1. Determination of need.** Exclusive jurisdiction to determine the need for a
17 conservatorship or other protective order;

18 **2. Determination of how estate managed, expended or distributed.** Exclusive
19 jurisdiction to determine how the estate of the protected person that is subject to the laws
20 of this State must be managed, expended or distributed to or for the use of the protected
21 person, individuals who are in fact dependent upon the protected person or other
22 claimants; and

23 **3. Determination of claims and questions.** Concurrent jurisdiction to determine
24 the validity of claims against the person or estate of the protected person and questions of
25 title concerning assets of the estate.

26 **§5-403. Original petition for appointment or protective order**

27 **1. Petitioner.** The following may petition for the appointment of a conservator or
28 for any other appropriate protective order:

29 A. The person to be protected;

30 B. An individual interested in the estate, affairs or welfare of the person to be
31 protected, including a parent, guardian or custodian; or

32 C. A person who would be adversely affected by lack of effective management of
33 the property and business affairs of the person to be protected.

34 **2. Petition contents.** A petition under subsection 1 must set forth the petitioner's
35 name, residence, current street address if different from residence, relationship to the
36 respondent and interest in the appointment or other protective order and, to the extent
37 known, must state or contain the following with respect to the respondent and the relief
38 requested:

- 1 A. The respondent's name, age, principal residence, current street address and, if
2 different, the address of the dwelling where it is proposed that the respondent will
3 reside if the appointment is made;
- 4 B. If the petition alleges impairment in the respondent's ability to receive and
5 evaluate information, a brief description of the nature and extent of the respondent's
6 alleged impairment;
- 7 C. If the petition alleges that the respondent is missing, detained or unable to return
8 to the United States, a statement of the relevant circumstances, including the time and
9 nature of the disappearance or detention and a description of any search or inquiry
10 concerning the respondent's whereabouts;
- 11 D. The name and address of the respondent's:
- 12 (1) Spouse or, if the respondent has none, an adult with whom the respondent
13 has resided for more than 6 months before the filing of the petition; and
- 14 (2) Adult children or, if the respondent has none, the respondent's parents and
15 adult brothers and sisters or, if the respondent has none, at least one of the adults
16 nearest in kinship to the respondent who can be found or, if none, an adult friend
17 if any can be found;
- 18 E. The name and address of the person responsible for care or custody of the
19 respondent;
- 20 F. The name and address of any legal representative of the respondent;
- 21 G. A general statement of the respondent's property with an estimate of its value,
22 including any insurance or pension, and the source and amount of other anticipated
23 income or receipts; and
- 24 H. The reason why a conservatorship or other protective order is in the best interest
25 of the respondent.

26 **3. Conservatorship request.** If a conservatorship is requested, the petition under
27 subsection 1 must also set forth to the extent known:

- 28 A. The name and address of any proposed conservator and the reason why the
29 proposed conservator should be selected;
- 30 B. The name and address of any person nominated as conservator by the respondent
31 if the respondent has attained 14 years of age; and
- 32 C. The type of conservatorship requested and, if an unlimited conservatorship, the
33 reason why limited conservatorship is inappropriate or, if a limited conservatorship,
34 the property to be placed under the conservator's control and any limitation on the
35 conservator's powers and duties.

36 **§5-404. Notice**

- 37 **1. Notice to respondent; failure.** A copy of a petition under section 5-403 and the
38 notice of hearing on a petition for conservatorship or other protective order must be
39 served personally on the respondent, but if the respondent's whereabouts are unknown or
40 personal service cannot be made, service on the respondent must be made by substituted

1 service or publication. The notice must include a statement that the respondent must be
2 physically present unless excused by the court, inform the respondent of the respondent's
3 rights at the hearing and, if the appointment of a conservator is requested, include a
4 description of the nature, purpose and consequences of an appointment. A failure to
5 serve the respondent with a notice substantially complying with this subsection precludes
6 the court from granting the petition.

7 **2. Notice of hearing to persons listed in petition.** In a proceeding to establish a
8 conservatorship or for another protective order, notice of the hearing must be given to the
9 persons listed in the petition. Failure to give notice under this subsection does not
10 preclude the appointment of a conservator or the making of another protective order.

11 **3. Notice to protected person; petition for order after appointment.** Notice of
12 the hearing on a petition for an order after the appointment of a conservator or the making
13 of another protective order, together with a copy of the petition, must be given to the
14 protected person, if the protected person has attained 14 years of age and is not missing,
15 detained or unable to return to the United States, any conservator of the protected person's
16 estate and any other person as ordered by the court.

17 **4. Notice of filing of inventory, report or plan.** A conservator shall give notice of
18 the filing of the conservator's inventory, report or plan of conservatorship, together with a
19 copy of the inventory, report or plan of conservatorship to the protected person, if the
20 person can be located, has attained 14 years of age and has sufficient mental capacity to
21 understand these matters, and any other person the court directs. The notice must be
22 delivered or sent within 14 days after the filing of the inventory, report or plan of
23 conservatorship.

24 **§5-405. Original petition; minors; preliminaries to hearing**

25 **1. Hearing; court-appointed attorney.** Upon the filing of a petition to establish a
26 conservatorship or for another protective order for the reason that the respondent is a
27 minor, the court shall set a date for hearing. If the court determines at any stage of the
28 proceeding that the interests of the minor are or may be inadequately represented, it may
29 appoint an attorney to represent the minor, giving consideration to the choice of the minor
30 if the minor has attained 14 years of age.

31 **2. Orders to preserve and apply property; visitor.** While a petition to establish a
32 conservatorship or for another protective order is pending, after preliminary hearing and
33 without notice to others, the court may make orders to preserve and apply the property of
34 the minor as may be required for the support of the minor or individuals who are in fact
35 dependent upon the minor. The court may appoint a visitor to assist in that task.

36 **§5-406. Original petition; preliminaries to hearing**

37 **1. Hearing; visitor.** Upon the filing of a petition for a conservatorship or other
38 protective order for a respondent for reasons other than being a minor, the court shall set
39 a date for hearing. The court shall appoint a visitor unless the petition does not request
40 the appointment of a conservator and the respondent is represented by an attorney. The
41 duties and reporting requirements of the visitor are limited to the relief requested in the

1 petition. The visitor must be an individual having training or experience in the type of
2 incapacity alleged.

3 **2. Court-appointed attorney.** The court shall appoint an attorney to represent the
4 respondent in the proceeding if:

5 A. Requested by the respondent;

6 B. Recommended by the visitor; or

7 C. The court determines that the respondent needs representation.

8 **3. Visitor duties.** The visitor shall interview the respondent in person and, to the
9 extent that the respondent is able to understand:

10 A. Explain to the respondent the substance of the petition and the nature, purpose
11 and effect of the proceeding;

12 B. If the appointment of a conservator is requested, inform the respondent of the
13 general powers and duties of a conservator and determine the respondent's views
14 regarding the proposed conservator, the proposed conservator's powers and duties and
15 the scope and duration of the proposed conservatorship;

16 C. Inform the respondent of the respondent's rights, including the right to employ
17 and consult with an attorney at the respondent's own expense and the right to request
18 a court-appointed attorney; and

19 D. Inform the respondent that all costs and expenses of the proceeding, including the
20 respondent's attorney's fees, will be paid from the respondent's estate.

21 **4. Additional specific duties.** In addition to the duties imposed by subsection 3, the
22 visitor shall:

23 A. Interview the petitioner and the proposed conservator, if any; and

24 B. Make any other investigation the court directs.

25 **5. Report.** The visitor shall promptly file a report with the court, which must
26 include:

27 A. A recommendation as to whether an attorney should be appointed to represent the
28 respondent;

29 B. Recommendations regarding the appropriateness of a conservatorship, including
30 whether less restrictive means of intervention are available, the type of
31 conservatorship and, if it is a limited conservatorship, the powers and duties to be
32 granted the limited conservator and the assets over which the conservator should be
33 granted authority;

34 C. A statement of the qualifications of the proposed conservator, together with a
35 statement as to whether the respondent approves or disapproves of the proposed
36 conservator, and a statement of the powers and duties proposed or the scope of the
37 conservatorship;

1 D. A recommendation as to whether a professional evaluation or further evaluation is
2 necessary; and

3 E. Any other matters the court directs.

4 **6. Evaluation of respondent.** The court may appoint a physician, psychologist or
5 other individual qualified to evaluate the alleged impairment to conduct an examination
6 of the respondent.

7 **7. Orders to preserve and apply property; visitor.** While a petition to establish a
8 conservatorship or for another protective order is pending, after preliminary hearing and
9 without notice to others, the court may issue orders to preserve and apply the property of
10 the respondent as may be required for the support of the respondent or individuals who
11 are in fact dependent upon the respondent. The court may appoint a visitor to assist in
12 that task.

13 **§5-407. Confidentiality of records**

14 The written report of a visitor and any professional evaluation pursuant to section
15 5-406 are confidential and must be sealed upon filing. The person who files the visitor's
16 report or a professional evaluation must provide notice of filing and a copy of the report
17 or evaluation to the respondent at the time of filing.

18 **1. Copies available.** Copies of the report or evaluation pursuant to section 5-406 are
19 available to:

20 A. The court; and

21 B. The respondent without limitation as to use.

22 **2. Copies available with limitations; objection by respondent.** Unless the
23 respondent files an objection with the court within 10 days of receiving a copy of the
24 report or evaluation under subsection 1, with a showing of good cause, copies of the
25 report or evaluation are available to:

26 A. The petitioner, the visitor and the petitioner's and respondent's attorneys, for
27 purposes of the proceeding; and

28 B. Any persons for such purposes as the court may order for good cause.

29 **§5-408. Original petition; procedure at hearing**

30 **1. Hearing; attendance; location.** Unless excused by the court for good cause, a
31 proposed conservator shall attend the hearing on the petition under section 5-406. In a
32 contested hearing, the respondent and witnesses shall attend the hearing in person, unless
33 excused by the court for good cause. The respondent may present evidence and subpoena
34 witnesses and documents, examine witnesses, including any court-appointed physician,
35 psychologist or other individual qualified to evaluate the alleged impairment, and the
36 visitor, and otherwise participate in the hearing. The hearing may be held in a location
37 convenient to the respondent or may be held by telephonic or other electronic
38 conferencing and may be closed upon request of the respondent and a showing of good
39 cause. The court may allow any interested person to attend a hearing by telephonic or

1 other electronic conferencing, subject however to the requirement that in contested cases
2 the respondent and witnesses shall attend in person unless excused by the court for good
3 cause.

4 **2. Permission to participate.** Any person may request permission to participate in
5 the hearing on the petition under section 5-406. The court may grant the request, with or
6 without hearing, upon determining that the best interest of the respondent will be served.
7 The court may attach appropriate conditions to the participation.

8 **§5-409. Original petition; orders**

9 **1. Minor; appointment or other protective order.** If a proceeding is brought for
10 the reason that the respondent is a minor, after a hearing on the petition and upon finding
11 that the appointment of a conservator or other protective order is in the best interest of the
12 minor, the court shall make an appointment or other appropriate protective order.

13 **2. Least restrictive order.** If a proceeding is brought for reasons other than that the
14 respondent is a minor, after a hearing on the petition and upon finding that a basis exists
15 for a conservatorship or other protective order, the court shall make the least restrictive
16 order consistent with its findings. The court shall make orders necessitated by the
17 protected person's limitations and demonstrated needs, including appointive and other
18 orders that will encourage the development of maximum self-reliance and independence
19 of the protected person.

20 **3. Order of appointment; right to seek termination or modification.** Within 14
21 days after an appointment, the conservator shall deliver or send a copy of the order of
22 appointment, together with a statement of the right to seek termination or modification, to
23 the protected person, if the protected person has attained 14 years of age and is not
24 missing, detained or unable to return to the United States, and to all other persons given
25 notice of the petition.

26 **4. Appointment or protective order not a determination of incapacity.** The
27 appointment of a conservator or the entry of another protective order is not a
28 determination of incapacity of the protected person.

29 **§5-410. Powers of court**

30 **1. Powers of court; directly or through conservator.** After hearing and upon
31 determining that a basis for a conservatorship or other protective order exists, the court
32 has the following powers, which may be exercised directly or through a conservator:

33 A. With respect to a minor for reasons of age, all the powers over the estate and
34 business affairs of the minor that may be necessary for the best interest of the minor
35 and members of the minor's immediate family; and

36 B. With respect to an adult, or to a minor for reasons other than age, for the benefit
37 of the protected person and individuals who are in fact dependent on the protected
38 person for support, all the powers over the estate and business affairs of the protected
39 person that the protected person could exercise if the protected person were an adult,
40 present and not under conservatorship or other protective order.

1 **2. Limitation of powers.** Subject to section 5-108 which requires endorsement of
2 limitations on the letters of appointment, the court may limit at any time the powers of a
3 conservator otherwise conferred and may remove or modify any limitation.

4 **§5-411. Required court approval**

5 **1. Powers with express authorization.** After notice to interested persons and upon
6 express authorization of the court, a conservator may:

7 A. Make gifts not otherwise authorized in section 5-427, subsection 2;

8 B. Convey, release or disclaim contingent and expectant interests in property,
9 including marital property rights and any right of survivorship incident to joint
10 tenancy or tenancy by the entireties;

11 C. Exercise or release a power of appointment;

12 D. Create a revocable or irrevocable trust of property of the estate, whether or not the
13 trust extends beyond the duration of the conservatorship, or revoke or amend a trust
14 revocable by the protected person;

15 E. Exercise rights to elect options and change beneficiaries under insurance policies
16 and annuities or surrender the policies and annuities for their cash value;

17 F. Exercise any right to an elective share in the estate of the protected person's
18 deceased spouse and to renounce or disclaim any interest by testate or intestate
19 succession or by transfer inter vivos; and

20 G. Make, amend or revoke the protected person's will.

21 **2. Protected person's will.** A conservator, in making, amending or revoking the
22 protected person's will, shall comply with section 2-502 on the execution of wills.

23 **3. Court considerations.** The court, in exercising or in approving a conservator's
24 exercise of the powers listed in subsection 1, shall consider primarily the decision that the
25 protected person would have made, to the extent that the decision can be ascertained.
26 The court shall also consider:

27 A. The financial needs of the protected person and the needs of individuals who are
28 in fact dependent on the protected person for support and the interest of creditors;

29 B. Possible reduction of income, estate, inheritance or other tax liabilities;

30 C. Eligibility for governmental assistance;

31 D. The protected person's previous pattern of giving or level of support;

32 E. The existing estate plan;

33 F. The protected person's life expectancy and the probability that the conservatorship
34 will terminate before the protected person's death; and

35 G. Any other factors the court considers relevant.

36 **4. Durable power of attorney.** Without authorization of the court, a conservator
37 may not revoke or amend a durable power of attorney of which the protected person is the

1 principal. If a durable power of attorney is in effect, absent a court order to the contrary,
2 a decision of the agent takes precedence over that of a conservator.

3 **§5-412. Protective arrangements and single transactions**

4 **1. Protective order.** If a basis is established for a protective order with respect to an
5 individual, the court, without appointing a conservator, may:

6 A. Authorize, direct or ratify any transaction necessary or desirable to achieve any
7 arrangement for security, service or care meeting the foreseeable needs of the
8 protected person, including:

9 (1) Payment, delivery, deposit or retention of funds or property;

10 (2) Sale, mortgage, lease or other transfer of property;

11 (3) Purchase of an annuity;

12 (4) Making a contract for life care, deposit contract or contract for training and
13 education; or

14 (5) Addition to or establishment of a suitable trust; and

15 B. Authorize, direct or ratify any other contract, trust, will or transaction relating to
16 the protected person's property and business affairs, including a settlement of a claim,
17 upon determining that it is in the best interest of the protected person.

18 **2. Court considerations.** In deciding whether to approve a protective arrangement
19 or other transaction under this section, the court shall consider the factors described in
20 section 5-411, subsection 3.

21 **3. Visitor.** The court may appoint a visitor to assist in the accomplishment of any
22 protective arrangement or other transaction authorized under this section. The visitor has
23 the authority conferred by the order and shall serve until discharged by order after report
24 to the court.

25 **§5-413. Who may be conservator; priorities**

26 **1. Priority.** Except as otherwise provided in subsection 4, the court, in appointing a
27 conservator, shall consider persons otherwise qualified in the following order of priority:

28 A. A conservator, guardian of the estate or other like fiduciary appointed or
29 recognized by an appropriate court of any other jurisdiction in which the protected
30 person resides;

31 B. A person nominated as conservator by the respondent, including the respondent's
32 most recent nomination made in a durable power of attorney, if the respondent has
33 attained 14 years of age and at the time of the nomination had sufficient capacity to
34 express a preference;

35 C. An agent appointed by the respondent to manage the respondent's property under
36 a durable power of attorney;

37 D. The spouse of the respondent;

- 1 E. An adult child of the respondent;
2 F. A parent of the respondent; and
3 G. An adult with whom the respondent has resided for more than 6 months before
4 the filing of the petition.

5 **2. Transfer priority.** A person having priority under subsection 1, paragraph A, D,
6 E or F may designate in writing a substitute to serve instead and thereby transfer the
7 priority to the substitute.

8 **3. Equal priority.** With respect to persons having equal priority, the court shall
9 select the one it considers best qualified. The court, acting in the best interest of the
10 protected person, may decline to appoint a person having priority and appoint a person
11 having a lower priority or no priority.

12 **4. Disqualification; exception.** An owner, operator or employee of a long-term care
13 facility or institution at which the respondent is receiving care may not be appointed as
14 conservator unless related to the respondent by blood, marriage or adoption.

15 **§5-414. Petition for order subsequent to appointment**

16 **1. Petition for order.** A protected person or a person interested in the welfare of a
17 protected person may file a petition in the appointing court for an order:

- 18 A. Requiring bond or collateral, or additional bond or collateral, or reducing bond;
19 B. Requiring an accounting for the administration of the protected person's estate;
20 C. Directing distribution;
21 D. Removing the conservator and appointing a temporary or successor conservator;
22 E. Modifying the type of appointment or powers granted to the conservator if the
23 extent of protection or management previously granted is currently excessive or
24 insufficient or the protected person's ability to manage the estate and business affairs
25 has so changed as to warrant the action; or
26 F. Granting other appropriate relief.

27 **2. Petition for instructions.** A conservator may petition the appointing court for
28 instructions concerning fiduciary responsibility.

29 **3. Court instructions and orders.** Upon notice and hearing the petition, the court
30 may give appropriate instructions and make any appropriate order.

31 **§5-415. Bond**

32 **1. Bond; amount; sureties.** The court may require a conservator to furnish a bond
33 conditioned upon faithful discharge of all duties of the conservatorship according to law,
34 with sureties as it may specify. Unless otherwise directed by the court, the bond must be
35 in the amount of the aggregate capital value of the property of the estate in the
36 conservator's control, plus one year's estimated income, and minus the value of assets
37 deposited under arrangements requiring an order of the court for their removal and the

1 value of any real property that the fiduciary, by express limitation, lacks power to sell or
2 convey without court authorization. The court, in place of sureties on a bond, may accept
3 collateral for the performance of the bond, including a pledge of securities or a mortgage
4 of real property.

5 **2. Exempt from furnishing a bond.** The following persons wishing to serve as
6 conservators are exempt from furnishing a bond under this section:

7 A. A spouse;

8 B. A financial institution authorized to do business in this State, as defined in Title
9 9-B, section 131, subsection 17-A, or its employees; and

10 C. A person who is already bonded in the course of the person's business if the bond
11 is sufficient to cover the duties of conservator.

12 **§5-416. Terms and requirements of bond**

13 **1. Rules applicable to bonds.** The following rules apply to any bond required under
14 section 5-415:

15 A. Except as otherwise provided by the terms of the bond, sureties and the
16 conservator are jointly and severally liable;

17 B. By executing the bond of a conservator, a surety submits to the jurisdiction of the
18 court that issued letters to the primary obligor in any proceeding pertaining to the
19 fiduciary duties of the conservator in which the surety is named as a party. Notice of
20 any proceeding must be sent or delivered to the surety at the address shown in the
21 court records at the place where the bond is filed and to any other address then known
22 to the petitioner;

23 C. On petition of a successor conservator or any interested person, a proceeding may
24 be brought against a surety for breach of the obligation of the bond of the
25 conservator; and

26 D. The bond of the conservator may be proceeded against until liability under the
27 bond is exhausted.

28 **2. Proceedings against surety.** A proceeding may not be brought against a surety
29 on any matter as to which an action or proceeding against the primary obligor is barred.

30 **§5-417. Compensation and expenses**

31 If not otherwise compensated for services rendered, a guardian, conservator, attorney
32 for the respondent or attorney whose services resulted in a protective order or in an order
33 beneficial to a protected person's estate or any other person appointed by the court is
34 entitled to reasonable compensation from the estate. Compensation may be paid and
35 expenses reimbursed without court order. If the court determines that the compensation
36 is excessive or the expenses are inappropriate, the excessive or inappropriate amount
37 must be repaid to the estate.

38 The factors set forth in section 3-721, subsection 2 must be considered in determining
39 the reasonableness of compensation under this section.

1 **§5-418. General duties of conservator; plan**

2 **1. Fiduciary; standard of care.** A conservator, in relation to powers conferred by
3 this Part or implicit in the title acquired by virtue of the proceeding, is a fiduciary and
4 shall observe the standards of care applicable to a trustee.

5 **2. Only as necessitated by limitations.** A conservator may exercise authority only
6 as necessitated by the limitations of the protected person and, to the extent possible, shall
7 encourage the protected person to participate in decisions, act in the protected person's
8 own behalf and develop or regain the ability to manage the protected person's estate and
9 business affairs.

10 **3. Plan for estate; develop and restore protected person's ability.** Within 60 days
11 after appointment, a conservator shall file with the appointing court a plan for protecting,
12 managing, expending and distributing the assets of the protected person's estate. The plan
13 must be based on the actual needs of the protected person and take into consideration the
14 best interest of the protected person. The conservator shall include in the plan steps to
15 develop or restore the protected person's ability to manage the protected person's
16 property, an estimate of the duration of the conservatorship and projections of expenses
17 and resources.

18 **4. Estate plan; will; other instrument of protected person.** In investing an estate,
19 selecting assets of the estate for distribution and invoking powers of revocation or
20 withdrawal available for the use and benefit of the protected person and exercisable by
21 the conservator, a conservator shall take into account any estate plan of the protected
22 person known to the conservator and may examine the will and any other donative,
23 nominative or other appointive instrument of the protected person.

24 **§5-419. Inventory; records**

25 **1. Inventory.** Within 60 days after appointment, a conservator shall prepare and file
26 with the appointing court a detailed inventory of the estate subject to the conservatorship,
27 together with an oath or affirmation that the inventory is believed to be complete and
28 accurate as far as information permits. The conservator shall provide a copy of the
29 completed inventory to the protected person if the person can be located, has attained 14
30 years of age and has sufficient mental capacity to understand these matters, and to any
31 parent or guardian with whom the protected person resides.

32 **2. Records of administration.** A conservator shall keep records of the
33 administration of the estate and make them available for examination on reasonable
34 request of an interested person.

35 **3. Penalty for failure to file inventory.** If a conservator fails without good cause to
36 file an inventory, the court may require the conservator or the conservator's surety to pay
37 to the protected person's estate a minimum of \$100 and a maximum of the amount the
38 court determines is just to compensate the estate for any damage resulting from the failure
39 to file the inventory. The payments required by this subsection are in addition to any
40 other award or remedy available at law or in equity for fiduciary misconduct of the
41 conservator.

1 **§5-420. Reports; appointment of visitor; monitoring**

2 **1. Reports; annual, intermediate, final.** A conservator shall report to the court for
3 administration of the protected person's estate annually unless the court otherwise directs,
4 upon resignation or removal, upon termination of the conservatorship and at other times
5 as the court directs. An order, after notice and hearing, allowing an intermediate report of
6 a conservator adjudicates liabilities concerning the matters adequately disclosed in the
7 accounting. An order, after notice and hearing, allowing a final report adjudicates all
8 previously unsettled liabilities relating to the conservatorship.

9 **2. Contents of report.** A report must state or contain:

10 A. A list of the assets of the estate under the conservator's control and a list of the
11 receipts, disbursements and distributions during the period for which the report is
12 made;

13 B. A list of the services provided to the protected person; and

14 C. Any recommended changes in the plan for the conservatorship as well as a
15 recommendation as to the continued need for conservatorship and any recommended
16 changes in the scope of the conservatorship.

17 **3. Visitor.** The court may appoint a visitor to review a report or plan, interview the
18 protected person or conservator and make any other investigation the court directs. In
19 connection with a report, the court may order a conservator to submit the assets of the
20 estate to an appropriate examination to be made in a manner the court directs.

21 **4. Report as directed.** Notwithstanding subsections 1 to 4, a private conservator
22 appointed before January 2, 2008 is not required to submit reports pursuant to subsection
23 1, but is only required to submit such periodic reports as may be directed in the order of
24 appointment.

25 **5. Penalty for failure to file accounting.** If the conservator fails without good
26 cause to file the accounting required by the court, the court may require the conservator
27 or the conservator's surety to pay to the protected person's estate a minimum of \$100 and
28 a maximum of the amount the court determines is just to compensate the estate for any
29 damage resulting from the failure to file the accounting. The payments required by this
30 subsection are in addition to any other award or remedy available at law or in equity for
31 fiduciary misconduct of the conservator.

32 **§5-421. Title by appointment**

33 **1. Appointment vests title to property.** The appointment of a conservator vests in
34 the conservator as trustee title to all property of the protected person, or to the part thereof
35 specified in the order, held at the time of appointment or thereafter acquired. An order
36 vesting in the conservator title to only a part of the property of the protected person
37 creates a conservatorship limited to assets specified in the order.

38 **2. Evidence of vesting title.** Letters of conservatorship are evidence of vesting title
39 to the protected person's assets in the conservator. An order terminating a
40 conservatorship transfers title to assets remaining subject to the conservatorship.

1 including any described in the order, to the formerly protected person or the protected
2 person's successors.

3 **3. Recording of letters and orders.** Subject to the requirements of other statutes
4 governing the filing or recordation of documents of title to land or other property, letters
5 of conservatorship and orders terminating conservatorships may be filed or recorded to
6 give notice of title as between the conservator and the protected person.

7 **4. Appointment not transfer or alienation.** The appointment of a conservator is
8 not a transfer or alienation within the meaning of general provisions of any federal or
9 state statute or regulation, insurance policy, pension plan, contract, will or trust
10 instrument imposing restrictions upon or penalties for transfer or alienation by the
11 protected person of the protected person's rights or interest, but this section does not
12 restrict the ability of persons to make specific provision by contract or dispositive
13 instrument relating to a conservator.

14 **§5-422. Protected person's interest inalienable**

15 **1. Interest not transferable or assignable by protected person.** Except as
16 otherwise provided in subsections 3 and 4, the interest of a protected person in property
17 vested in a conservator is not transferable or assignable by the protected person. An
18 attempted transfer or assignment by the protected person, although ineffective to affect
19 property rights, may give rise to a claim against the protected person for restitution or
20 damages that, subject to presentation and allowance, may be satisfied as provided in
21 section 5-429.

22 **2. Property not subject to process against protected person.** Property vested in a
23 conservator by appointment and the interest of the protected person in that property are
24 not subject to levy, garnishment or similar process for claims against the protected person
25 unless allowed under section 5-429.

26 **3. Tangible personal property transferred by protected person.** A person
27 without knowledge of the conservatorship who in good faith and for security or
28 substantially equivalent value receives delivery from a protected person of tangible
29 personal property of a type normally transferred by delivery of possession is protected as
30 if the protected person or transferee had valid title.

31 **4. Protection of 3rd party.** A 3rd party who deals with the protected person with
32 respect to property vested in a conservator is entitled to any protection provided in other
33 law.

34 **§5-423. Sale, encumbrance or other transaction involving conflict of interest**

35 Any transaction involving the conservatorship estate that is affected by a substantial
36 conflict between the conservator's fiduciary and personal interests is voidable unless the
37 transaction is expressly authorized by the court after notice to interested persons. A
38 transaction affected by a substantial conflict between personal and fiduciary interests
39 includes any sale, encumbrance or other transaction involving the conservatorship estate
40 entered into by the conservator, the spouse, descendant, agent or attorney of a conservator

1 or a corporation or other enterprise in which the conservator has a substantial beneficial
2 interest.

3 **§5-424. Protection of person dealing with conservator**

4 **1. Protection of 3rd persons.** A person who assists or deals with a conservator in
5 good faith and for value in any transaction other than one requiring a court order under
6 section 5-410 or 5-411 is protected as though the conservator properly exercised the
7 power. That a person knowingly deals with a conservator does not alone require the
8 person to inquire into the existence of a power or the propriety of its exercise, but
9 restrictions on powers of conservators that are endorsed on letters as provided in section
10 5-108 are effective as to 3rd persons. A person who pays or delivers assets to a
11 conservator is not responsible for their proper application.

12 **2. Application of protection.** Protection provided by this section extends to any
13 procedural irregularity or jurisdictional defect that occurred in proceedings leading to the
14 issuance of letters and is not a substitute for protection provided to persons assisting or
15 dealing with a conservator by comparable provisions in other law relating to commercial
16 transactions or to simplifying transfers of securities by fiduciaries.

17 **§5-425. Powers of conservator in administration**

18 **1. Powers; powers of trustee.** Except as otherwise qualified or limited by the court
19 in its order of appointment and endorsed on the letters, a conservator has all of the powers
20 granted in this section and any additional powers granted by law to a trustee in this State.

21 **2. Specific powers.** A conservator, acting reasonably and in an effort to accomplish
22 the purpose of the appointment, and without further court authorization or confirmation,
23 may:

24 A. Collect, hold and retain assets of the estate, including assets in which the
25 conservator has a personal interest and real property in another state, until the
26 conservator considers that disposition of an asset should be made;

27 B. Receive additions to the estate;

28 C. Continue or participate in the operation of any business or other enterprise;

29 D. Acquire an undivided interest in an asset of the estate in which the conservator, in
30 any fiduciary capacity, holds an undivided interest;

31 E. Invest assets of the estate as though the conservator were a trustee;

32 F. Deposit money of the estate in a financial institution, including one operated by
33 the conservator;

34 G. Acquire or dispose of an asset of the estate, including real property in another
35 state, for cash or on credit, at public or private sale and manage, develop, improve,
36 exchange, partition, change the character of or abandon an asset of the estate;

37 H. Make ordinary or extraordinary repairs or alterations in buildings or other
38 structures, demolish any improvements and raze existing or erect new party walls or
39 buildings;

- 1 I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of
2 plats and adjust boundaries, adjust differences in valuation or exchange or partition
3 by giving or receiving considerations and dedicate easements to public use without
4 consideration;
- 5 J. Enter for any purpose into a lease as lessor or lessee, with or without option to
6 purchase or renew, for a term within or extending beyond the term of the
7 conservatorship;
- 8 K. Enter into a lease or arrangement for exploration and removal of minerals or other
9 natural resources or enter into a pooling or unitization agreement;
- 10 L. Grant an option involving disposition of an asset of the estate and take an option
11 for the acquisition of any asset;
- 12 M. Vote a security, in person or by general or limited proxy;
- 13 N. Pay calls, assessments and any other sums chargeable or accruing against or on
14 account of securities;
- 15 O. Sell or exercise stock-subscription or conversion rights;
- 16 P. Consent, directly or through a committee or other agent, to the reorganization,
17 consolidation, merger, dissolution or liquidation of a corporation or other business
18 enterprise;
- 19 Q. Hold a security in the name of a nominee or in other form without disclosure of
20 the conservatorship so that title to the security may pass by delivery;
- 21 R. Insure the assets of the estate against damage or loss and the conservator against
22 liability with respect to a 3rd person;
- 23 S. Borrow money, with or without security, to be repaid from the estate or otherwise
24 and advance money for the protection of the estate or the protected person and for all
25 expenses, losses and liability sustained in the administration of the estate or because
26 of the holding or ownership of any assets, for which the conservator has a lien on the
27 estate as against the protected person for advances so made;
- 28 T. Pay or contest any claim, settle a claim by or against the estate or the protected
29 person by compromise, arbitration or otherwise and release, in whole or in part, any
30 claim belonging to the estate to the extent the claim is uncollectible;
- 31 U. Pay taxes, assessments and compensation of the conservator and any guardian and
32 other expenses incurred in the collection, care, administration and protection of the
33 estate;
- 34 V. Allocate items of income or expense to income or principal of the estate, as
35 provided by other law, including creation of reserves out of income for depreciation,
36 obsolescence or amortization or for depletion of minerals or other natural resources;
- 37 W. Pay any sum distributable to a protected person or individual who is in fact
38 dependent on the protected person by paying the sum to the distributee or by paying
39 the sum for the use of the distributee;
- 40 (1) To the guardian of the distributee;

1 (2) To a distributee's custodian under the Maine Uniform Transfers to Minors
2 Act or custodial trustee under the laws of another state; or

3 (3) If there is no guardian, custodian or custodial trustee, to a relative or other
4 person having physical custody of the distributee;

5 X. Prosecute or defend actions, claims or proceedings in any jurisdiction for the
6 protection of assets of the estate and of the conservator in the performance of
7 fiduciary duties;

8 Y. Execute and deliver all instruments that will accomplish or facilitate the exercise
9 of the powers vested in the conservator; and

10 Z. Exercise any powers described in section 1-110 relating to compliance with
11 environmental laws.

12 **§5-426. Delegation**

13 **1. Not entire administration; performance of functions.** A conservator may not
14 delegate to an agent or another conservator the entire administration of the estate, but a
15 conservator may otherwise delegate the performance of functions that a prudent trustee of
16 comparable skills may delegate under similar circumstances.

17 **2. Reasonable care, skill and caution.** The conservator shall exercise reasonable
18 care, skill and caution in:

19 A. Selecting an agent;

20 B. Establishing the scope and terms of a delegation, consistent with the purposes and
21 terms of the conservatorship;

22 C. Periodically reviewing an agent's overall performance and compliance with the
23 terms of the delegation; and

24 D. Redressing an action or decision of an agent that would constitute a breach of
25 trust if performed by the conservator.

26 **3. Liability.** A conservator who complies with subsections 1 and 2 is not liable to
27 the protected person or to the estate for the decisions or actions of the agent to whom a
28 function was delegated.

29 **4. Reasonable care of agent.** In performing a delegated function, an agent shall
30 exercise reasonable care to comply with the terms of the delegation.

31 **5. Agent submits to jurisdiction.** By accepting a delegation from a conservator
32 subject to the law of this State, an agent submits to the jurisdiction of the courts of this
33 State.

34 **§5-427. Principles of distribution by conservator**

35 **1. Expend or distribute income or principal.** Unless otherwise specified in the
36 order of appointment and endorsed on the letters of appointment or contrary to the plan
37 filed pursuant to section 5-418, a conservator may expend or distribute income or
38 principal of the estate of the protected person without further court authorization or

1 confirmation for the support, care, education, health and welfare of the protected person
2 and individuals who are in fact dependent on the protected person, including the payment
3 of child or spousal support, in accordance with the following rules.

4 A. A conservator shall consider recommendations relating to the appropriate
5 standard of support, care, education, health and welfare for the protected person or an
6 individual who is in fact dependent on the protected person made by a guardian, if
7 any, and, if the protected person is a minor, the conservator shall consider
8 recommendations made by a parent.

9 B. A conservator may not be surcharged for money paid to persons furnishing
10 support, care, education or benefit to a protected person or an individual who is in
11 fact dependent on the protected person in accordance with the recommendations of a
12 parent or guardian of the protected person unless the conservator knows that the
13 parent or guardian derives personal financial benefit therefrom, including relief from
14 any personal duty of support, or the recommendations are not in the best interest of
15 the protected person.

16 C. In making distributions under this subsection, the conservator shall consider:

17 (1) The size of the estate, the estimated duration of the conservatorship and the
18 likelihood that the protected person, at some future time, may be fully self-
19 sufficient and able to manage business affairs and the estate;

20 (2) The accustomed standard of living of the protected person and individuals
21 who are in fact dependent on the protected person; and

22 (3) Other money or sources used for the support of the protected person.

23 D. Money expended under this subsection may be paid by the conservator to any
24 person, including the protected person, as reimbursement for expenditures that the
25 conservator might have made, or in advance for services to be rendered to the
26 protected person if it is reasonable to expect the services will be performed and
27 advance payments are customary or reasonably necessary under the circumstances.

28 **2. Gifts not to exceed 20% of annual income.** If the estate is ample to provide for
29 the distributions authorized by subsection 1, a conservator for a protected person other
30 than a minor may make gifts that the protected person might have been expected to make,
31 in amounts that do not exceed in the aggregate for any calendar year 20% of the income
32 of the estate in that year.

33 **§5-428. Death of protected person**

34 **1. Will; inform personal representative or beneficiary; retain estate.** If a
35 protected person dies, the conservator shall deliver to the court for safekeeping any will
36 of the protected person that may have come into the conservator's possession, inform the
37 personal representative or beneficiary named in the will of the delivery and retain the
38 estate for delivery to the personal representative of the decedent or to another person
39 entitled to it.

40 **2. Apply to exercise powers and duties of personal representative; notice.** If a
41 personal representative has not been appointed within 40 days after the death of a

1 protected person and an application or petition for appointment is not before the court, the
2 conservator may apply to exercise the powers and duties of a personal representative in
3 order to administer and distribute the decedent's estate. Upon application for an order
4 conferring upon the conservator the powers of a personal representative, after notice
5 given by the conservator to the following, the court may grant the application upon
6 determining that there is no objection and endorse the letters of conservatorship to note
7 that the formerly protected person is deceased and that the conservator has acquired all of
8 the powers and duties of a personal representative:

9 A. Any person nominated as personal representative by any will of which the
10 applicant is aware;

11 B. All of the decedent's heirs; and

12 C. All devisees of the will, if any.

13 **3. Effect of appointment as personal representative.** The issuance of an order
14 under this section has the effect of an order of appointment of a personal representative as
15 provided in section 3-308 and Article 3, Parts 6 to 10. However, the estate in the name of
16 the conservator, after administration, may be distributed to the decedent's successors
17 without retransfer to the conservator as personal representative.

18 **§5-429. Presentation and allowance of claims**

19 **1. Claims against estate or protected person.** A conservator may pay, or secure by
20 encumbering assets of the estate, claims against the estate or against the protected person
21 arising before or during the conservatorship upon their presentation and allowance in
22 accordance with the priorities stated in subsection 4. A claimant may present a claim by:

23 A. Sending or delivering to the conservator a written statement of the claim,
24 indicating its basis, the name and address of the claimant and the amount claimed; or

25 B. Filing a written statement of the claim, in a form acceptable to the court, with the
26 clerk of court and sending or delivering a copy of the statement to the conservator.

27 **2. Presented claim; allowance; disallowance.** A claim is considered presented on
28 receipt of the written statement of claim by the conservator or the filing of the claim with
29 the court, whichever first occurs. A presented claim is allowed if it is not disallowed by
30 written statement sent or delivered by the conservator to the claimant within 60 days after
31 its presentation. The conservator before payment may change an allowance to a
32 disallowance in whole or in part, but not after allowance under a court order or judgment
33 or an order directing payment of the claim. The presentation of a claim tolls the running
34 of any statute of limitations relating to the claim until 30 days after its disallowance.

35 **3. Unpaid claim.** A claimant whose claim has not been paid may petition the court
36 for determination of the claim at any time before it is barred by a statute of limitations
37 and, upon due proof, procure an order for its allowance, payment or security by
38 encumbering assets of the estate. If a proceeding is pending against a protected person at
39 the time of appointment of a conservator or is initiated against the protected person
40 thereafter, the moving party shall give to the conservator notice of any proceeding that
41 could result in creating a claim against the estate.

1 **4. Distribution; order.** If it appears that the estate is likely to be exhausted before
2 all existing claims are paid, the conservator shall distribute the estate in money or in kind
3 in payment of claims in the following order:

4 A. Costs and expenses of administration;

5 B. Claims of the Federal Government or State Government having priority under
6 other law;

7 C. Claims incurred by the conservator for support, care, education, health and
8 welfare previously provided to the protected person or individuals who are in fact
9 dependent on the protected person;

10 D. Claims arising before the conservatorship; and

11 E. Any claims other than those specified in paragraphs A to D.

12 **5. Preference of claims.** Preference may not be given in the payment of a claim
13 over any other claim of the same class, and a claim due and payable may not be preferred
14 over a claim not due.

15 **6. Security interest in conservatorship estate.** If assets of the conservatorship are
16 adequate to meet all existing claims, the court, acting in the best interest of the protected
17 person, may order the conservator to grant a security interest in the conservatorship estate
18 for payment of all claims at a future date.

19 **§5-430. Personal liability of conservator**

20 **1. Not personally liable.** Except as otherwise agreed, a conservator is not
21 personally liable on a contract properly entered into in a fiduciary capacity in the course
22 of administration of the estate unless the conservator fails to reveal in the contract the
23 representative capacity and identify the estate.

24 **2. Personally liable.** A conservator is personally liable for obligations arising from
25 ownership or control of property of the estate or for other acts or omissions occurring in
26 the course of administration of the estate, including liability for violation of
27 environmental law, only if personally at fault.

28 **3. Claims asserted against conservator.** Claims based on contracts entered into by
29 a conservator in a fiduciary capacity, obligations arising from ownership or control of the
30 estate and claims based on torts committed in the course of administration of the estate
31 may be asserted against the estate by proceeding against the conservator in a fiduciary
32 capacity, whether or not the conservator is personally liable therefor.

33 **4. Determination of liability.** A question of liability between the estate and the
34 conservator personally may be determined in a proceeding for accounting, surcharge or
35 indemnification or in another appropriate proceeding or action.

36 **§5-431. Termination of proceedings**

37 **1. Death; order of court; minor attains majority or is emancipated.** A
38 conservatorship terminates upon the death of the protected person or upon order of the

1 court. Unless created for reasons other than that the protected person is a minor, a
2 conservatorship created for a minor also terminates when the protected person attains
3 majority or is emancipated.

4 **2. Distribution upon death; report and petition for discharge.** Upon the death of
5 a protected person, the conservator shall conclude the administration of the estate by
6 distribution to the person's successors. The conservator shall file a final report and
7 petition for discharge within 30 days after distribution.

8 **3. Petition to terminate; termination; liability.** On petition of a protected person,
9 a conservator or another person interested in a protected person's welfare, the court may
10 terminate the conservatorship if the protected person no longer needs the assistance or
11 protection of a conservator. Termination of the conservatorship does not affect a
12 conservator's liability for previous acts or the obligation to account for funds and assets of
13 the protected person.

14 **4. Procedures for termination.** Except as otherwise ordered by the court for good
15 cause, before terminating a conservatorship the court shall follow the same procedures to
16 safeguard the rights of the protected person that apply to a petition for conservatorship.
17 Upon the establishment of a prima facie case for termination, the court shall order
18 termination unless it is proved that continuation of the conservatorship is in the best
19 interest of the protected person.

20 **5. Title to assets passes upon termination; final report.** Upon termination of a
21 conservatorship and whether or not formally distributed by the conservator, title to assets
22 of the estate passes to the formerly protected person or the person's successors. The order
23 of termination must provide for expenses of administration and direct the conservator to
24 execute appropriate instruments to evidence the transfer of title or confirm a distribution
25 previously made and to file a final report and a petition for discharge upon approval of
26 the final report.

27 **6. Final order of discharge.** The court shall enter a final order of discharge upon
28 the approval of the final report and satisfaction by the conservator of any other conditions
29 placed by the court on the conservator's discharge.

30 **§5-432. Registration of guardianship orders**

31 If a guardian has been appointed in another state and a petition for the appointment of
32 a guardian is not pending in this State, the guardian appointed in the other state, after
33 giving notice to the appointing court of an intent to register, may register the guardianship
34 order in this State by filing as a foreign judgment in a court in any appropriate county of
35 this State certified copies of the order and letters of appointment.

36 **§5-433. Registration of protective orders**

37 If a conservator has been appointed in another state and a petition for a protective
38 order is not pending in this State, the conservator appointed in the other state, after giving
39 notice to the appointing court of an intent to register, may register the protective order in
40 this State by filing as a foreign judgment in a court in any county in which property

1 belonging to the protected person is located certified copies of the order and letters of
2 appointment and of any bond.

3 **§5-434. Effect of registration**

4 **1. Registration.** Upon registration of a guardianship or protective order from
5 another state, under the guardian or conservator may exercise in this State all powers
6 authorized in the order of appointment except as prohibited under the laws of this State,
7 including maintaining actions and proceedings in this State, and, if the guardian or
8 conservator is not a resident of this State, subject to any conditions imposed upon
9 nonresident parties.

10 **2. Enforce registered order.** A court of this State may grant any relief available
11 under this Article and other laws of this State to enforce a registered order.

12 **PART 5**

13 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**
14 **JURISDICTION ACT**

15 **SUBPART 1**

16 **GENERAL PROVISIONS**

17 **§5-501. Short title**

18 This Part may be known and cited as "the Uniform Adult Guardianship and
19 Protective Proceedings Jurisdiction Act."

20 **§5-502. Definitions**

21 As used in this Part, unless the context otherwise indicates, the following terms have
22 the following meanings.

23 **1. Adult.** "Adult" means an individual who has attained 18 years of age.

24 **2. Conservator.** "Conservator" means a person appointed by the court to administer
25 the property of an adult, including a person appointed under Part 4.

26 **3. Guardian.** "Guardian" means a person appointed by the court to make decisions
27 regarding the person of an adult, including a person appointed under Part 3.

28 **4. Guardianship proceeding.** "Guardianship proceeding" means a judicial
29 proceeding in which an order for the appointment of a guardian is sought or has been
30 issued.

31 **5. Incapacitated person.** "Incapacitated person" means an adult for whom a
32 guardian has been appointed or an adult who is an incapacitated person within the
33 meaning of section 5-102, subsection 5.

1 **6. Party.** "Party" means an interested person within the meaning of section 1-201,
2 subsection 26, including the respondent, petitioner, guardian, conservator or any other
3 person allowed by the court to participate in a guardianship or protective proceeding.

4 **7. Person.** "Person," except in the term "incapacitated person" or "protected
5 person," means an individual; corporation; business trust; estate; trust; partnership;
6 limited liability company; association; joint venture; public corporation; government or
7 governmental subdivision, agency or instrumentality; or any other legal or commercial
8 entity.

9 **8. Protected person.** "Protected person" means an adult for whom a protective
10 order has been issued.

11 **9. Protective order.** "Protective order" means an order appointing a conservator or
12 other order related to management or disposition of an adult's property.

13 **10. Protective proceeding.** "Protective proceeding" means a judicial proceeding in
14 which a protective order is sought or has been issued.

15 **11. Respondent.** "Respondent" means an adult for whom a protective order or the
16 appointment of a guardian is sought.

17 **§5-503. International application of Part**

18 A court of this State may treat a foreign country as if it were a state for the purpose of
19 applying this Part.

20 **§5-504. Communication between courts**

21 **1. Communication between courts; participation; record.** A court of this State
22 may communicate with a court in another state concerning a proceeding arising under this
23 Part. The court may allow the parties to participate in the communication. Except as
24 otherwise provided in subsection 2, the court shall make a record of the communication.
25 The record may be limited to the fact that the communication occurred.

26 **2. No record required.** Courts may communicate concerning schedules, calendars,
27 court records and other administrative matters without making a record.

28 **§5-505. Cooperation between courts**

29 **1. Request of court of another state.** In a guardianship proceeding or protective
30 proceeding in this State, a court of this State may request the appropriate court of another
31 state to do any of the following:

32 A. Hold an evidentiary hearing;

33 B. Order a person in that state to produce evidence or give testimony pursuant to
34 procedures of that state;

35 C. Order that an evaluation or assessment be made of the respondent;

36 D. Order any appropriate investigation of a person involved in a proceeding;

1 E. Forward to the court a certified copy of the transcript or other record of a hearing
2 under paragraph A or any other proceeding, any evidence otherwise produced under
3 paragraph B and any evaluation or assessment prepared in compliance with an order
4 under paragraph C or D;

5 F. Issue any order necessary to ensure the appearance in the proceeding of a person
6 whose presence is necessary for the court to make a determination, including the
7 respondent or the incapacitated person or protected person; and

8 G. Issue an order authorizing the release of medical, financial, criminal or other
9 relevant information in that state, including protected health information as defined in
10 45 Code of Federal Regulations, Section 160.103, as amended.

11 **2. Jurisdiction to comply with request.** If a court of another state in which a
12 guardianship proceeding or protective proceeding is pending requests assistance of the
13 kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose
14 of granting the request or making reasonable efforts to comply with the request.

15 **§5-506. Taking testimony in another state**

16 **1. Testimony of witness in another state.** In a guardianship proceeding or
17 protective proceeding, in addition to other procedures that may be available, testimony of
18 a witness who is located in another state may be offered by deposition or other means
19 allowable in this State for testimony taken in another state. The court on its own motion
20 may order that the testimony of a witness be taken in another state and may prescribe the
21 manner in which and the terms upon which the testimony is to be taken.

22 **2. Deposition or testimony by electronic means.** In a guardianship proceeding or
23 protective proceeding, a court in this State may permit a witness located in another state
24 to be deposed or to testify by telephone or audiovisual or other electronic means. A court
25 of this State shall cooperate with the court of the other state in designating an appropriate
26 location for the deposition or testimony.

27 **3. Documentary evidence transmitted, no original writing.** Documentary
28 evidence transmitted from another state to a court of this State by technological means
29 that do not produce an original writing may not be excluded from evidence on an
30 objection based on the best evidence rule.

31 **SUBPART 2**

32 **JURISDICTION**

33 **§5-521. Definitions; significant connection factors**

34 **1. Definitions.** As used in this subpart, unless the context otherwise indicates, the
35 following terms have the following meanings.

36 A. "Emergency" means a circumstance that likely will result in substantial harm to a
37 respondent's health, safety or welfare and for which the appointment of a guardian is
38 necessary.

1 B. "Home state" means the state in which the respondent was physically present,
2 including any period of temporary absence, for at least 6 consecutive months
3 immediately before the filing of a petition for a protective order or the appointment of
4 a guardian or, if none, the state in which the respondent was physically present,
5 including any period of temporary absence, for at least 6 consecutive months ending
6 within the 6 months prior to the filing of the petition.

7 C. "Significant-connection state" means a state, other than the home state, with
8 which a respondent has a significant connection other than mere physical presence
9 and in which substantial evidence concerning the respondent is available.

10 **2. Significant-connection factors.** In determining under section 5-523 and section
11 5-531, subsection 5 whether a respondent has a significant connection with a particular
12 state, the court shall consider:

13 A. The location of the respondent's family and other persons required to be notified
14 of the guardianship proceeding or protective proceeding;

15 B. The length of time the respondent at any time was physically present in the state
16 and the duration of any absence;

17 C. The location of the respondent's property; and

18 D. The extent to which the respondent has ties to the state such as voting registration,
19 state or local tax return filing, vehicle registration, driver's license, social relationship
20 and receipt of services.

21 **§5-522. Exclusive basis**

22 This subpart provides the exclusive jurisdictional basis for a court of this State to
23 appoint a guardian or issue a protective order for an adult.

24 **§5-523. Jurisdiction**

25 A court of this State has jurisdiction to appoint a guardian or issue a protective order
26 for a respondent if:

27 **1. Respondent's home state.** This State is the respondent's home state; or

28 **2. Significant-connection state and other factors.** On the date the petition is filed,
29 this State is a significant-connection state and:

30 A. The respondent does not have a home state or a court of the respondent's home
31 state has declined to exercise jurisdiction because this State is a more appropriate
32 forum;

33 B. The respondent has a home state, a petition for an appointment or order is not
34 pending in a court of that state or another significant-connection state and, before the
35 court makes the appointment or issues the order:

36 (1) A petition for an appointment or order is not filed in the respondent's home
37 state;

1 (2) An objection to the court's jurisdiction is not filed by a person required to be
2 notified of the proceeding; and

3 (3) The court in this State concludes that it is an appropriate forum under the
4 factors set forth in section 5-526;

5 C. This State does not have jurisdiction under either paragraph A or B, the
6 respondent's home state and all significant-connection states have declined to
7 exercise jurisdiction because this State is the more appropriate forum and jurisdiction
8 in this State is consistent with the Constitution of Maine and the United States
9 Constitution; or

10 D. The requirements for special jurisdiction under section 5-524 are met.

11 **§5-524. Special jurisdiction**

12 **1. Special jurisdiction.** If this State is not the respondent's home state and not a
13 significant-connection state, a court of this State has special jurisdiction to do any of the
14 following:

15 A. Appoint a guardian in an emergency for a term not exceeding 6 months for a
16 respondent who is physically present in this State;

17 B. Issue a protective order with respect to real or tangible personal property located
18 in this State; or

19 C. Appoint a guardian or conservator for an incapacitated person or protected person
20 for whom a provisional order to transfer the proceeding from another state has been
21 issued under procedures similar to those in section 5-531.

22 **2. Emergency appointment.** If a petition for the appointment of a guardian in an
23 emergency is brought in this State and this State was not the respondent's home state on
24 the date the petition was filed, the court shall dismiss the proceeding at the request of the
25 court of the home state, if any, whether dismissal is requested before or after the
26 emergency appointment.

27 **§5-525. Exclusive and continuing jurisdiction**

28 Except as otherwise provided in section 5-524, a court that has appointed a guardian
29 or issued a protective order consistent with this Part has exclusive and continuing
30 jurisdiction over the proceeding until it is terminated by the court or the appointment or
31 order expires by its own terms.

32 **§5-526. Appropriate forum**

33 **1. Decline jurisdiction.** A court of this State having jurisdiction under section 5-523
34 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if
35 it determines at any time that a court of another state is a more appropriate forum.

36 **2. Actions by court that declines jurisdiction.** If a court of this State declines to
37 exercise its jurisdiction under subsection 1, it shall either:

38 A. Dismiss or stay the proceeding; or

1 B. Impose any condition the court considers just and proper, including the condition
2 that a petition for the appointment of a guardian or issuance of a protective order be
3 filed promptly in another state.

4 **3. Appropriate forum factors.** In determining whether it is an appropriate forum,
5 the court shall consider all relevant factors, which may include:

6 A. Any expressed preference of the respondent;

7 B. Whether abuse, neglect or exploitation of the respondent has occurred or is likely
8 to occur and which state could best protect the respondent from the abuse, neglect or
9 exploitation;

10 C. The length of time the respondent was physically present in or was a legal
11 resident of this State or another state;

12 D. The distance of the respondent from the court in each state;

13 E. The financial circumstances of the respondent's estate;

14 F. The nature and location of the evidence;

15 G. The ability of the court in each state to decide the issue expeditiously and the
16 procedures necessary to present evidence;

17 H. The familiarity of the court of each state with the facts and issues in the
18 proceeding; and

19 I. If an appointment were made, the court's ability to monitor the conduct of the
20 guardian or conservator.

21 **§5-527. Jurisdiction declined by reason of conduct**

22 **1. Jurisdiction because of unjustifiable conduct.** If at any time a court of this
23 State determines that it acquired jurisdiction to appoint a guardian or issue a protective
24 order because of unjustifiable conduct, the court may:

25 A. Decline to exercise jurisdiction;

26 B. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy
27 to ensure the health, safety and welfare of the respondent or the protection of the
28 respondent's property or prevent a repetition of the unjustifiable conduct, including
29 staying the proceeding until a petition for the appointment of a guardian or issuance
30 of a protective order is filed in a court of another state having jurisdiction; or

31 C. Continue to exercise jurisdiction after considering:

32 (1) The extent to which the respondent and all persons required to be notified of
33 the proceedings have acquiesced in the exercise of the court's jurisdiction;

34 (2) Whether it is a more appropriate forum than the court of any other state under
35 the factors set forth in section 5-526, subsection 3; and

36 (3) Whether the court of any other state would have jurisdiction under factual
37 circumstances in substantial conformity with the jurisdictional standards of
38 section 5-523.

1 2. Assessment of expenses. If a court of this State determines that it acquired
 2 jurisdiction to appoint a guardian or issue a protective order because a party seeking to
 3 invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party
 4 necessary and reasonable expenses, including attorney's fees, investigative fees, court
 5 costs, communication expenses, witness fees and expenses and travel expenses. The
 6 court may not assess fees, costs or expenses of any kind against this State or a
 7 governmental subdivision, agency or instrumentality of this State unless authorized by
 8 law other than this Part.

9 **§5-528. Notice of proceeding**

10 If a petition for the appointment of a guardian or issuance of a protective order is
 11 brought in this State and this State was not the respondent's home state on the date the
 12 petition was filed, in addition to complying with the notice requirements of this State,
 13 notice of the petition must be given to those persons who would be entitled to notice of
 14 the petition if a proceeding were brought in the respondent's home state. The notice must
 15 be given in the same manner as notice is required to be given in this State.

16 **§5-529. Proceedings in more than one state**

17 Except for a petition for the appointment of a guardian in an emergency or issuance
 18 of a protective order limited to property located in this State under section 5-524,
 19 subsection 1, paragraph A or B, if a petition for the appointment of a guardian or issuance
 20 of a protective order is filed in this State and in another state and neither petition has been
 21 dismissed or withdrawn, the following apply.

22 **1. Jurisdiction proper; proceed with case.** If the court in this State has jurisdiction
 23 under section 5-523, it may proceed with the case unless a court in another state acquires
 24 jurisdiction under provisions similar to section 5-523 before the appointment or issuance
 25 of the order.

26 **2. Lack of jurisdiction; communication with court.** If the court in this State does
 27 not have jurisdiction under section 5-523, whether at the time the petition is filed or at
 28 any time before the appointment or issuance of the order, the court shall stay the
 29 proceeding and communicate with the court in the other state. If the court in the other
 30 state has jurisdiction, the court in this State shall dismiss the petition unless the court in
 31 the other state determines that the court in this State is a more appropriate forum.

32 **SUBPART 3**

33 **TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

34 **§5-531. Transfer of guardianship or conservatorship to another state**

35 **1. Petition.** A guardian or conservator appointed in this State may petition the court
 36 to transfer the guardianship or conservatorship to another state.

37 **2. Notice.** Notice of a petition under subsection 1 must be given to the persons that
 38 would be entitled to notice of a petition in this State for the appointment of a guardian or
 39 conservator.

1 **3. Hearing or opportunity for hearing.** On the court's own motion or on request of
2 the guardian or conservator, the incapacitated person or protected person or other person
3 required to be notified of the petition, the court shall hold a hearing or provide an
4 opportunity for a hearing to be held on a petition filed pursuant to subsection 1.

5 **4. Provisional order; guardianship.** The court shall issue an order provisionally
6 granting a petition to transfer a guardianship and shall direct the guardian to petition for
7 guardianship in the other state if the court is satisfied that the guardianship will be
8 accepted by the court in the other state and the court finds that:

9 A. The incapacitated person is physically present in or is reasonably expected to
10 move permanently to the other state;

11 B. An objection to the transfer has not been made or, if an objection has been made,
12 the objector has not established by a preponderance of the evidence that the transfer
13 would be contrary to the best interests of the incapacitated person; and

14 C. Plans for care and services for the incapacitated person in the other state are
15 reasonable and sufficient.

16 **5. Provisional order; conservatorship.** The court shall issue a provisional order
17 granting a petition to transfer a conservatorship and shall direct the conservator to petition
18 for conservatorship in the other state if the court is satisfied that the conservatorship will
19 be accepted by the court of the other state and the court finds that:

20 A. The protected person is physically present in or is reasonably expected to move
21 permanently to the other state or the protected person has a significant connection to
22 the other state considering the factors in section 5-521, subsection 2;

23 B. An objection to the transfer has not been made or, if an objection has been made,
24 the objector has not established by a preponderance of the evidence that the transfer
25 would be contrary to the best interests of the protected person; and

26 C. Adequate arrangements will be made for management or disposition of the
27 protected person's property.

28 **6. Final order.** The court shall issue a final order confirming the transfer and
29 terminating the guardianship or conservatorship upon its receipt of:

30 A. A provisional order accepting the proceeding from the court to which the
31 proceeding is to be transferred that is issued under provisions similar to section
32 5-532; and

33 B. The documents required to terminate a guardianship or conservatorship in this
34 State.

35 **§5-532. Accepting guardianship or conservatorship transferred from another state**

36 **1. Petition.** To confirm transfer of a guardianship or conservatorship transferred to
37 this State under provisions similar to section 5-531, the guardian or conservator must
38 petition the court in this State to accept the guardianship or conservatorship. The petition
39 must include a certified copy of the other state's provisional order of transfer.

1 **2. Notice.** Notice of a petition under subsection 1 must be given to those persons
2 who would be entitled to notice if the petition were a petition for the appointment of a
3 guardian or issuance of a protective order in both the transferring state and this State.
4 The notice must be given in the same manner as notice is required to be given in this
5 State.

6 **3. Hearing.** On the court's own motion or on request of the guardian or conservator,
7 the incapacitated person or protected person or other person required to be notified of the
8 proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1.

9 **4. Provisional order.** The court shall issue an order provisionally granting a petition
10 filed under subsection 1 unless:

11 A. An objection is made and the objector establishes by a preponderance of the
12 evidence that transfer of the proceeding would be contrary to the best interests of the
13 incapacitated person or protected person; or

14 B. The guardian or conservator is ineligible for appointment in this State.

15 **5. Final order.** The court shall issue a final order accepting the proceeding and
16 appointing the guardian or conservator as guardian or conservator in this State upon its
17 receipt from the court from which the proceeding is being transferred of a final order
18 issued under provisions similar to section 5-531 transferring the proceeding to this State.

19 **6. Recognition of order from other state.** In granting a petition under this section,
20 the court shall recognize a guardianship or conservatorship order from the other state,
21 including the determination of the incapacitated person's or protected person's incapacity
22 and the appointment of the guardian or conservator.

23 **7. Denial; other proceedings unaffected.** The denial by a court of this State of a
24 petition to accept a guardianship or conservatorship transferred from another state does
25 not affect the ability of the guardian or conservator to seek appointment as guardian or
26 conservator in this State under Part 3 or 4 if the court has jurisdiction to make an
27 appointment other than by reason of the provisional order of transfer.

28 SUBPART 4

29 MISCELLANEOUS PROVISIONS

30 **§5-541. Uniformity of application and construction**

31 In applying and construing this Part, consideration must be given to the need to
32 promote uniformity of the law with respect to its subject matter among states that enact it.

33 **§5-542. Relation to Electronic Signatures in Global and National Commerce Act**

34 This Part modifies, limits and supersedes the federal Electronic Signatures in Global
35 and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not
36 modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic
37 delivery of any of the notices described in 15 United States Code, Section 7003(b).

1 **§5-543. Transitional provisions**

2 **1. Proceedings on or after July 1, 2013.** This Part applies to guardianship and
3 protective proceedings begun on or after July 1, 2013.

4 **2. Proceedings before July 1, 2013.** Subparts 1, 3 and 4 and sections 5-551 and
5 5-552 apply to proceedings begun before July 1, 2013, regardless of whether a
6 guardianship or protective order has been issued.

7 **PART 6**

8 **PUBLIC GUARDIAN AND CONSERVATOR**

9 **§5-601. Public guardians and conservators; general**

10 **1. Appointment of public guardian or conservator.** In any case in which a
11 guardian or conservator may be appointed by the court under this Article, the court may
12 appoint a public guardian or conservator as provided in this Part for incapacitated persons
13 who are in need of protective services.

14 **2. Department of Health and Human Services.** The Department of Health and
15 Human Services shall act as the public guardian or conservator for incapacitated persons
16 in need of protective services.

17 **3. Article applies to public guardians and conservators.** Except as otherwise
18 provided in this Part, the appointment, termination, rights and duties and other provisions
19 for guardians and conservators in this Article apply to public guardians and conservators.

20 **§5-602. Priority of private guardian or conservator**

21 A public guardian or conservator may not be appointed if the court determines that a
22 suitable private guardian or conservator is available and willing to assume the
23 responsibilities of a guardian or conservator.

24 **§5-603. Exclusiveness of public guardian or conservator**

25 When the court has appointed a public guardian or conservator under this Part, no
26 other guardian or conservator may be appointed for the same ward or protected person
27 during the continuation of the public guardianship or public conservatorship.

28 **§5-604. Nomination of public guardian or conservator**

29 **1. Nomination of public guardian.** Any person who is eligible to petition for
30 appointment of a guardian under section 5-304, subsection 1, including the commissioner
31 of any state department, the head of any state institution, the overseers of the poor and the
32 welfare director or health officer of any municipality, may nominate the public guardian.

33 **2. Nomination of public conservator.** Any person who is eligible to petition for
34 appointment of a conservator under section 5-403, subsection 1, including the
35 commissioner of any state department, the head of any state institution, the overseer of

1 the poor and the welfare director or health officer of any municipality, may nominate the
2 public conservator.

3 **3. Article applies to proceedings for determining appointment.** Except as
4 supplemented by section 5-605, the proceedings for determining the appointment of a
5 public guardian or conservator are governed by the provisions of this Article for the
6 appointment of guardians and conservators generally.

7 **§5-605. Acceptance by public guardian or conservator; plan**

8 Prior to the appointment of a public guardian or conservator, the appropriate agency
9 nominated shall accept or reject the nomination in writing within 30 days of its receipt of
10 notification that it has been nominated and if the nomination is accepted shall file a
11 detailed plan that, as relevant, must include but is not limited to the type of proposed
12 living arrangement for the ward, how the ward's financial needs will be met, how the
13 ward's medical and other remedial needs will be met, how the ward's social needs will be
14 met and a plan for the ward's continuing contact with relatives and friends, as well as a
15 plan for the management of the ward's or protected person's estate in the case of a public
16 conservatorship.

17 **§5-606. Officials authorized to act as public guardian or conservator**

18 **1. Commissioner of Health and Human Services.** When the Department of Health
19 and Human Services is appointed public guardian or conservator of an incapacitated
20 person, the authority of the public guardian or conservator must be exercised by the
21 Commissioner of Health and Human Services and by any persons duly delegated by the
22 commissioner to exercise such authority.

23 **2. Delegation of authority.** Persons duly delegated by the officials authorized to act
24 under subsection 1 may include a staff of competent social workers or competent social
25 workers assigned to the public guardian or conservator by the Department of Health and
26 Human Services. In the event that the delegation is to an individual, such individual must
27 be qualified by reason of education or experience, or both, in administering to the needs
28 of the individual or individuals over whom the individual is to exercise administrative or
29 supervisory authority under the public guardian.

30 **§5-607. Duties and powers of a public guardian or conservator**

31 A public guardian or conservator has the same powers, rights and duties respecting
32 the ward or the protected person as provided for guardians and conservators by the other
33 Parts of this Article except as otherwise specifically provided in this Part, including the
34 following particular provisions.

35 **1. Placement in licensed facility; removal.** A public guardian may place a ward in
36 a facility described in Title 22, section 1811 only if the facility is duly licensed. In the
37 event that the license of any such facility is suspended or revoked, the public guardian
38 having any ward placed in that facility shall remove the ward and effect an appropriate
39 placement of the ward as soon as practicable after knowledge of the suspension or
40 revocation of the license.

1 **2. Examination and evaluation; report to court.** A public guardian or conservator
2 at least annually, and at any time when ordered by the court, shall review the case of
3 every person for whom the public guardian or conservator is acting under this Part. A
4 report of each review must be filed with the court. Each review must contain an
5 examination and evaluation of the plan created under section 5-605 for the ward or
6 protected person and recommendations for a modification of the plan, as appropriate or
7 necessary.

8 **3. Records.** A public guardian or conservator shall keep books of account or other
9 records showing separately the principal amount received, increments thereto and
10 disbursements therefrom for the benefit of the ward or protected person, and such other
11 records as are appropriate for the particular situation, together with the name of the ward
12 or protected person, the source from which the money was received and the purpose for
13 which the money was expended.

14 **4. In absence of kin, autopsy and burial.** A public guardian, in the absence of
15 available next of kin, may authorize the performance of an autopsy upon the body of a
16 deceased ward. The public guardian, in the absence of available next of kin, or in the
17 event that next of kin refuses to assume responsibility for the deceased ward, shall cause
18 any deceased ward to be suitably buried and has authority to expend funds of the ward for
19 that purpose, and in the event the ward is without funds at the time of death, the public
20 guardian shall cause the ward to be suitably buried at public expense, as in the case of the
21 burial of any other deceased indigent person.

22 **§5-608. No change in rights to services**

23 The appointment of a public guardian or conservator in no way enlarges or
24 diminishes the ward's or protected person's right to services made available to all
25 incapacitated persons in the State except for the provision of guardianship or
26 conservatorship services as provided under this Article.

27 **§5-609. No change in powers and duties of agency heads and trustees**

28 Nothing in this Article abrogates any other powers or duties vested by law in the head
29 of any public institution, or vested by the settlor of a trust in the trustee thereof, for the
30 benefit of any ward or protected person for whom the public guardian or conservator is
31 appointed.

32 **§5-610. Bond**

33 The public guardian or conservator is not required to file bonds in individual
34 guardianships or conservatorships, but shall give a surety bond for the joint benefit of the
35 wards or protected persons placed under the responsibility of the public guardian or
36 conservator and the State, with a surety company or companies authorized to do business
37 within the State, in an amount not less than the total value of all assets held by the public
38 guardian or conservator, which amount must be computed at the end of each state fiscal
39 year and approved by the Probate Court for Kennebec County. At no time may the bond
40 of each of the public guardians or conservators be less than \$500 respectively.

1 **§5-611. Compensation**

2 **1. Reasonable expenses; account for costs.** The public guardian or conservator
3 may receive such reasonable amounts for its expenses as guardian or conservator as the
4 Probate Court may allow. The amounts so allowed must be allocated to an account from
5 which may be drawn expenses for filing fees, bond premiums, court costs and other
6 expenses required in the administration of the functions of the public guardian or
7 conservator. No amounts thus received may inure to the benefit of any employee of the
8 public guardian or conservator. Any balance in the account at the end of a fiscal year
9 does not lapse but is carried forward from year to year and used for the purposes provided
10 for in this subsection.

11 **2. Reimbursement of personal expenditures.** Any personal expenditures made on
12 the ward's or protected person's behalf by the public guardian or conservator must, when
13 properly evidenced, be reimbursed out of the ward's or protected person's estate. Claims
14 for services rendered by state agencies must be submitted to the Probate Court for
15 approval before payment.

16 **§5-612. Incapacitated persons; guardian ad litem costs**

17 **1. Guardian ad litem, other special costs.** The costs of the guardian ad litem or
18 any other special costs may be paid by the Department of Health and Human Services,
19 within the limits of the department's budget, when:

- 20 A. An allegedly incapacitated person is in need of protective services and:
21 (1) A guardian ad litem is appointed under the provisions of this Code; or
22 (2) A court incurs special costs in a proceeding concerning the allegedly
23 incapacitated person; and
24 B. Appointment of a public guardian or conservator is sought or the allegedly
25 incapacitated person, within 3 months prior to the filing of the petition:
26 (1) Is or has been a client of the Department of Health and Human Services; or
27 (2) Has received services from a worker from the Department of Health and
28 Human Services.

29 **2. Payment of costs.** The Department of Health and Human Services is not liable
30 for the costs set out in subsection 1 if the department can demonstrate that the allegedly
31 incapacitated person has assets against which the costs may be assessed or that another
32 more appropriate funding source is available and subject to the court's jurisdiction.

33 **§5-613. Limited public guardianships**

34 The provisions of section 5-206 regarding limited guardianships apply to the
35 appointment of public guardians.

36 **PART 7**

37 **UNIFORM HEALTH CARE DECISIONS ACT**

1 **§5-701. Short title**

2 This Part may be known and cited as "the Uniform Health Care Decisions Act."

3 **§5-702. Definitions**

4 As used in this Part, unless the context otherwise indicates, the following terms have
5 the following meanings.

6 **1. Advance health care directive.** "Advance health care directive" means an
7 individual instruction from, or a power of attorney for health care by, an individual with
8 capacity.

9 **2. Agent.** "Agent" means an individual with capacity designated in a power of
10 attorney for health care to make a health care decision for the individual granting the
11 power.

12 **3. Capacity.** "Capacity" means the ability to have a basic understanding of the
13 diagnosed condition and to understand the significant benefits, risks and alternatives to
14 the proposed health care and the consequences of forgoing the proposed treatment, the
15 ability to make and communicate a health care decision and the ability to understand the
16 consequences of designating an agent or surrogate to make health care decisions.

17 **4. Guardian.** "Guardian" means a judicially appointed guardian or conservator
18 having authority to make a health care decision for an individual.

19 **5. Health care.** "Health care" means any care, treatment, service or procedure to
20 maintain, diagnose or otherwise affect an individual's physical or mental condition.

21 **6. Health care decision.** "Health care decision" means a decision made by an
22 individual with capacity or by the individual's agent, guardian or surrogate regarding the
23 individual's health care, including:

24 A. Selection and discharge of health care providers and institutions;

25 B. Approval or disapproval of diagnostic tests, surgical procedures, programs of
26 medication and orders not to resuscitate; and

27 C. Directions to provide, withhold or withdraw artificial nutrition and hydration and
28 all other forms of health care, including life-sustaining treatment.

29 **7. Health care institution.** "Health care institution" means an institution, facility or
30 agency licensed, certified or otherwise authorized or permitted by law to provide health
31 care in the ordinary course of business.

32 **8. Health care provider.** "Health care provider" means an individual licensed,
33 certified or otherwise authorized or permitted by law to provide health care in the
34 ordinary course of business or practice of a profession.

35 **9. Individual instruction.** "Individual instruction" means a direction from an
36 individual with capacity concerning a health care decision for the individual.

1 **10. Life-sustaining treatment.** "Life-sustaining treatment" means any medical
2 procedure or intervention that, when administered to a person without capacity and in
3 either a terminal condition or a persistent vegetative state, will serve only to prolong the
4 process of dying. "Life-sustaining treatment" may include artificially administered
5 nutrition and hydration, which is the provision of nutrients and liquids through the use of
6 tubes, intravenous procedures or similar medical interventions.

7 **11. Persistent vegetative state.** "Persistent vegetative state" means a state that
8 occurs after coma in which the patient totally lacks higher cortical and cognitive function,
9 but maintains vegetative brain stem processes, with no realistic possibility of recovery, as
10 diagnosed in accordance with acceptable medical standards.

11 **12. Person.** "Person" means an individual, corporation, business trust, estate, trust,
12 partnership, association, joint venture, government, governmental subdivision, agency or
13 instrumentality or any other legal or commercial entity.

14 **13. Physician.** "Physician" means an individual authorized to practice medicine
15 under Title 32.

16 **14. Power of attorney for health care.** "Power of attorney for health care" means
17 the designation of an agent with capacity to make health care decisions for the individual
18 granting the power.

19 **15. Primary physician.** "Primary physician" means a physician designated by an
20 individual with capacity or by the individual's agent, guardian or surrogate to have
21 primary responsibility for the individual's health care or, in the absence of a designation
22 or if the designated physician is not reasonably available, a physician who undertakes the
23 responsibility.

24 **16. Reasonably available.** "Reasonably available" means readily able to be
25 contacted without undue effort and willing and able to act in a timely manner considering
26 the urgency of the patient's health care needs.

27 **17. Supervising health care provider.** "Supervising health care provider" means
28 the primary physician or, if there is no primary physician or the primary physician is not
29 reasonably available, the health care provider who has undertaken primary responsibility
30 for a patient's health care.

31 **18. Surrogate.** "Surrogate" means an individual with capacity, other than a patient's
32 agent or guardian, authorized under this Part to make health care decisions as provided in
33 section 5-706.

34 **19. Terminal condition.** "Terminal condition" means an incurable and irreversible
35 condition that, without the administration of life-sustaining treatment, in the opinion of
36 the primary physician, will result in death within a relatively short time.

37 **§5-703. Advance health care directives**

38 **1. Individual instruction.** An adult or emancipated minor with capacity may give
39 an individual instruction. The instruction may be oral or written. The instruction may be

1 limited to take effect only if a specified condition arises. An oral instruction is valid only
2 if made to a health care provider or to an individual who may serve as a surrogate under
3 section 5-706, subsection 2.

4 **2. Power of attorney for health care.** An adult or emancipated minor with capacity
5 may execute a power of attorney for health care, which may authorize the agent to make
6 any health care decision the principal could have made while having capacity. The power
7 must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law
8 validating electronic or digital signatures, signatures of the principal and witnesses must
9 be made in person and not by electronic means. The power remains in effect
10 notwithstanding the principal's later incapacity and may include individual instructions.
11 Unless related to the principal by blood, marriage or adoption, an agent may not be an
12 owner, operator or employee of a residential long-term health care institution at which the
13 principal is receiving care.

14 **3. Effective upon determination that principal lacks capacity.** Unless otherwise
15 specified in a power of attorney for health care, the authority of an agent becomes
16 effective only upon a determination that the principal lacks capacity and ceases to be
17 effective upon a determination that the principal has recovered capacity.

18 **4. Determination.** Unless otherwise specified in a written advance health care
19 directive, a determination that an individual lacks or has recovered capacity or that
20 another condition exists that affects an individual instruction, the authority of an agent or
21 the validity of an advance health care directive must be made by the primary physician,
22 by a court of competent jurisdiction or, for an individual who has included a directive
23 authorizing mental health treatment in an advance health care directive, by a person
24 qualified to conduct an examination pursuant to Title 34-B, section 3863.

25 **5. Decision in accordance with instructions, wishes, best interest.** An agent shall
26 make a health care decision in accordance with the principal's individual instructions, if
27 any, and other wishes to the extent known to the agent. Otherwise, the agent shall make
28 the decision in accordance with the agent's determination of the principal's best interest.
29 In determining the principal's best interest, the agent shall consider the principal's
30 personal values to the extent known to the agent.

31 **6. Effective without judicial approval.** A health care decision made by an agent
32 for a principal is effective without judicial approval.

33 **7. Nomination of guardian.** A written advance health care directive may include
34 the individual's nomination of a guardian of the person.

35 **8. Validity of advance health care directive.** An advance health care directive is
36 valid for purposes of this Part if it complies with this Part, regardless of when or where
37 executed or communicated, or if it is valid under the laws of the state in which it was
38 executed. An advance health care directive that is valid where executed or communicated
39 is valid for the purposes of this Part.

1 **9. Directing mental health treatment.** An advance health care directive is valid for
2 purposes of directing mental health treatment. The terms of the directive must be
3 construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

4 **10. Personal representative for purposes of federal law.** A surrogate or an agent
5 named in an advance health care directive has the power and authority to serve as the
6 personal representative of the patient who executed the health care directive for all
7 purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42
8 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal
9 Regulations, Parts 160-164. The surrogate or agent has all the rights of the patient with
10 respect to the use and disclosure of the individually identifiable health information and
11 other medical records of the patient.

12 **§5-704. Revocation of advance health care directive**

13 **1. Revocation of designation of agent.** An individual with capacity may revoke the
14 designation of an agent only by a signed writing or by personally informing the
15 supervising health care provider.

16 **2. Revocation of advance health care directive.** An individual with capacity may
17 revoke all or part of an advance health care directive, other than the designation of an
18 agent, at any time and in any manner that communicates an intent to revoke.

19 **3. Communication of revocation.** A health care provider, agent, guardian or
20 surrogate who is informed of a revocation by an individual with capacity shall promptly
21 communicate the fact of the revocation to the supervising health care provider and to any
22 health care institution at which the patient is receiving care.

23 **4. Revocation of spouse as agent.** A decree of annulment, divorce, dissolution of
24 marriage or legal separation revokes a previous designation of a spouse as agent unless
25 otherwise specified in the decree or in a power of attorney for health care.

26 **5. Revocation of earlier advance health care directive in conflict.** An advance
27 health care directive that conflicts with an earlier advance health care directive revokes
28 the earlier directive to the extent of the conflict.

29 **§5-705. Optional form**

30 The following form may, but need not, be used to create an advance health care
31 directive. The other sections of this Part govern the effect of this or any other writing
32 used to create an advance health care directive. An individual with capacity may
33 complete or modify all or any part of the following form.

34 **ADVANCE HEALTH CARE DIRECTIVE**

35 **Explanation**

1 You have the right to give instructions about your own health care. You also have
2 the right to name someone else to make health care decisions for you. This form lets you
3 do either or both of these things. It also lets you express your wishes regarding donation
4 of organs and the designation of your primary physician. If you use this form, you may
5 complete or modify all or any part of it. You are free to use a different form.

6 Part 1 of this form is a power of attorney for health care. Part 1 lets you name
7 another individual as agent to make health care decisions for you if you become incapable
8 of making your own decisions or if you want someone else to make those decisions for
9 you now even though you are still capable. You may also name an alternate agent to act
10 for you if your first choice is not willing, able or reasonably available to make decisions
11 for you. Unless related to you, your agent may not be an owner, operator or employee of
12 a residential long-term health care institution at which you are receiving care.

13 Unless the form you sign limits the authority of your agent, your agent may make all
14 health care decisions for you. This form has a place for you to limit the authority of your
15 agent. You need not limit the authority of your agent if you wish to rely on your agent
16 for all health care decisions that may have to be made. If you choose not to limit the
17 authority of your agent, your agent will have the right to:

18 (1) Consent or refuse consent to any care, treatment, service or procedure to
19 maintain, diagnose or otherwise affect a physical or mental condition;

20 (2) Select or discharge health care providers and institutions;

21 (3) Approve or disapprove diagnostic tests, surgical procedures, programs of
22 medication and orders not to resuscitate; and

23 (4) Direct the provision, withholding or withdrawal of artificial nutrition and
24 hydration and all other forms of health care, including life-sustaining treatment.

25 Part 2 of this form lets you give specific instructions about any aspect of your health
26 care. Choices are provided for you to express your wishes regarding the provision,
27 withholding or withdrawal of treatment to keep you alive, including the provision of
28 artificial nutrition and hydration, as well as the provision of pain relief. Space is also
29 provided for you to add to the choices you have made or for you to write out any
30 additional wishes.

31 Part 3 of this form lets you express an intention to donate your bodily organs and
32 tissues following your death.

33 Part 4 of this form lets you designate a physician to have primary responsibility for
34 your health care.

35 After completing this form, sign and date the form at the end. You must have 2 other
36 individuals sign as witnesses. Give a copy of the signed and completed form to your
37 physician, to any other health care providers you may have, to any health care institution
38 at which you are receiving care and to any health care agents you have named. You
39 should talk to the person you have named as agent to make sure that he or she
40 understands your wishes and is willing to take the responsibility.

1 You have the right to revoke this advance health care directive or replace this form at
2 any time.

3 *****

4 PART 1

5 POWER OF ATTORNEY FOR HEALTH CARE

6 (1) DESIGNATION OF AGENT: I designate the following individual as my agent
7 to make health care decisions for me:

8

9 (name of individual you choose as agent)

10

11 (address) (city) (state) (zip code)

12

13 (home phone) (work phone)

14 OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or
15 reasonably available to make a health care decision for me, I designate as my first
16 alternate agent:

17

18 (name of individual you choose as first alternate agent)

19

20 (address) (city) (state) (zip code)

21

22 (home phone) (work phone)

23 OPTIONAL: If I revoke the authority of my agent and first alternate agent or if
24 neither is willing, able or reasonably available to make a health care decision for me, I
25 designate as my second alternate agent:

26

27 (name of individual you choose as second alternate agent)

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(address) (city) (state) (zip code)
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(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....
.....
.....

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

1 (6) END-OF-LIFE DECISIONS: I direct that my health care providers and others
2 involved in my care provide, withhold or withdraw treatment in accordance with the
3 choice I have marked below:

4 [] (a) Choice Not To Prolong Life

5 I do not want my life to be prolonged if (i) I have an incurable and irreversible
6 condition that will result in my death within a relatively short time, (ii) I become
7 unconscious and, to a reasonable degree of medical certainty, I will not regain
8 consciousness or (iii) the likely risks and burdens of treatment would outweigh the
9 expected benefits, OR

10 [] (b) Choice To Prolong Life

11 I want my life to be prolonged as long as possible within the limits of generally
12 accepted health care standards.

13 (7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and
14 hydration must be provided, withheld or withdrawn in accordance with the choice I have
15 made in paragraph (6) unless I mark the following box. If I mark this box [], artificial
16 nutrition and hydration must be provided regardless of my condition and regardless of the
17 choice I have made in paragraph (6).

18 (8) RELIEF FROM PAIN: Except as I state in the following space, I direct that
19 treatment for alleviation of pain or discomfort be provided at all times, even if it hastens
20 my death:

21
22

23 (9) OTHER WISHES: (If you do not agree with any of the optional choices above
24 and wish to write your own, or if you wish to add to the instructions you have given
25 above, you may do so here.) I direct that:

26
27

28 (Add additional sheets if needed)

29 PART 3

30 DONATION OF ORGANS AT DEATH

31 (OPTIONAL)

1 (10) UPON MY DEATH: (mark applicable box)

2 [] (a) I give any needed organs, tissues or parts, OR

3 [] (b) I give the following organs, tissues or parts only:

4

5 (c) My gift is for the following purposes: (strike any of the following you do not
6 want)

7 (i) Transplant

8 (ii) Therapy

9 (iii) Research

10 (iv) Education

11 PART 4

12 PRIMARY PHYSICIAN

13 (OPTIONAL)

14 DESIGNATION OF PRIMARY PHYSICIAN

15 (11) I designate the following physician as my primary physician:

16

17 (name of physician)

18

19 (address) (city) (state) (zip code)

20

21 (phone)

22 OPTIONAL: If the physician I have designated above is not willing, able or
23 reasonably available to act as my primary physician, I designate the following physician
24 as my primary physician:

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(name of physician)
.....
(address) (city) (state) (zip code)
.....
(phone)

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.
(13) SIGNATURES: Sign and date the form here:

.....
(date) (sign your name)
.....

(address) (print your name)
.....
(city) (state)

SIGNATURES OF WITNESSES:

First witness 2nd witness
.....

(print name) (print name)
.....

(address) (address)
.....

(city) (state) (city) (state)
.....

(signature of witness) (signature of witness)
.....

1 (date) _____ (date)

2 **§5-706. Decisions by surrogate**

3 **1. Decisions by surrogate.** A surrogate may make a decision to withhold or
4 withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if
5 the patient has been determined by the primary physician to lack capacity, no agent or
6 guardian has been appointed or the agent or guardian is not reasonably available and the
7 patient is in a terminal condition or a persistent vegetative state as determined by the
8 primary physician.

9 A surrogate also is authorized to make any other health care decision for a patient who is
10 an adult or emancipated minor if the patient has been determined by the primary
11 physician to lack capacity and no agent or guardian exists, except that a surrogate may
12 not deny surgery, procedures or other interventions that are lifesaving and medically
13 necessary.

14 A medically necessary procedure is one providing the most patient-appropriate
15 intervention or procedure that can be safely and effectively given.

16 **2. Priority of who may act as surrogate.** Any member of the following classes of
17 the patient's family who is reasonably available, in descending order of priority, may act
18 as surrogate:

19 A. The spouse, unless legally separated;

20 B. An adult who shares an emotional, physical and financial relationship with the
21 patient similar to that of a spouse;

22 C. An adult child;

23 D. A parent;

24 E. An adult brother or sister;

25 F. An adult grandchild;

26 G. An adult niece or nephew, related by blood or adoption;

27 H. An adult aunt or uncle, related by blood or adoption; or

28 I. Any adult relative of the patient, related by blood or adoption, who is familiar with
29 the patient's personal values and is reasonably available for consultation.

30 **3. Adult who has exhibited special concern.** If none of the individuals eligible to
31 act as surrogate under subsection 2 is reasonably available, an adult who has exhibited
32 special concern for the patient, who is familiar with the patient's personal values and who
33 is reasonably available may act as surrogate.

34 **4. Communication of assumption of authority.** A surrogate shall communicate the
35 surrogate's assumption of authority as promptly as practicable to the members of the
36 patient's family specified in subsection 2 who can be readily contacted.

37 **5. Conflict among potential surrogates; neutral 3rd party or court.** If more than
38 one member of a class assumes authority to act as surrogate and they, or members of

1 different classes who are reasonably available, do not agree on a health care decision and
2 the supervising health care provider is so informed, the supervising health care provider
3 may comply with the decision of the class having priority or a majority of the members of
4 that class who have communicated their views to the provider. The health care provider
5 may refer the members of the class or classes to a neutral 3rd party for assistance in
6 resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided
7 concerning the health care decision and the supervising health care provider is so
8 informed, that class and all individuals having lower priority are disqualified from
9 making the decision.

10 **6. Decision in accordance with instructions, wishes, best interest.** A surrogate
11 shall make a health care decision in accordance with the patient's individual instructions,
12 if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate
13 shall make the decision in accordance with the surrogate's determination of the patient's
14 best interest and in good faith. In determining the patient's best interest, the surrogate
15 shall consider the patient's personal values to the extent known to the surrogate. A
16 consent is not valid if it conflicts with the intention of the patient previously expressed to
17 the surrogate.

18 **7. Effective without judicial approval.** A health care decision made by a surrogate
19 for a patient lacking capacity is effective without judicial approval.

20 **8. Disqualification.** An individual with capacity at any time may disqualify another,
21 including a member of the individual's family, from acting as the individual's surrogate
22 by a signed writing or by personally informing the supervising health care provider of the
23 disqualification.

24 **9. Conflict of interest.** A surrogate may not be an owner, operator or employee of a
25 residential long-term health care institution at which the patient is receiving care unless
26 the surrogate is one of the following:

27 A. The spouse of the patient;

28 B. An adult child of the patient;

29 C. A parent of the patient; or

30 D. A relative of the patient with whom the patient has resided for more than 6
31 months prior to the decision.

32 **10. Written declaration supporting authority.** A supervising health care provider
33 may require an individual claiming the right to act as surrogate for a patient to provide a
34 written declaration under penalty of perjury stating facts and circumstances reasonably
35 sufficient to establish the claimed authority.

36 **§5-707. Decisions by guardian**

37 **1. Compliance with expressed wishes; cannot revoke advance health care**
38 **directive.** Except as authorized by a court of competent jurisdiction, a guardian shall
39 comply with the ward's individual instructions and other wishes, if any, expressed while

1 the ward had capacity and to the extent known to the guardian and may not revoke the
2 ward's advance health care directive unless the appointing court expressly so authorizes.

3 **2. Agent's decision takes precedence.** Absent a court order to the contrary, a health
4 care decision of an agent takes precedence over that of a guardian.

5 **3. Effective without judicial approval; exceptions.** A health care decision made
6 by a guardian for the ward is effective without judicial approval, except under the
7 following circumstances:

8 A. The guardian's decision is contrary to the ward's individual instructions and other
9 wishes, expressed while the ward had capacity; or

10 B. The guardian seeks to withhold or withdraw life-sustaining treatment from the
11 ward, against the advice of the ward's primary physician and in the absence of
12 instructions from the ward, made while the ward had capacity.

13 **§5-708. Obligations of health care provider**

14 **1. Communicate to patient.** Before implementing a health care decision made for a
15 patient, a supervising health care provider, if possible, shall promptly communicate to the
16 patient the decision made and the identity of the person making the decision.

17 **2. Include in record advance health care directive, surrogate, revocation,**
18 **disqualification.** A supervising health care provider who knows of the existence of an
19 advance health care directive, a revocation of an advance health care directive or a
20 designation or disqualification of a surrogate shall promptly record its existence in the
21 patient's health care record and, if it is in writing, shall request a copy and if one is
22 furnished shall arrange for its maintenance in the health care record.

23 **3. Include in record determinations on capacity; communicate.** A primary
24 physician who makes or is informed of a determination that a patient lacks or has
25 recovered capacity or that another condition exists that affects an individual instruction or
26 the authority of an agent, guardian or surrogate or the validity of an advance health care
27 directive shall promptly record the determination in the patient's health care record and
28 communicate the determination to the patient, if possible, and to any person then
29 authorized to make health care decisions for the patient.

30 **4. Compliance.** Except as provided in subsections 5 and 6, a health care provider or
31 health care institution providing care to a patient shall:

32 A. Comply with an individual instruction of the patient and with a reasonable
33 interpretation of that instruction made by a person then authorized to make health
34 care decisions for the patient; and

35 B. Comply with a health care decision for the patient made by a person then
36 authorized to make health care decisions for the patient to the same extent as if the
37 decision had been made by the patient while having capacity.

38 **5. Decline to comply; not in compliance; reasons of conscience; contrary to**
39 **policy.** A health care provider may decline to comply with an individual instruction or

1 health care decision if the instruction or decision appears not to be in compliance with
2 this Part or for reasons of conscience. A health care institution may decline to comply
3 with an individual instruction or health care decision if the instruction or decision appears
4 not to be in compliance with this Part or if the instruction or decision is contrary to a
5 policy of the institution that is expressly based on reasons of conscience and if the policy
6 was timely communicated to the patient or to a person then authorized to make health
7 care decisions for the patient.

8 **6. Decline to comply; ineffective health care; contrary to generally accepted**
9 **standards.** A health care provider or health care institution may decline to comply with
10 an individual instruction or health care decision that requires medically ineffective health
11 care or health care contrary to generally accepted health care standards applicable to the
12 health care provider or institution.

13 **7. Duties if decline to comply.** A health care provider or health care institution that
14 declines to comply with an individual instruction or health care decision shall:

15 A. Promptly so inform the patient, if possible, and any person then authorized to
16 make health care decisions for the patient;

17 B. Provide continuing care to the patient until a transfer can be effected or a court of
18 competent jurisdiction issues a final order regarding the decision; and

19 C. Unless the patient or person then authorized to make health care decisions for the
20 patient refuses assistance, immediately make all reasonable efforts to assist in the
21 transfer of the patient to another health care provider or institution that is willing to
22 comply with the instruction or decision.

23 **8. Not as a condition for providing health care.** A health care provider or health
24 care institution may not require or prohibit the execution or revocation of an advance
25 health care directive as a condition for providing health care.

26 **§5-709. Health care information**

27 Unless otherwise specified in an advance health care directive, a person then
28 authorized to make health care decisions for a patient has the same rights as the patient to
29 request, receive, examine, copy and consent to the disclosure of medical or any other
30 health care information.

31 **§5-710. Immunities**

32 **1. Health care provider or institution.** A health care provider or health care
33 institution acting in good faith and in accordance with generally accepted health care
34 standards applicable to the health care provider or health care institution is not subject to
35 civil or criminal liability or to discipline for unprofessional conduct for:

36 A. Complying with a health care decision of a person apparently having authority
37 and capacity to make a health care decision for a patient, including a decision to
38 withhold or withdraw health care;

1 B. Declining to comply with a health care decision of a person based on a belief that
2 the person then lacked authority or capacity or that the decision otherwise does not
3 comply with this Part;

4 C. Complying with an advance health care directive and assuming that the directive
5 was valid when made and has not been revoked or terminated; or

6 D. Seeking judicial relief from a court of competent jurisdiction.

7 **2. Agent, guardian or surrogate.** An individual acting as agent, guardian or
8 surrogate under this Part is not subject to civil or criminal liability or to discipline for
9 unprofessional conduct for health care decisions made in good faith.

10 **§5-711. Statutory damages**

11 **1. Health care provider or institution; intentional violation.** A health care
12 provider or health care institution that intentionally violates this Part is subject to liability
13 to the aggrieved individual for damages of \$500 or actual damages resulting from the
14 violation, whichever is greater, plus reasonable attorney's fees.

15 **2. Interference with autonomy to make health care decisions.** A person who
16 intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance
17 health care directive or a revocation of an advance health care directive without the
18 individual's consent, or who coerces or fraudulently induces an individual to give, revoke
19 or not to give an advance health care directive, is subject to liability to that individual for
20 damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus
21 reasonable attorney's fees.

22 **§5-712. Capacity**

23 **1. Right to make health care decisions while having capacity.** This Part does not
24 affect the right of an individual to make health care decisions while having capacity to do
25 so.

26 **2. Presumed to have capacity; rebuttal.** An individual is presumed to have
27 capacity to make a health care decision, to give or revoke an advance health care directive
28 and to designate or disqualify a surrogate. This presumption may be rebutted by a
29 determination by the individual's primary physician or by a court of competent
30 jurisdiction.

31 **§5-713. Effect of copy**

32 A copy of a written advance health care directive, revocation of an advance health
33 care directive or designation or disqualification of a surrogate has the same effect as the
34 original.

35 **§5-714. Effect of Part**

36 **1. No presumption concerning intention if no advance health care directive or if**
37 **revoked.** This Part does not create a presumption concerning the intention of an
38 individual who has not made or who has revoked an advance health care directive.

1 **2. Death resulting from withholding or withdrawing health care.** Death resulting
2 from the withholding or withdrawal of health care in accordance with this Part does not
3 for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of
4 insurance or an annuity providing a death benefit, notwithstanding any term of the policy
5 or annuity to the contrary.

6 **3. Prohibited by other statutes.** This Part does not authorize mercy killing, assisted
7 suicide, euthanasia or the provision, withholding or withdrawal of health care to the
8 extent prohibited by other statutes of this State.

9 **4. Health care contrary to generally accepted health care standards.** This Part
10 does not authorize or require a health care provider or health care institution to provide
11 health care contrary to generally accepted health care standards applicable to the health
12 care provider or health care institution.

13 **5. Admission to a mental health institution.** This Part does not authorize an agent
14 or surrogate to consent to the admission of an individual to a mental health institution
15 unless the individual's written advance health care directive expressly so provides.

16 **6. Other statutes governing treatment for mental illness.** This Part does not
17 affect other statutes of this State governing treatment for mental illness of an individual
18 involuntarily committed to a mental health institution.

19 **§5-715. Judicial relief**

20 On petition of a patient, the patient's agent, guardian or surrogate, a health care or
21 social services provider or health care institution involved with the patient's care, a state
22 agency mandated to provide adult protective services pursuant to Title 22, chapter 958-A,
23 or an adult relative or adult friend of the patient, the court may enjoin or direct a health
24 care decision or other equitable relief.

25 **§5-716. Uniformity of application and construction**

26 This Part must be applied and construed to effectuate its general purpose to make
27 uniform the law with respect to the subject matter of this Part among states enacting it.

28 **§5-717. Military advanced medical directives**

29 A military advanced medical directive executed in accordance with 10 United States
30 Code, Section 1044c is valid in this State.

31 **PART 8**

32 **MAINE UNIFORM POWER OF ATTORNEY ACT**

33 **SUBPART 1**

34 **GENERAL PROVISIONS AND DEFINITIONS**

1 **§5-801. Short title**

2 This Part may be known and cited as "the Maine Uniform Power of Attorney Act."

3 **§5-802. Definitions**

4 As used in this Part, unless the context otherwise indicates, the following terms have
5 the following meanings.

6 **1. Agent.** "Agent" means a person granted authority to act for a principal under a
7 power of attorney, whether denominated an agent, attorney-in-fact or otherwise. "Agent"
8 includes an original agent, coagent, successor agent and a person to whom an agent's
9 authority is delegated.

10 **2. Durable.** "Durable," with respect to a power of attorney, means not terminated by
11 the principal's incapacity.

12 **3. Electronic.** "Electronic" means relating to technology having electrical, digital,
13 magnetic, wireless, optical, electromagnetic or similar capabilities.

14 **4. Good faith.** "Good faith" means honesty in fact.

15 **5. Incapacity.** "Incapacity" means inability of an individual to effectively manage
16 property or business affairs because the individual:

17 A. Is impaired by reason of mental illness, mental deficiency, physical illness or
18 disability, chronic use of drugs, chronic intoxication or other cause to the extent that
19 the individual lacks sufficient understanding, capacity or ability to receive and
20 evaluate information or make or communicate decisions regarding the individual's
21 property or business affairs; or

22 B. Is:

23 (1) Missing;

24 (2) Detained, including incarcerated in a penal system; or

25 (3) Outside the United States and unable to return.

26 **6. Person.** "Person" means an individual, corporation, business trust, estate, trust,
27 partnership, limited liability company, association, joint venture, public corporation,
28 government or governmental subdivision, agency or instrumentality or any other legal or
29 commercial entity.

30 **7. Power of attorney.** "Power of attorney" means a writing or other record that
31 grants authority to an agent to act in the place of the principal, whether or not the term
32 "power of attorney" is used.

33 **8. Presently exercisable general power of appointment.** "Presently exercisable
34 general power of appointment," with respect to property or a property interest subject to a
35 power of appointment, means power exercisable at the time in question to vest absolute
36 ownership in the principal individually, the principal's estate, the principal's creditors or

1 the creditors of the principal's estate. "Presently exercisable general power of
2 appointment" includes a power of appointment not exercisable until the occurrence of a
3 specified event, the satisfaction of an ascertainable standard or the passage of a specified
4 period only after the occurrence of the specified event, the satisfaction of the
5 ascertainable standard or the passage of the specified period. "Presently exercisable
6 general power of appointment" does not include a power exercisable in a fiduciary
7 capacity or only by will.

8 **9. Principal.** "Principal" means an individual who grants authority to an agent in a
9 power of attorney.

10 **10. Property.** "Property" means anything that may be the subject of ownership,
11 whether real or personal or legal or equitable, or any interest or right therein.

12 **11. Sign.** "Sign" means, with present intent to authenticate or adopt a record:

13 A. To execute or adopt a tangible symbol; or

14 B. To attach to or logically associate with the record an electronic sound, symbol or
15 process.

16 **12. Stocks and bonds.** "Stocks and bonds" means stocks, bonds, mutual funds and
17 all other types of securities and financial instruments, whether held directly, indirectly or
18 in any other manner. "Stocks and bonds" does not include commodity futures contracts
19 and call or put options on stocks or stock indexes.

20 **§5-803. Applicability**

21 This Part applies to all powers of attorney except:

22 **1. Coupled with an interest in the subject of the power.** A power to the extent it
23 is coupled with an interest in the subject of the power, including a power given to or for
24 the benefit of a creditor in connection with a credit transaction;

25 **2. Health care decisions.** A power to make health care decisions;

26 **3. Proxy or other delegation to exercise rights.** A proxy or other delegation to
27 exercise voting rights or management rights with respect to an entity; and

28 **4. Governmental purpose.** A power created on a form prescribed by a government
29 or governmental subdivision, agency or instrumentality for a governmental purpose.

30 **§5-804. Power of attorney is durable**

31 A power of attorney created under this Part is durable unless it expressly provides
32 that it is terminated by the incapacity of the principal.

33 **§5-805. Execution of power of attorney; notices**

34 **1. Signed by principal; acknowledged.** A power of attorney must be signed by the
35 principal or in the principal's conscious presence by another individual directed by the
36 principal to sign the principal's name on the power of attorney. A signature on a power of

1 attorney is presumed to be genuine if the principal acknowledges the signature before a
2 notary public or other individual authorized by law to take acknowledgments. A power
3 of attorney under this Part is not valid unless it is acknowledged before a notary public or
4 other individual authorized by law to take acknowledgments.

5 **2. Notices for durable power of attorney.** A durable power of attorney under this
6 Part is not valid unless it contains the following notices substantially in the following
7 form:

8 "Notice to the Principal: As the "Principal" you are using this power of attorney to grant
9 power to another person (called the Agent) to make decisions about your property and to
10 use your property on your behalf. Under this power of attorney you give your Agent
11 broad and sweeping powers to sell or otherwise dispose of your property without notice
12 to you. Under this document your Agent will continue to have these powers after you
13 become incapacitated. The powers that you give your Agent are explained more fully in
14 the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5,
15 Part 8. You have the right to revoke this power of attorney at any time as long as you are
16 not incapacitated. If there is anything about this power of attorney that you do not
17 understand, you should ask an attorney to explain it to you.

18 Notice to the Agent: As the "Agent" you are given power under this power of attorney to
19 make decisions about the property belonging to the Principal and to dispose of the
20 Principal's property on the Principal's behalf in accordance with the terms of this power
21 of attorney. This power of attorney is valid only if the Principal is of sound mind when
22 the Principal signs it. When you accept the authority granted under this power of
23 attorney, a special legal relationship is created between you and the Principal. This
24 relationship imposes upon you legal duties that continue until you resign or the power of
25 attorney is terminated or revoked. The duties are more fully explained in the Maine
26 Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 8 and
27 Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are
28 generally not entitled to use the Principal's property for your own benefit or to make gifts
29 to yourself or others unless the power of attorney gives you such authority. If you violate
30 your duty under this power of attorney, you may be liable for damages and may be
31 subject to criminal prosecution. You must stop acting on behalf of the Principal if you
32 learn of any event that terminates this power of attorney or your authority under this
33 power of attorney. Events of termination are more fully explained in the Maine Uniform
34 Power of Attorney Act and include, but are not limited to, revocation of your authority or
35 of the power of attorney by the Principal, the death of the Principal or the commencement
36 of divorce proceedings between you and the Principal. If there is anything about this
37 power of attorney or your duties under it that you do not understand, you should ask an
38 attorney to explain it to you."

39 **§5-806. Validity of power of attorney**

40 **1. Executed on or after January 1, 2019.** A power of attorney executed in this
41 State on or after January 1, 2019 is valid if its execution complies with section 5-805.

1 **2. Executed on or after July 1, 2010 but before January 1, 2019.** A power of
2 attorney executed on or after July 1, 2010 but before January 1, 2019 is valid if its
3 execution complied with former Title 18-A, section 5-906.

4 **3. Executed before July 1, 2010.** A power of attorney executed in this State before
5 July 1, 2010 is valid if its execution complied with the law of this State as it existed at the
6 time of execution.

7 **4. Executed other than in this State.** A power of attorney executed other than in
8 this State is valid in this State if, when the power of attorney was executed, the execution
9 complied with:

10 **A. The law of the jurisdiction that determines the meaning and effect of the power of**
11 **attorney pursuant to section 5-807; or**

12 **B. The requirements for a military power of attorney pursuant to 10 United States**
13 **Code, Section 1044b, as amended.**

14 **5. Copy.** Except as otherwise provided by statute other than this Part, a photocopy
15 or electronically transmitted copy of an original power of attorney has the same effect as
16 the original.

17 **§5-807. Meaning and effect of power of attorney**

18 The meaning and effect of a power of attorney are determined by the law of the
19 jurisdiction indicated in the power of attorney and, in the absence of an indication of
20 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

21 **§5-808. Nomination of conservator or guardian; relation of agent to court-**
22 **appointed fiduciary**

23 **1. Nomination of conservator or guardian.** In a power of attorney, a principal may
24 nominate a conservator of the principal's estate or guardian of the principal's person for
25 consideration by the court if protective proceedings for the principal's estate or person are
26 begun after the principal executes the power of attorney. Except for good cause shown or
27 disqualification, the court shall make its appointment in accordance with the principal's
28 most recent nomination.

29 **2. Relation of agent to court-appointed fiduciary.** If, after a principal executes a
30 power of attorney, a court appoints a conservator of the principal's estate or other
31 fiduciary charged with the management of some or all of the principal's property, the
32 agent is accountable to the fiduciary as well as to the principal. The power of attorney is
33 not terminated and the agent's authority continues unless limited, suspended or terminated
34 by the court.

35 **§5-809. When power of attorney effective**

36 **1. Effective when executed unless otherwise provided.** A power of attorney is
37 effective when executed unless the principal provides in the power of attorney that it
38 becomes effective at a future date or upon the occurrence of a future event or
39 contingency.

1 **2. Future event or contingency; determination.** If a power of attorney becomes
2 effective upon the occurrence of a future event or contingency, the principal, in the power
3 of attorney, may authorize one or more persons to determine in a writing or other record
4 that the event or contingency has occurred.

5 **3. Incapacity; determination.** If a power of attorney becomes effective upon the
6 principal's incapacity and the principal has not authorized a person to determine whether
7 the principal is incapacitated, or the person authorized is unable or unwilling to make the
8 determination, the power of attorney becomes effective upon a determination in a writing
9 or other record by:

10 A. A physician that the principal is incapacitated within the meaning of section
11 5-802, subsection 5, paragraph A; or

12 B. An attorney, a judge or an appropriate governmental official that the principal is
13 incapacitated within the meaning of section 5-802, subsection 5, paragraph B.

14 **4. Personal representative pursuant to federal law.** A person authorized by the
15 principal in the power of attorney to determine that the principal is incapacitated may act
16 as the principal's personal representative pursuant to the federal Health Insurance
17 Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq.,
18 as amended, and applicable regulations, to obtain access to the principal's health care
19 information and communicate with the principal's health care provider.

20 **§5-810. Termination of power of attorney or agent's authority**

21 **1. Termination of power of attorney.** A power of attorney terminates when:

22 A. The principal dies;

23 B. The principal becomes incapacitated, if the power of attorney is not durable;

24 C. The principal revokes the power of attorney;

25 D. The power of attorney provides that it terminates;

26 E. The purpose of the power of attorney is accomplished; or

27 F. The principal revokes the agent's authority or the agent dies, becomes
28 incapacitated or resigns and the power of attorney does not provide for another agent
29 to act under the power of attorney.

30 **2. Termination of agent's authority.** An agent's authority terminates:

31 A. When the principal revokes the authority;

32 B. When the agent dies, becomes incapacitated or resigns;

33 C. When an action is filed for the termination or annulment of the agent's marriage to
34 the principal or their legal separation, unless the power of attorney otherwise
35 provides;

36 D. Upon the sooner to occur of either:

1 (1) The marriage of the principal to a person other than the agent if upon or after
2 execution of the power of attorney the principal and the agent are or became
3 registered domestic partners, the filing with the domestic partner registry, in
4 accordance with Title 22, section 2710, subsection 4, of a notice consenting to the
5 termination of a registered domestic partnership of the principal and the agent; or

6 (2) Upon service, in accordance with Title 22, section 2710, subsection 4, of a
7 notice of intent to terminate the registered domestic partnership of the principal
8 and the agent; or

9 E. When the power of attorney terminates.

10 **3. Agent's authority until termination.** Unless the power of attorney otherwise
11 provides, an agent's authority is exercisable until the authority terminates under
12 subsection 2, notwithstanding a lapse of time since the execution of the power of
13 attorney.

14 **4. Termination of authority not effective without actual knowledge.** Termination
15 of an agent's authority or of a power of attorney is not effective as to the agent or another
16 person that, without actual knowledge of the termination, acts in good faith under the
17 power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds
18 the principal and the principal's successors in interest.

19 **5. Incapacity does not revoke or terminate nondurable power of attorney**
20 **without actual knowledge.** Incapacity of the principal of a power of attorney that is not
21 durable does not revoke or terminate the power of attorney as to an agent or other person
22 that, without actual knowledge of the incapacity, acts in good faith under the power of
23 attorney. An act so performed, unless otherwise invalid or unenforceable, binds the
24 principal and the principal's successors in interest.

25 **6. Previously executed power of attorney not revoked unless provided.** The
26 execution of a power of attorney does not revoke a power of attorney previously executed
27 by the principal unless the subsequent power of attorney provides that the previous power
28 of attorney is revoked or that all other powers of attorney are revoked.

29 **§5-811. Coagents and successor agents**

30 **1. Coagents.** A principal may designate 2 or more persons to act as coagents.
31 Unless the power of attorney otherwise provides, each coagent may exercise its authority
32 independently.

33 **2. Successor agents.** A principal may designate one or more successor agents to act
34 if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to
35 serve. A principal may grant authority to designate one or more successor agents to an
36 agent or other person designated by name, office or function. Unless the power of
37 attorney otherwise provides, a successor agent:

38 A. Has the same authority as that granted to the original agent; and

39 B. May not act until all predecessor agents have resigned, died, become
40 incapacitated, are no longer qualified to serve or have declined to serve.

1 **3. Not liable for actions of other agent.** Except as otherwise provided in the power
2 of attorney and subsection 4, an agent that does not participate in or conceal a breach of
3 fiduciary duty committed by another agent, including a predecessor agent, is not liable for
4 the actions of the other agent.

5 **4. Actual knowledge of breach or imminent breach; damages.** An agent that has
6 actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall
7 notify the principal and, if the principal is incapacitated, take any action reasonably
8 appropriate in the circumstances to safeguard the principal's interests. An agent that fails
9 to notify the principal or take action as required by this subsection is liable for the
10 reasonably foreseeable damages that could have been avoided if the agent had notified
11 the principal or taken such action.

12 **§5-812. Reimbursement and compensation of agent**

13 Unless the power of attorney otherwise provides, an agent is entitled to
14 reimbursement of expenses reasonably incurred on behalf of the principal and to
15 compensation that is reasonable under the circumstances. The factors set forth in section
16 3-721, subsection 2 should be considered as guides in determining the reasonableness of
17 compensation under this section.

18 **§5-813. Agent's acceptance**

19 Except as otherwise provided in the power of attorney, a person accepts appointment
20 as an agent under a power of attorney by exercising authority or performing duties as an
21 agent or by any other assertion or conduct indicating acceptance.

22 **§5-814. Agent's duties**

23 **1. Minimum mandatory duties.** Notwithstanding provisions in the power of
24 attorney, an agent that has accepted appointment shall:

25 A. Act in accordance with the principal's reasonable expectations to the extent
26 actually known by the agent and otherwise act as a fiduciary under the standards of
27 care applicable to trustees as described under Title 18-B, sections 802 to 807 and
28 Title 18-B, chapter 9;

29 B. Act in good faith; and

30 C. Act only within the scope of authority granted in the power of attorney.

31 **2. Default duties.** Except as otherwise provided in the power of attorney, an agent
32 that has accepted appointment shall:

33 A. Act loyally for the principal's benefit;

34 B. Act so as not to create a conflict of interest that impairs the agent's ability to act
35 impartially;

36 C. Act with the care, competence and diligence ordinarily exercised by agents in
37 similar circumstances;

1 D. Keep a record of all receipts, disbursements and transactions made on behalf of
2 the principal;

3 E. Cooperate with a person that has authority to make health care decisions for the
4 principal to carry out such decisions; and

5 F. Attempt to preserve the principal's estate plan, to the extent actually known by the
6 agent, based on all relevant factors, including:

7 (1) The value and nature of the principal's property;

8 (2) The principal's foreseeable obligations and need for maintenance;

9 (3) Minimization of taxes, including income, estate, inheritance, generation-
10 skipping transfer and gift taxes; and

11 (4) Eligibility for a benefit, a program or assistance under a statute, rule or
12 regulation.

13 **3. Failure to preserve estate plan; good faith.** An agent that acts in good faith is
14 not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

15 **4. Agent also benefits.** An agent that acts with care, competence and diligence for
16 the sole interest of the principal is not liable solely because the agent also benefits from
17 the act or has an individual or conflicting interest in relation to the property or affairs of
18 the principal.

19 **5. Special skills or expertise.** If an agent is selected by the principal because of
20 special skills or expertise possessed by the agent or in reliance on the agent's
21 representation that the agent has special skills or expertise, the special skills or expertise
22 must be considered in determining whether the agent has acted with care, competence and
23 diligence under the circumstances.

24 **6. Value of property declines.** Absent a breach of duty to the principal, an agent is
25 not liable if the value of the principal's property declines.

26 **7. Delegation of authority.** An agent that exercises authority to delegate to another
27 person the authority granted by the principal or that engages another person on behalf of
28 the principal is not liable for an act, error of judgment or default of that person if the
29 agent exercises care, competence and diligence in selecting and monitoring the person.

30 **8. Disclosure upon request.** Except as otherwise provided in the power of attorney,
31 an agent is not required to disclose receipts, disbursements or transactions conducted on
32 behalf of the principal unless ordered by a court or requested by the principal, a guardian,
33 a conservator, another fiduciary acting for the principal, a governmental agency having
34 authority to protect the welfare of the principal or, upon the death of the principal, by the
35 personal representative or successor in interest of the principal's estate. If so requested,
36 within 30 days the agent shall comply with the request or provide a writing or other
37 record substantiating why additional time is needed and shall comply with the request
38 within an additional 30 days.

1 **§5-815. Exoneration of agent**

2 A provision in a power of attorney relieving an agent of liability for breach of duty is
3 binding on the principal and the principal's successors in interest except to the extent the
4 provision:

5 **1. Dishonesty, improper motive, reckless indifference.** Relieves the agent of
6 liability for breach of duty committed dishonestly, with an improper motive or with
7 reckless indifference to the purposes of the power of attorney; or

8 **2. Abuse of relationship.** Was inserted as a result of an abuse of a confidential or
9 fiduciary relationship with the principal.

10 **§5-816. Judicial relief**

11 **1. Petition.** The following persons may petition the Probate Court or the Superior
12 Court for the county in which either the principal or the agent resides to construe a power
13 of attorney or review the agent's conduct and grant appropriate relief:

14 A. The principal or the agent;

15 B. A guardian, conservator or other fiduciary acting for the principal;

16 C. A person authorized to make health care decisions for the principal;

17 D. The principal's spouse, registered domestic partner, parent or descendant;

18 E. An individual who would qualify as a presumptive heir of the principal;

19 F. A person named as a beneficiary to receive any property, benefit or contractual
20 right on the principal's death or as a beneficiary of a trust created by or for the
21 principal that has a financial interest in the principal's estate;

22 G. A governmental agency having regulatory authority to protect the welfare of the
23 principal;

24 H. The principal's caregiver or another person that demonstrates sufficient interest in
25 the principal's welfare; and

26 I. A person asked to accept the power of attorney.

27 **2. Motion by principal to dismiss; lack of capacity.** Upon motion by the principal,
28 the court shall dismiss a petition filed under this section, unless the court finds that the
29 principal lacks capacity to revoke the agent's authority or the power of attorney.

30 **§5-817. Agent's liability**

31 An agent that violates this Part is liable to the principal or the principal's successors in
32 interest for the amount required to:

33 **1. Restore property.** Restore the value of the principal's property to what it would
34 have been had the violation not occurred; and

1 **2. Reimburse fees and costs.** Reimburse the principal or the principal's successors
2 in interest for the attorney's fees and costs paid on the agent's behalf.

3 **§5-818. Agent's resignation; notice**

4 Unless the power of attorney provides a different method for an agent's resignation,
5 an agent may resign by giving notice to the principal and, if the principal is incapacitated:

6 **1. Conservator, guardian, coagent, successor agent.** To the conservator or
7 guardian, if one has been appointed for the principal, and a coagent or successor agent; or

8 **2. Caregiver, interested person, governmental agency.** If there is no person
9 described in subsection 1, to:

10 A. The principal's caregiver;

11 B. Another person reasonably believed by the agent to have sufficient interest in the
12 principal's welfare; or

13 C. A governmental agency having authority to protect the welfare of the principal.

14 **§5-819. Acceptance of and reliance upon acknowledged power of attorney**

15 **1. Acknowledged.** For purposes of this section and section 5-820, "acknowledged"
16 means purportedly verified before a notary public or other individual authorized to take
17 acknowledgments.

18 **2. Signature not genuine.** A person that in good faith accepts an acknowledged
19 power of attorney without actual knowledge that the signature is not genuine may rely
20 upon the presumption under section 5-805 that the signature is genuine.

21 **3. Void, invalid or terminated; exceeding or improper authority.** A person that
22 in good faith accepts an acknowledged power of attorney without actual knowledge that
23 the power of attorney is void, invalid or terminated, that the purported agent's authority is
24 void, invalid or terminated or that the agent is exceeding or improperly exercising the
25 agent's authority may rely upon the power of attorney as if the power of attorney were
26 genuine, valid and still in effect, the agent's authority were genuine, valid and still in
27 effect and the agent had not exceeded and had properly exercised the authority.

28 **4. Request and rely upon.** A person that is asked to accept an acknowledged power
29 of attorney may request, and rely upon, without further investigation:

30 A. An agent's certification under penalty of perjury of any factual matter concerning
31 the principal, agent or power of attorney;

32 B. An English translation of the power of attorney if the power of attorney contains,
33 in whole or in part, language other than English; and

34 C. An opinion of counsel as to any matter of law concerning the power of attorney if
35 the person making the request provides in a writing or other record the reason for the
36 request.

1 **5. Expense of translation or opinion of counsel.** An English translation or an
2 opinion of counsel requested under this section must be provided at the principal's
3 expense unless the request is made more than 7 business days after the power of attorney
4 is presented for acceptance.

5 **6. Employee without actual knowledge.** For purposes of this section and section
6 5-820, a person that conducts activities through employees is without actual knowledge
7 of a fact relating to a power of attorney, a principal or an agent if the employee
8 conducting the transaction involving the power of attorney is without actual knowledge of
9 the fact.

10 **§5-820. Liability for refusal to accept acknowledged power of attorney**

11 **1. Request within 7 days; accept within 5 days of receipt.** Except as otherwise
12 provided in subsection 2:

13 A. A person shall either accept an acknowledged power of attorney or request a
14 certification, a translation or an opinion of counsel under section 5-819, subsection 4
15 no later than 7 business days after presentation of the power of attorney for
16 acceptance;

17 B. If a person requests a certification, a translation or an opinion of counsel under
18 section 5-819, subsection 4, the person shall accept the power of attorney no later
19 than 5 business days after receipt of the certification, translation or opinion of
20 counsel; and

21 C. A person may not require an additional or different form of power of attorney for
22 authority granted in the power of attorney presented.

23 **2. Acceptance not required.** A person is not required to accept an acknowledged
24 power of attorney if:

25 A. The person is not otherwise required to engage in a transaction with the principal
26 in the same circumstances;

27 B. Engaging in a transaction with the agent or the principal in the same
28 circumstances would be inconsistent with federal law;

29 C. The person has actual knowledge of the termination of the agent's authority or of
30 the power of attorney before exercise of the power;

31 D. A request for a certification, a translation or an opinion of counsel under section
32 5-819, subsection 4 is refused;

33 E. The person in good faith believes that the power is not valid or that the agent does
34 not have the authority to perform the act requested, whether or not a certification, a
35 translation or an opinion of counsel under section 5-819, subsection 4 has been
36 requested or provided; or

37 F. The person has a good faith belief that the principal may be subject to physical or
38 financial abuse, neglect, exploitation or abandonment by the agent or a person acting
39 for or with the agent and the person makes, or has actual knowledge that another

1 person has made, a report to the Department of Health and Human Services regarding
2 such beliefs.

3 **3. Consequences of refusal.** A person that refuses in violation of this section to
4 accept an acknowledged power of attorney is subject to:

5 A. A court order mandating acceptance of the power of attorney; and

6 B. Liability for reasonable attorney's fees and costs incurred in any action or
7 proceeding that confirms the validity of the power of attorney or mandates
8 acceptance of the power of attorney.

9 **§5-821. Principles of law and equity**

10 Unless displaced by a provision of this Part, the principles of law and equity
11 supplement this Part.

12 **§5-822. Laws applicable to financial institutions and entities**

13 This Part does not supersede any other law applicable to financial institutions or other
14 entities, and the other law controls if inconsistent with this Part.

15 **§5-823. Remedies under other law**

16 The remedies under this Part are not exclusive and do not abrogate any right or
17 remedy under the law of this State other than this Part.

18 **SUBPART 2**

19 **AUTHORITY**

20 **§5-831. Authority that requires specific grant; grant of general authority**

21 **1. Specific grant of authority required.** An agent under a power of attorney may
22 do the following on behalf of the principal or with the principal's property only if the
23 power of attorney expressly grants the agent the authority and exercise of the authority is
24 not otherwise prohibited by another agreement or instrument to which the authority or
25 property is subject:

26 A. Create, amend, revoke or terminate an inter vivos trust;

27 B. Make a gift;

28 C. Create or change rights of survivorship;

29 D. Create or change a beneficiary designation;

30 E. Delegate authority granted under the power of attorney;

31 F. Waive the principal's right to be a beneficiary of a joint and survivor annuity,
32 including a survivor benefit under a retirement plan;

33 G. Exercise fiduciary powers that the principal has authority to delegate; and

34 H. Disclaim property, including a power of appointment.

1 **2. Limitation on creating interest in principal's property.** Notwithstanding a
2 grant of authority to do an act described in subsection 1, unless the power of attorney
3 otherwise provides, an agent that is not an ancestor, spouse, registered domestic partner
4 or descendant of the principal may not exercise authority under a power of attorney to
5 create in the agent, or in an individual to whom the agent owes a legal obligation of
6 support, an interest in the principal's property, whether by gift, right of survivorship,
7 beneficiary designation, disclaimer or otherwise.

8 **3. General authority.** Subject to subsections 1, 2, 4 and 5, if a power of attorney
9 grants to an agent authority to do all acts that a principal could do, the agent has the
10 general authority described in sections 5-834 to 5-846.

11 **4. Authority to make a gift.** Unless the power of attorney otherwise provides, a
12 grant of authority to make a gift is subject to section 5-847.

13 **5. Overlapping subjects.** Subject to subsections 1, 2 and 4, if the subjects over
14 which authority is granted in a power of attorney are similar or overlap, the broadest
15 authority controls.

16 **6. Authority with respect to principal's property.** Authority granted in a power of
17 attorney is exercisable with respect to property that the principal has when the power of
18 attorney is executed or acquires later, whether or not the property is located in this State
19 and whether or not the authority is exercised or the power of attorney is executed in this
20 State.

21 **7. Act pursuant to power of attorney.** An act performed by an agent pursuant to a
22 power of attorney has the same effect and inures to the benefit of and binds the principal
23 and the principal's successors in interest as if the principal had performed the act.

24 **§5-832. Incorporation of authority**

25 **1. Reference to subject.** An agent has authority described in this subpart if the
26 power of attorney refers to general authority with respect to the descriptive term for the
27 subjects stated in sections 5-834 to 5-847 or cites the section in which the authority is
28 described.

29 **2. Reference to section number.** A reference in a power of attorney to general
30 authority with respect to the descriptive term for a subject in sections 5-834 to 5-847 or a
31 citation to a section of sections 5-834 to 5-847 incorporates the entire section as if it were
32 set out in full in the power of attorney.

33 **3. Modify incorporated authority.** A principal may modify authority incorporated
34 by reference.

35 **§5-833. Construction of authority generally**

36 Except as otherwise provided in the power of attorney, by executing a power of
37 attorney that incorporates by reference a subject described in sections 5-834 to 5-847 or
38 that grants to an agent authority to do all acts that a principal could do pursuant to section
39 5-831, subsection 3, a principal authorizes the agent, with respect to that subject, to:

1 **1. Money or another thing of value.** Demand, receive and obtain, by litigation or
2 otherwise, money or another thing of value to which the principal is, may become or
3 claims to be entitled and conserve, invest, disburse or use anything so received or
4 obtained for the purposes intended;

5 **2. Contracts.** Contract in any manner with any person, on terms agreeable to the
6 agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate,
7 reform, restate, release or modify the contract or another contract made by or on behalf of
8 the principal;

9 **3. Instrument or communication.** Execute, acknowledge, seal, deliver, file or
10 record any instrument or communication the agent considers desirable to accomplish a
11 purpose of a transaction, including creating at any time a schedule listing some or all of
12 the principal's property and attaching it to the power of attorney;

13 **4. Claim in favor of or against principal; intervene.** Initiate, participate in, submit
14 to alternative dispute resolution, settle, oppose or propose or accept a compromise with
15 respect to a claim existing in favor of or against the principal or intervene in litigation
16 relating to the claim;

17 **5. Assistance of court or governmental agency.** Seek on the principal's behalf the
18 assistance of a court or other governmental agency to carry out an act authorized in the
19 power of attorney;

20 **6. Advisors.** Engage, compensate and discharge an attorney, accountant,
21 discretionary investment manager, expert witness or other advisor;

22 **7. Record, report or other document.** Prepare, execute and file a record, report or
23 other document to safeguard or promote the principal's interest under a statute, rule or
24 regulation;

25 **8. Communication with government or instrumentality.** Communicate with any
26 representative or employee of a government or governmental subdivision, agency or
27 instrumentality on behalf of the principal;

28 **9. Access communications.** Access communications intended for and communicate
29 on behalf of the principal, whether by mail, electronic transmission, telephone or other
30 means; and

31 **10. Any lawful act.** Do any lawful act with respect to the subject and all property
32 related to the subject.

33 **§5-834. Real property**

34 Unless the power of attorney otherwise provides, language in a power of attorney
35 granting general authority with respect to real property authorizes the agent to:

36 **1. Acquire or reject an interest in real property.** Demand, buy, lease, receive,
37 accept as a gift or as security for an extension of credit or otherwise acquire or reject an
38 interest in real property or a right incident to real property;

1 **2. Grant or dispose of an interest in real property.** Sell; exchange; convey with
2 or without covenants, representations or warranties; quitclaim; release; surrender; retain
3 title for security; encumber; partition; consent to partitioning; subject to an easement or
4 covenant; subdivide; apply for zoning or other governmental permits; plat or consent to
5 plating; develop; grant an option concerning; lease; sublease; contribute to an entity in
6 exchange for an interest in that entity; or otherwise grant or dispose of an interest in real
7 property or a right incident to real property;

8 **3. Interest in real property as security.** Pledge or mortgage an interest in real
9 property or right incident to real property as security to borrow money or pay, renew or
10 extend the time of payment of a debt of the principal or a debt guaranteed by the
11 principal;

12 **4. Claim to real property.** Release, assign, satisfy or enforce by litigation or
13 otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other
14 claim to real property that exists or is asserted;

15 **5. Manage or conserve interest in real property.** Manage or conserve an interest
16 in real property or a right incident to real property owned or claimed to be owned by the
17 principal, including:

18 A. Insuring against liability or casualty or other loss;

19 B. Obtaining or regaining possession of or protecting the interest or right by
20 litigation or otherwise;

21 C. Paying, assessing, compromising or contesting taxes or assessments or applying
22 for and receiving refunds in connection with them; and

23 D. Purchasing supplies, hiring assistance or labor and making repairs or alterations to
24 the real property;

25 **6. Structures or other improvements.** Use, develop, alter, replace, remove, erect
26 or install structures or other improvements upon real property in or incident to which the
27 principal has, or claims to have, an interest or right;

28 **7. Reorganization with respect to real property.** Participate in a reorganization
29 with respect to real property or an entity that owns an interest in or right incident to real
30 property and receive, hold and act with respect to stocks and bonds or other property
31 received in a plan of reorganization, including:

32 A. Selling or otherwise disposing of them;

33 B. Exercising or selling an option, right of conversion or similar right with respect to
34 them; and

35 C. Exercising any voting rights in person or by proxy;

36 **8. Form of title.** Change the form of title of an interest in or right incident to real
37 property; and

38 **9. Public use.** Dedicate to public use, with or without consideration, easements or
39 other real property in which the principal has, or claims to have, an interest.

1 **§5-835. Tangible personal property**

2 Unless the power of attorney otherwise provides, language in a power of attorney
3 granting general authority with respect to tangible personal property authorizes the agent
4 to:

5 **1. Acquire or reject interest in tangible personal property.** Demand, buy,
6 receive, accept as a gift or as security for an extension of credit or otherwise acquire or
7 reject ownership or possession of tangible personal property or an interest in tangible
8 personal property;

9 **2. Grant or otherwise dispose of interest in tangible personal property.** Sell;
10 exchange; convey with or without covenants, representations or warranties; quitclaim;
11 release; surrender; create a security interest in; grant options concerning; lease; sublease;
12 or otherwise dispose of tangible personal property or an interest in tangible personal
13 property;

14 **3. Security interest in tangible personal property.** Grant a security interest in
15 tangible personal property or an interest in tangible personal property as security to
16 borrow money or pay, renew or extend the time of payment of a debt of the principal or a
17 debt guaranteed by the principal;

18 **4. Claim to tangible personal property.** Release, assign, satisfy or enforce by
19 litigation or otherwise a security interest, lien or other claim on behalf of the principal
20 with respect to tangible personal property or an interest in tangible personal property; and

21 **5. Manage or conserve tangible personal property.** Manage or conserve tangible
22 personal property or an interest in tangible personal property on behalf of the principal,
23 including:

24 A. Insuring against liability or casualty or other loss;

25 B. Obtaining or regaining possession of or protecting the property or interest by
26 litigation or otherwise;

27 C. Paying, assessing, compromising or contesting taxes or assessments or applying
28 for and receiving refunds in connection with them;

29 D. Moving the property from place to place;

30 E. Storing the property for hire or on a gratuitous bailment;

31 F. Using and making repairs, alterations or improvements to the property; and

32 G. Changing the form of title of an interest in tangible personal property.

33 **§5-836. Stocks and bonds**

34 Unless the power of attorney otherwise provides, language in a power of attorney
35 granting general authority with respect to stocks and bonds authorizes the agent to:

36 **1. Buy, sell and exchange.** Buy, sell and exchange stocks and bonds;

1 **2. Stocks and bonds account.** Establish, continue, modify or terminate an account
2 with respect to stocks and bonds;

3 **3. Security.** Pledge stocks and bonds as security to borrow, pay, renew or extend the
4 time of payment of a debt of the principal;

5 **4. Evidences of ownership.** Receive certificates and other evidences of ownership
6 with respect to stocks and bonds; and

7 **5. Voting rights.** Exercise voting rights with respect to stocks and bonds in person
8 or by proxy, enter into voting trusts and consent to limitations on the right to vote.

9 **§5-837. Commodities and options**

10 Unless the power of attorney otherwise provides, language in a power of attorney
11 granting general authority with respect to commodities and options authorizes the agent
12 to:

13 **1. Commodity futures, stock options.** Buy, sell, exchange, assign, settle and
14 exercise commodity futures contracts and call or put options on stocks or stock indexes
15 traded on a regulated option exchange; and

16 **2. Option accounts.** Establish, continue, modify and terminate option accounts.

17 **§5-838. Banks and other financial institutions**

18 Unless the power of attorney otherwise provides, language in a power of attorney
19 granting general authority with respect to banks and other financial institutions authorizes
20 the agent to:

21 **1. Banking arrangement by principal.** Continue, modify and terminate an account
22 or other banking arrangement made by or on behalf of the principal;

23 **2. Banking arrangement selected by agent.** Establish, modify and terminate an
24 account or other banking arrangement with a bank, trust company, savings and loan
25 association, credit union, thrift company, brokerage firm or other financial institution
26 selected by the agent;

27 **3. Contract for services.** Contract for services available from a financial institution,
28 including renting a safe deposit box or space in a vault;

29 **4. Withdraw property of principal.** Withdraw, by check, order, electronic funds
30 transfer or otherwise, money or property of the principal deposited with or left in the
31 custody of a financial institution;

32 **5. Receive and act on documents.** Receive statements of account, vouchers, notices
33 and similar documents from a financial institution and act with respect to them;

34 **6. Safe deposit box or vault.** Enter a safe deposit box or vault and withdraw or add
35 to the contents;

1 **7. Borrow and pledge as security.** Borrow money and pledge as security personal
2 property of the principal necessary to borrow money or pay, renew or extend the time of
3 payment of a debt of the principal or a debt guaranteed by the principal;

4 **8. Negotiable and nonnegotiable paper of the principal.** Make, assign, draw,
5 endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other
6 negotiable or nonnegotiable paper of the principal or payable to the principal or the
7 principal's order; transfer money; receive the cash or other proceeds of those transactions;
8 and accept a draft drawn by a person upon the principal and pay it when due;

9 **9. Receive and act on negotiable and nonnegotiable instruments.** Receive for the
10 principal and act upon a sight draft, warehouse receipt or other document of title, whether
11 tangible or electronic, or other negotiable or nonnegotiable instrument;

12 **10. Letters of credit.** Apply for, receive and use letters of credit, credit and debit
13 cards, electronic transaction authorizations and traveler's checks from a financial
14 institution and give an indemnity or other agreement in connection with letters of credit;
15 and

16 **11. Extension of time of payment.** Consent to an extension of the time of payment
17 with respect to commercial paper or a financial transaction with a financial institution.

18 **§5-839. Operation of entity or business**

19 Subject to the terms of a document or an agreement governing an entity or an entity
20 ownership interest, and unless the power of attorney otherwise provides, language in a
21 power of attorney granting general authority with respect to operation of an entity or
22 business authorizes the agent to:

23 **1. Ownership interest.** Operate, buy, sell, enlarge, reduce or terminate an
24 ownership interest;

25 **2. Duty, liability, right, power, privilege or option.** Perform a duty or discharge a
26 liability and exercise in person or by proxy a right, power, privilege or option that the
27 principal has, may have or claims to have;

28 **3. Ownership agreement.** Enforce the terms of an ownership agreement;

29 **4. Ownership interest litigation.** Initiate, participate in, submit to alternative
30 dispute resolution, settle, oppose or propose or accept a compromise with respect to
31 litigation to which the principal is a party because of an ownership interest;

32 **5. Stocks and bonds.** Exercise in person or by proxy, or enforce by litigation or
33 otherwise, a right, power, privilege or option the principal has or claims to have as the
34 holder of stocks and bonds;

35 **6. Stocks and bonds litigation.** Initiate, participate in, submit to alternative dispute
36 resolution, settle, oppose or propose or accept a compromise with respect to litigation to
37 which the principal is a party concerning stocks and bonds;

1 **7. Sole ownership.** With respect to an entity or business owned solely by the
2 principal:

3 A. Continue, modify, renegotiate, extend and terminate a contract made by or on
4 behalf of the principal with respect to the entity or business before execution of the
5 power of attorney;

6 B. Determine:

7 (1) The location of its operation;

8 (2) The nature and extent of its business;

9 (3) The methods of manufacturing, selling, merchandising, financing, accounting
10 and advertising employed in its operation;

11 (4) The amount and types of insurance carried; and

12 (5) The mode of engaging, compensating and dealing with its employees and
13 accountants, attorneys or other advisors;

14 C. Change the name or form of organization under which the entity or business is
15 operated and enter into an ownership agreement with other persons to take over all or
16 part of the operation of the entity or business; and

17 D. Demand and receive money due or claimed by the principal or on the principal's
18 behalf in the operation of the entity or business and control and disburse the money in
19 the operation of the entity or business;

20 **8. Additional capital.** Put additional capital into an entity or business in which the
21 principal has an interest;

22 **9. Reorganization, consolidation, conversion, domestication or merger.** Join in a
23 plan of reorganization, consolidation, conversion, domestication or merger of the entity or
24 business in which the principal has an interest;

25 **10. Sell or liquidate.** Sell or liquidate all or part of an entity or business in which
26 the principal has an interest;

27 **11. Buy-out agreement value.** Establish the value of an entity or business under a
28 buy-out agreement to which the principal is a party;

29 **12. Reports and other papers; payments.** Prepare, sign, file and deliver reports,
30 compilations of information, returns or other papers with respect to an entity or business
31 and make related payments; and

32 **13. Taxes, assessments, fines and penalties.** Pay, compromise or contest taxes,
33 assessments, fines or penalties and perform any other act to protect the principal from
34 illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or
35 business, including attempts to recover, in any manner permitted by law, money paid
36 before or after the execution of the power of attorney.

1 **§5-840. Insurance and annuities**

2 Unless the power of attorney otherwise provides, language in a power of attorney
3 granting general authority with respect to insurance and annuities authorizes the agent to:

4 **1. Insurance or annuity contract procured by principal.** Continue, pay the
5 premium or make a contribution on, modify, exchange, rescind, release or terminate a
6 contract procured by or on behalf of the principal that insures or provides an annuity to
7 either the principal or another person, whether or not the principal is a beneficiary under
8 the contract;

9 **2. New insurance or annuity contract for principal and family.** Procure new,
10 different and additional contracts of insurance and annuities for the principal and the
11 principal's spouse, registered domestic partner, children and other dependents and select
12 the amount, type of insurance or annuity and mode of payment;

13 **3. Insurance or annuity contract procured by agent.** Pay the premium or make a
14 contribution on, modify, exchange, rescind, release or terminate a contract of insurance or
15 annuity procured by the agent;

16 **4. Loan secured by insurance or annuity contract.** Apply for and receive a loan
17 secured by a contract of insurance or annuity;

18 **5. Surrender, cash on insurance or annuity contract.** Surrender and receive the
19 cash surrender value on a contract of insurance or annuity;

20 **6. Election.** Exercise an election;

21 **7. Investment powers.** Exercise investment powers available under a contract of
22 insurance or annuity;

23 **8. Manner of paying premiums.** Change the manner of paying premiums on a
24 contract of insurance or annuity;

25 **9. Change or convert type.** Change or convert the type of insurance or annuity with
26 respect to which the principal has or claims to have authority described in this section;

27 **10. Benefit or assistance to guarantee or pay premiums.** Apply for and procure a
28 benefit or assistance under a statute or regulation to guarantee or pay premiums of a
29 contract of insurance on the life of the principal;

30 **11. Interest of principal in contract.** Collect, sell, assign, hypothecate, borrow
31 against or pledge the interest of the principal in a contract of insurance or annuity;

32 **12. Form and timing of payment of proceeds.** Select the form and timing of the
33 payment of proceeds from a contract of insurance or annuity; and

34 **13. Tax or assessment.** Pay, from proceeds or otherwise, compromise or contest,
35 and apply for refunds in connection with, a tax or assessment levied by a taxing authority

1 with respect to a contract of insurance or annuity or its proceeds or liability accruing by
2 reason of the tax or assessment.

3 **§5-841. Estate, trust and other beneficial interest**

4 **1. Definition.** As used in this section, "estate, trust and other beneficial interest"
5 means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a
6 fund from which the principal is, may become or claims to be entitled to a share or
7 payment.

8 **2. General authority.** Unless the power of attorney otherwise provides, language in
9 a power of attorney granting general authority with respect to an estate, trust and other
10 beneficial interest authorizes the agent to:

11 A. Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment
12 from the fund;

13 B. Demand or obtain money or another thing of value to which the principal is, may
14 become or claims to be entitled by reason of the fund, by litigation or otherwise;

15 C. Exercise for the benefit of the principal a presently exercisable general power of
16 appointment held by the principal;

17 D. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
18 propose or accept a compromise with respect to litigation to ascertain the meaning,
19 validity or effect of a deed, will, declaration of trust or other instrument or transaction
20 affecting the interest of the principal;

21 E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
22 propose or accept a compromise with respect to litigation to remove, substitute or
23 surcharge a fiduciary;

24 F. Conserve, invest, disburse or use anything received for an authorized purpose; and

25 G. Transfer an interest of the principal in real property, stocks and bonds, accounts
26 with financial institutions or securities intermediaries, insurance, annuities and other
27 property to the trustee of a revocable trust created by the principal as settlor.

28 **§5-842. Claims and litigation**

29 Unless the power of attorney otherwise provides, language in a power of attorney
30 granting general authority with respect to claims and litigation authorizes the agent to:

31 **1. Assert and maintain claim.** Assert and maintain before a court or administrative
32 agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or
33 defense, including an action to recover property or other thing of value, or recover
34 damages sustained by the principal; eliminate or modify tax liability; or seek an
35 injunction, specific performance or other relief;

36 **2. Participate in litigation.** Bring an action to determine adverse claims or
37 intervene or otherwise participate in litigation;

1 **3. Effect or satisfy judgement, order or decree.** Seek an attachment, garnishment,
2 order of arrest or other preliminary, provisional or intermediate relief and use an available
3 procedure to effect or satisfy a judgment, order or decree;

4 **4. Offer of judgment or admission of facts; bind principal.** Make or accept a
5 tender, offer of judgment or admission of facts, submit a controversy on an agreed
6 statement of facts, consent to examination and bind the principal in litigation;

7 **5. Alternative dispute resolution, settle and compromise.** Submit to alternative
8 dispute resolution, settle and propose or accept a compromise;

9 **6. Service of process; procedure.** Waive the issuance and service of process upon
10 the principal; accept service of process; appear for the principal; designate persons upon
11 which process directed to the principal may be served; execute and file or deliver
12 stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and
13 give surety and indemnity bonds; contract and pay for the preparation and printing of
14 records and briefs; and receive, execute and file or deliver a consent, waiver, release,
15 confession of judgment, satisfaction of judgment, notice, agreement or other instrument
16 in connection with the prosecution, settlement or defense of a claim or litigation;

17 **7. Bankruptcy or insolvency; reorganization, receivership or appointment of**
18 **receiver or trustee.** Act for the principal with respect to bankruptcy or insolvency,
19 whether voluntary or involuntary, concerning the principal or some other person, or with
20 respect to a reorganization, receivership or application for the appointment of a receiver
21 or trustee that affects an interest of the principal in property or other thing of value;

22 **8. Pay claim or litigation.** Pay a judgment, award or order against the principal or a
23 settlement made in connection with a claim or litigation; and

24 **9. Receive settlement of or proceeds of claim or litigation.** Receive money or
25 other thing of value paid in settlement of or as proceeds of a claim or litigation.

26 **§5-843. Personal and family maintenance**

27 **1. General authority.** Unless the power of attorney otherwise provides, language in
28 a power of attorney granting general authority with respect to personal and family
29 maintenance authorizes the agent to:

30 **A. Perform the acts necessary to maintain the customary standard of living of the**
31 **principal, the principal's spouse or the principal's registered domestic partner and the**
32 **following individuals, whether living when the power of attorney is executed or later**
33 **born:**

34 (1) Individuals legally entitled to be supported by the principal; and

35 (2) Individuals whom the principal has customarily supported or indicated the
36 intent to support;

37 **B. Make periodic payments of child support and other family maintenance required**
38 **by a court or governmental agency or an agreement to which the principal is a party;**

39 **C. Provide living quarters for the individuals described in paragraph A by:**

- 1 (1) Purchase, lease or other contract; or
2 (2) Paying the operating costs, including interest, amortization payments, repairs,
3 improvements and taxes, for premises owned by the principal or occupied by
4 those individuals;

5 D. Provide normal domestic help, usual vacations and travel expenses and funds for
6 shelter, clothing, food, appropriate education, including postsecondary and vocational
7 education, and other current living costs for the individuals described in paragraph A;

8 E. Pay expenses for necessary health care and custodial care on behalf of the
9 individuals described in paragraph A;

10 F. Act as the principal's personal representative pursuant to the federal Health
11 Insurance Portability and Accountability Act of 1996, 42 United States Code, Section
12 1320d et seq., as amended, and applicable regulations, in making decisions related to
13 the past, present or future payment for the provision of health care consented to by
14 the principal or anyone authorized under the law of this State to consent to health care
15 on behalf of the principal;

16 G. Continue any provision made by the principal for automobiles or other means of
17 transportation, including registering, licensing, insuring and replacing them, for the
18 individuals described in paragraph A;

19 H. Maintain credit and debit accounts for the convenience of the individuals
20 described in paragraph A and open new accounts; and

21 I. Continue payments incidental to the membership or affiliation of the principal in a
22 religious institution, club, society, order or other organization or to continue
23 contributions to those organizations.

24 2. Authority with respect to gifts. Authority with respect to personal and family
25 maintenance is neither dependent upon, nor limited by, authority that an agent may or
26 may not have with respect to gifts under this Part.

27 **§5-844. Benefits from governmental programs or civil or military service**

28 1. Definition. As used in this section, "benefits from governmental programs or
29 civil or military service" means any benefit, program or assistance provided under a
30 statute, rule or regulation including Social Security, Medicare and Medicaid.

31 2. General authority. Unless the power of attorney otherwise provides, language in
32 a power of attorney granting general authority with respect to benefits from governmental
33 programs or civil or military service authorizes the agent to:

34 A. Execute vouchers in the name of the principal for allowances and reimbursements
35 payable by the United States or a foreign government or by a state or subdivision of a
36 state to the principal, including allowances and reimbursements for transportation of
37 the individuals described in section 5-843, subsection 1, paragraph A and for
38 shipment of their household effects;

39 B. Take possession and order the removal and shipment of property of the principal
40 from a post, warehouse, depot, dock or other place of storage or safekeeping, either

1 governmental or private, and execute and deliver a release, voucher, receipt, bill of
2 lading, shipping ticket, certificate or other instrument for that purpose;

3 C. Enroll in, apply for, select, reject, change, amend or discontinue, on the
4 principal's behalf, a benefit or program;

5 D. Prepare, file and maintain a claim of the principal for a benefit or assistance,
6 financial or otherwise, to which the principal may be entitled under a statute, rule or
7 regulation;

8 E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
9 propose or accept a compromise with respect to litigation concerning any benefit or
10 assistance the principal may be entitled to receive under a statute, rule or regulation;
11 and

12 F. Receive the financial proceeds of a claim described in paragraph D and conserve,
13 invest, disburse or use for a lawful purpose anything so received.

14 **§5-845. Retirement plans**

15 **1. Definition.** As used in this section, "retirement plan" means a plan or account
16 created by an employer, the principal or another individual to provide retirement benefits
17 or deferred compensation of which the principal is a participant, beneficiary or owner,
18 including a plan or account under the following sections of the federal Internal Revenue
19 Code:

20 A. An individual retirement account under 26 United States Code, Section 408, as
21 amended;

22 B. A Roth individual retirement account under 26 United States Code, Section 408A,
23 as amended;

24 C. A deemed individual retirement account under 26 United States Code, Section
25 408(q), as amended;

26 D. An annuity or mutual fund custodial account under 26 United States Code,
27 Section 403(b), as amended;

28 E. A pension, profit-sharing, stock bonus or other retirement plan qualified under 26
29 United States Code, Section 401(a), as amended;

30 F. A plan under 26 United States Code, Section 457(b), as amended; and

31 G. A nonqualified deferred compensation plan under 26 United States Code, Section
32 409A, as amended.

33 **2. General authority.** Unless the power of attorney otherwise provides, language in
34 a power of attorney granting general authority with respect to retirement plans authorizes
35 the agent to:

36 A. Select the form and timing of payments under a retirement plan and withdraw
37 benefits from a plan;

38 B. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
39 retirement plan to another;

- 1 C. Establish a retirement plan in the principal's name;
- 2 D. Make contributions to a retirement plan;
- 3 E. Exercise investment powers available under a retirement plan; and
- 4 F. Borrow from, sell assets to or purchase assets from a retirement plan.

5 **§5-846. Taxes**

6 Unless the power of attorney otherwise provides, language in a power of attorney
7 granting general authority with respect to taxes authorizes the agent to:

8 **1. Prepare, sign and file returns and other documents.** Prepare, sign and file
9 federal, state, local and foreign income, gift, payroll, property, Federal Insurance
10 Contributions Act and other tax returns, claims for refunds, requests for extension of
11 time, petitions regarding tax matters and any other tax-related documents, including
12 receipts, offers, waivers, consents, including consents and agreements under 26 United
13 States Code, Section 2032A, as amended, closing agreements and any power of attorney
14 required by the federal Internal Revenue Service or other taxing authority with respect to
15 a tax year upon which the statute of limitations has not run and the following 25 tax
16 years;

17 **2. Taxes due, refunds, bonds, confidential information and deficiencies.** Pay
18 taxes due, collect refunds, post bonds, receive confidential information and contest
19 deficiencies determined by the federal Internal Revenue Service or other taxing authority;

20 **3. Election under tax law.** Exercise any election available to the principal under
21 federal, state, local or foreign tax law; and

22 **4. Act for principal in all tax matters.** Act for the principal in all tax matters for all
23 periods before the federal Internal Revenue Service or other taxing authority.

24 **§5-847. Gifts**

25 **1. Gift.** For the purposes of this section, a gift for the benefit of a person includes a
26 gift to a trust, an account under the Maine Uniform Transfers to Minors Act and a tuition
27 savings account or prepaid tuition plan as defined under 26 United States Code, Section
28 529, as amended.

29 **2. Consistent with principal's objectives.** An agent may make a gift of the
30 principal's property only as the agent determines is consistent with the principal's
31 objectives if known by the agent and, if unknown, as the agent determines is consistent
32 with the principal's objectives based on all relevant factors, including:

33 A. The value and nature of the principal's property;

34 B. The principal's foreseeable obligations and need for maintenance;

35 C. Minimization of taxes, including income, estate, inheritance, generation-skipping
36 transfer and gift taxes;

1 D. Eligibility for a benefit, a program or assistance under a statute, rule or regulation;
2 and

3 E. The principal's personal history of making or joining in making gifts.

4 **SUBPART 3**

5 **STATUTORY FORMS**

6 **§5-851. Agent's certification**

7 The following optional form may be used by an agent to certify facts concerning a
8 power of attorney.

9 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF
10 ATTORNEY AND AGENT'S AUTHORITY

11 State of

12 County of

13 I, (Name of Agent), certify under penalty of
14 perjury that (Name of Principal) granted me
15 authority as an agent or successor agent in a power of attorney dated
16

17 I further certify that to my knowledge:

18 (1) The Principal is alive and has not revoked the Power of Attorney or my authority
19 to act under the Power of Attorney and the Power of Attorney and my authority to act
20 under the Power of Attorney have not terminated;

21 (2) If the Power of Attorney was drafted to become effective upon the happening of
22 an event or contingency, the event or contingency has occurred;

23 (3) If I was named as a successor agent, the prior agent is no longer able or willing to
24 serve; and

25 (4)

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30 (Insert other relevant statements)

31 **SIGNATURE AND ACKNOWLEDGMENT**

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.....
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Agent's Signature

Date

.....

Agent's Name Printed

.....

Agent's Address

.....

Agent's Telephone Number

This document was acknowledged before me on (Date)

by

(Name of Agent)

..... (Seal, if any)

Signature of Notary/Attorney

My commission expires:

This document prepared by:

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SUBPART 4

MISCELLANEOUS PROVISIONS

§5-861. Uniformity of application and construction

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§5-862. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

§5-863. Effect on existing powers of attorney

Except as otherwise provided in this Part:

1. Application to powers of attorney. This Part applies to a power of attorney created before, on or after January 1, 2019;

1 **2. Application to judicial proceedings commenced on or after January 1, 2019.**
2 This Part applies to a judicial proceeding concerning a power of attorney commenced on
3 or after January 1, 2019; and

4 **3. Application to judicial proceedings commenced before January 1, 2019.** This
5 Part applies to a judicial proceeding concerning a power of attorney commenced before
6 January 1, 2019, unless the court finds that application of a provision of this Part would
7 substantially interfere with the effective conduct of the judicial proceeding or prejudice
8 the rights of a party, in which case that provision does not apply and the superseded law
9 applies.

10 An act done before January 1, 2019 is not affected by this Part.

11 **Maine Uniform Probate Code Comment (§5-102)**

12 This section modifies the Uniform Probate Code definition of "incapacitated person"
13 by inserting "informed" before "decisions." Lack of capacity to make an "informed"
14 decision is a statutory condition for involuntary treatment in a psychiatric hospital.
15 "Informed" consent to treatment is a term used in other health care contexts. This change
16 to the uniform language promotes consistency across Maine statutes related to capacity to
17 decide or consent.

18 Also in that definition, this section inserts "reasonably available" before
19 "technological assistance." If technological assistance exists to address functional
20 deficits, a guardianship or conservatorship is, arguably, not "least restrictive." According
21 to the Uniform Probate Code language, if the respondent cannot afford technological
22 assistance and if the assistance is not otherwise available, the respondent is precluded
23 from getting either technological assistance or the protection that guardianship or
24 conservatorship would provide.

25 "Best interest of the minor" is not defined in the Uniform Probate Code. This section
26 retains a definition of "best interest of the minor" using currently existing criteria in Title
27 19-A to promote uniformity across Maine statutes.

28 The Uniform Probate Code does not include definitions of "de facto guardian" and
29 "demonstrated lack of consistent participation," which were both added to former Title
30 18-A by Public Law 2005, chapter 371, which provided rights to adults who were caring
31 for minors, but not under court appointment. This section does not retain those
32 definitions. The Uniform Probate Code treatment of individuals "other than a parent or
33 guardian having care or custody of a minor" provides those individuals notice of
34 guardianship proceedings, opportunity to object and potential guardianship appointment.

35 **Maine Uniform Probate Code Comment (§5-103)**

36 This section is based on section 5-104 of the Uniform Probate Code.

1 The Uniform Probate Code is adopted with a single change to allow transfer of funds
2 under this provision to a married minor. This is consistent with other statutes treating
3 married minors as adults, such as Title 22, section 1503, which gives married minors
4 authority to give consent for health care services. With the exception of an increase over
5 the amount in the former Title 18-A of the permitted transfer amount from \$5,000 to
6 \$10,000, this does not constitute a substantive change to Maine law.

7 **Maine Uniform Probate Code Comment (§5-104)**

8 This section is based on section 5-105 of the Uniform Probate Code.

9 This section adopts the Uniform Probate Code with 2 exceptions. First, this section
10 uses a 12-month effective period for a power of attorney rather than the 6-month period
11 in the Uniform Probate Code. Second, this section provides for an automatic extension
12 for parents serving in the National Guard or Reserves of the United States Armed Forces.
13 In adopting the Uniform Probate Code, this section removes the requirement under
14 former Title 18-A that a delegation by a court-appointed guardian through a power of
15 attorney be filed with the court.

16 Also, Public Law 2015, chapter 467 added a new subsection 3 to address a power of
17 attorney executed by parents for temporary care of a minor, addressing concerns about
18 organizations providing agents to provide care for the minor pursuant to the power of
19 attorney.

20 **Maine Uniform Probate Code Comment (§5-105)**

21 This section is based on section 5-106 of the Uniform Probate Code.

22 This section adopts the Uniform Probate Code language concerning jurisdiction.
23 This does not change the Probate Court's role as the exclusive court in Maine with
24 jurisdiction over guardianship and protective proceedings for minors and adults, except as
25 that jurisdiction may be reserved specifically to another court. The Uniform Adult
26 Guardianship and Protective Proceedings Jurisdiction Act is Part 5 of this Article.

27 **Maine Uniform Probate Code Comment (§5-108)**

28 This section is based on section 5-110 of the Uniform Probate Code.

29 This section expands previous Maine law by stating content requirements for letters
30 of appointment.

31 **Maine Uniform Probate Code Comment (§5-109)**

32 This section is based on section 5-111 of the Uniform Probate Code.

33 This section does not constitute a substantive change to Maine law.

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Maine Uniform Probate Code Comment (§5-110)

This section is based on section 5-112 of the Uniform Probate Code.

This section adds to Maine law explicit authority to appoint contingent coguardians or successor guardians or conservators. The section preserves the court's discretion to appoint counsel for the ward or indigent parents or guardians or to "make any order that may be appropriate" as provided under the former Title 18-A, section 5-212. The section confirms Maine law as interpreted by the Maine Supreme Judicial Court in *In re Guardianship of David C.*, 2010 ME 136, ¶¶ 6-7 and *In re Guardianship of Jeremiah T.*, 2009 ME 74, ¶¶ 24-28.

Maine Uniform Probate Code Comment (§5-111)

This section is based on section 5-113 of the Uniform Probate Code.

This section adds a plain language requirement to Maine law and specifies that the petitioner must give the required notices.

Maine Uniform Probate Code Comment (§5-112)

This section is based on section 5-114 of the Uniform Probate Code.

This section removes the authority under former Title 18-A, section 5-309, subsection (b) and section 5-405, subsection (a) for a ward or protected person to waive notice if that individual attended the hearing or if the waiver was confirmed by that individual's counsel, the guardian ad litem or the visitor.

Maine Uniform Probate Code Comment (§5-113)

This section is based on section 5-115 of the Uniform Probate Code.

This section does not include the specific requirements of former Title 18-A, sections 1-112, 5-303 and 5-407 addressing appointment and duties of guardians ad litem in guardianship and conservatorship proceedings. This section consolidates the appointment sections and retains the court's discretion and a duty to tailor the role of the guardian ad litem to the circumstances.

Maine Uniform Probate Code Comment (§5-114)

This section is based on section 5-116 of the Uniform Probate Code.

This section expands former Title 18-A by allowing an individual not otherwise entitled to notice to receive notice in a guardianship or a conservatorship proceeding, as long as the individual has provided a statement showing the individual's interest and an address to which notice should be sent.

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Maine Uniform Probate Code Comment (§5-201)

Title 22, section 4038-C permits District Courts in child protective proceedings to appoint a permanency guardian. This section departs from the Uniform Probate Code to recognize that authority and to ensure that the Probate Court does not appoint a guardian without leave of the District Court if the District Court has appointed a permanency guardian.

Maine Uniform Probate Code Comment (§5-202)

The Uniform Probate Code provisions permitting parental appointment of a so-called standby guardian are new to Maine law.

Maine Uniform Probate Code Comment (§5-204)

This section does not adopt the temporary and emergency guardianship language of the Uniform Probate Code. The existing process in Maine, including authority to issue orders for transitional arrangements, accommodates prompt disposition and appropriate protections for participants in the context of Maine's part-time probate courts. This section retains the "clear and convincing evidence" burden of proof. This section also retains additional protections, previously codified in the last 3 paragraphs of former Title 18-A, section 5-204, subsection (d), which are now contained in section 5-204, subsections 6, 7 and 8, concerning legal representation for indigent parents, concerning cost-effective participation of child support enforcement agents in guardianship proceedings and specifying any parental rights retained if a limited guardian is appointed.

Maine Uniform Probate Code Comment (§5-205)

This section expands the list of people entitled to notice of a guardianship petition but otherwise does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§5-206)

This section adds as a specific criterion for limiting the powers of a guardian that the limitation must be in the interest of developing self-reliance of a ward, consistent with the adult guardianship statute. This section does not include the provision under previous Maine law prohibiting the appointment of a guardian who intends to remove the minor from the State for purposes of adoption, leaving the decision as to the minor's best interest in the discretion of the court.

Maine Uniform Probate Code Comment (§5-207)

This section expands the duties of a guardian under previous Maine law, requiring the guardian to become and remain acquainted with a ward and to inform the court of a change in the ward's address, but this section does not otherwise constitute a substantive change to Maine law.

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Maine Uniform Probate Code Comment (§5-208)

This section adopts Uniform Probate Code language modified to reconcile it with the Uniform Health Care Decisions Act, Title 18-A, section 5-707, which limits certain health care decision making by a guardian.

This section also adopts Uniform Probate Code language modified to ensure that people who rely on a coguardian's authority to act may rely on the consent or action of each coguardian separately.

Maine Uniform Probate Code Comment (§5-210)

This section adopts the Uniform Probate Code but retains a provision considered traditional in Maine that the marriage of a minor ward terminates a guardianship.

Maine Uniform Probate Code Comment (§5-211)

The Uniform Probate Code has no provision concerning transitional arrangements for minors. This section retains the provisions of former Title 18-A, section 5-213 as a nonuniform provision to support transition arrangements in the best interest of the minor. See Maine Uniform Probate Code Comment section 5-204.

Maine Uniform Probate Code Comment (§5-301)

This section adopts Uniform Probate Code language modified to treat domestic partners in a manner comparable to their treatment in other sections of the Maine Uniform Probate Code.

Maine Uniform Probate Code Comment (§5-302)

This section adopts Uniform Probate Code language modified to treat domestic partners in a manner comparable to their treatment in other sections of former Title 18-A. The Uniform Probate Code provisions permitting parental or spousal appointment of a so-called standby guardian are new to Maine law.

Maine Uniform Probate Code Comment (§5-303)

This section adopts Uniform Probate Code language modified to treat domestic partners in a manner comparable to their treatment in other sections of former Title 18-A.

Maine Uniform Probate Code Comment (§5-304)

This section adopts Uniform Probate Code language with additional provisions, in subsections 3 and 4, that require a guardianship plan and an examination and report from a health care provider, which is consistent with former Title 18-A, section 5-303, subsections (a) and (b).

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Maine Uniform Probate Code Comment (§5-305)

This section adopts Uniform Probate Code Alternative A for section 5-305, permitting the court to retain the discretion existing under former Maine law to refrain from appointing an attorney in uncontested proceedings.

Maine Uniform Probate Code Comment (§5-306)

This section adopts Uniform Probate Code language modified to grant the court specific authority to order the examination required under section 5-304, subsection 4 and to treat the costs of evaluation in the same manner as the costs of a visitor, a guardian ad litem and a court-appointed attorney were treated under former Title 18-A, section 5-303, subsection (b).

Maine Uniform Probate Code Comment (§5-307)

There is no counterpart to this section in former Title 18-A. This section adopts Uniform Probate Code language modified to provide a respondent with an opportunity to object to an interested party's access to reports or evaluations that would otherwise be made available to that party.

Maine Uniform Probate Code Comment (§5-308)

This section adopts Uniform Probate Code language modified to require the respondent's attendance only in contested proceedings, to eliminate the requirement that the respondent participate in the hearing and to allow telephonic or other electronic participation in hearings, in keeping with the practice in most of Maine's probate courts.

Maine Uniform Probate Code Comment (§5-309)

This section adopts Uniform Probate Code language modified for consistency with the Maine modifications to Uniform Probate Code section 5-308.

Maine Uniform Probate Code Comment (§5-310)

This section adopts Uniform Probate Code language modified to treat domestic partners in a manner comparable to their treatment elsewhere in the Maine Uniform Probate Code.

Former Title 18-A, section 5-311, subsection (b), paragraph (5) gave priority to a relative with whom the respondent has resided. Adoption of the Uniform Probate Code gives priority to an adult with whom the respondent has resided. This section carries forward from the former Title 18-A, section 5-311, subsection (b), paragraph (6) consideration, as a last priority for guardianship, of a person nominated by someone who is caring for the respondent or is paying benefits to the respondent.

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Maine Uniform Probate Code Comment (§5-311)

See Maine Uniform Probate Code Comment section 5-102.

Maine Uniform Probate Code Comment (§5-312)

This section adopts the Uniform Probate Code in part, but retains the role under former Title 18-A, section 5-310-A of the visitor and guardian ad litem in cases of emergency guardianships. Given the nature of the probate courts in Maine, it is not practical to require the assignment of a lawyer immediately upon the receipt of a petition for an emergency guardian or to adopt the shortened time limits contained in the Uniform Probate Code. Partly for that reason, this section continues to require the filing, with the petition for emergency guardianship, of an affidavit setting forth the factual basis for the emergency and the powers requested, as in former Title 18-A, section 5-310-A. The role of the guardian ad litem and visitor will continue to ensure that the respondent's interests are represented without limiting the court's authority to appoint a lawyer for the respondent at a later time on a case-by-case basis.

This section carries forward from the former Title 18-A, section 5-310-A a heightened standard of harm as a basis for an ex parte appointment.

Instead of adopting the shorter time limits contained in the Uniform Probate Code, this section integrates provisions of the former Title 18-A, section 5-310-A providing that emergency appointment of an emergency guardian be followed by a visit with a guardian ad litem or visitor.

Maine Uniform Probate Code Comment (§5-313)

This section retains as a nonuniform provision the provisions of former Title 18-A, section 5-310-A prohibiting a temporary substitute guardian from seeking involuntary hospitalization of a ward outside the State.

Maine Uniform Probate Code Comment (§5-315)

This section adopts Uniform Probate Code language modified to reconcile it with the Uniform Health Care Decisions Act, section 5-707, which limits certain health care decision making by a guardian. This section also adopts Uniform Probate Code language modified to ensure that people who rely on a coguardian's authority to act may rely on the consent or action of each coguardian separately.

Maine Uniform Probate Code Comment (§5-316)

This section uses the term "psychiatric hospital," as opposed to "mental health-care institution," to conform to Title 34-B, section 3863, which addresses involuntary civil commitment.

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Maine Uniform Probate Code Comment (§5-317)

This section retains from former Title 18-A, section 5-312 the court's discretion to direct the timing of reporting by guardians. This section allows reporting requirements for guardianships existing on the effective date of this Act to remain in place unless altered by the court. It also allows courts to retain systems currently in place for monitoring.

Maine Uniform Probate Code Comment (§5-318)

This section adopts Uniform Probate Code language modified to include specific resignation provisions for the guardian; a provision to allow the ward or others to petition for removal of a guardian; and a requirement of clear and convincing evidence to show that continuing guardianship is in the best interest of the ward, once a prima facie case for termination has been made.

Maine Uniform Probate Code Comment (§5-401)

This section adds to the Uniform Probate Code language about communicating informed consent and reasonably available technological assistance consistent with the additions to section 5-102 (see accompanying Maine Uniform Probate Code Comment).

This section adds to subsection 2 of the Uniform Probate Code language a blocked paragraph that retains the exception to the clear and convincing standard under Title 18-A, section 5-401, subsection (2) for a conservatorship to which an allegedly incapacitated adult has consented.

Maine Uniform Probate Code Comment (§5-402)

This section does not constitute a substantive change to Maine law.

Maine Uniform Probate Code Comment (§5-403)

In conjunction with section 5-404, this section adds to Maine law the requirement that notice of a protective proceeding be given to an adult friend if any can be found and if no family can be found. This is similar to the requirement of former Title 18-A, section 5-405, subsection (a-1).

Maine Uniform Probate Code Comment (§5-404)

This section adds to the language of the Uniform Probate Code language from former Title 18-A, section 5-418 limiting obligations to provide notice of filing of inventories, reports or plans to people who can be located, are at least 14 years of age and are able to understand the filings.

Maine Uniform Probate Code Comment (§5-405)

1 Adoption of this section is not intended to change the existing Maine practice that a
2 lawyer appointed by the court to represent a minor has the powers and duties of a
3 guardian ad litem.

4 **Maine Uniform Probate Code Comment (§5-406)**

5 This section adopts Uniform Probate Code Alternative A for section 5-406,
6 permitting the court to retain the discretion existing under former Maine law to refrain
7 from appointing an attorney in uncontested proceedings.

8 **Maine Uniform Probate Code Comment (§5-407)**

9 This section adopts Uniform Probate Code section 5-407 language modified to
10 provide a respondent with an opportunity to object to an interested party's access to
11 reports or evaluations that would otherwise be made available to that party.

12 **Maine Uniform Probate Code Comment (§5-408)**

13 This section adopts Uniform Probate Code language modified to require the
14 respondent's attendance only in contested proceedings, to eliminate the requirement that
15 the respondent participate in the hearing and to allow telephonic or other electronic
16 participation in hearings, in keeping with the practice in most of Maine's probate courts.

17 **Maine Uniform Probate Code Comment (§5-411)**

18 This section adopts Uniform Probate Code section 5-411, subsection (a), paragraph
19 (1) language modified to make it unambiguous.

20 This section also removes from Maine law the provision under former Title 18-A,
21 section 5-408, subsection (6), paragraph (b), as enacted by Public Law 2005, chapter 12,
22 Part DDD, section 4 and amended by Public Law 2011, chapter 155, section 1,
23 prohibiting courts from authorizing gifts that would hasten a protected person's eligibility
24 for MaineCare.

25 **Maine Uniform Probate Code Comment (§5-412)**

26 This section removes from Maine law the provision under former Title 18-A, section
27 5-409, subsection (d), paragraph (2), as enacted by Public Law 2005, chapter 12, Part
28 DDD, section 6 and amended by Public Law 2011, chapter 155, section 1, prohibiting
29 courts from authorizing gifts that would hasten a protected person's eligibility for
30 MaineCare.

31 **Maine Uniform Probate Code Comment (§5-413)**

32 This section removes "domestic partner" in the priority list in former Title 18-A,
33 section 5-410 for consideration as conservator. The spousal priority now applies to same-

1 sex couples, and a person who has chosen not to marry may be considered later in the
2 priority list as "an adult with whom the respondent has resided for more than 6 months."

3 Although this section does not address it, the court may order the conservator to
4 notify the court of any change of address.

5 **Maine Uniform Probate Code Comment (§5-415)**

6 This section retains statutory exceptions to bonding requirements found in former
7 Title 18-A, section 5-411, subsection (c).

8 Although this section does not address it, the court may order the conservator to
9 notify the court if the conservator moves out of state, and the court may reassess the need
10 for a bond at that time.

11 **Maine Uniform Probate Code Comment (§5-416)**

12 This section does not constitute a substantive change to Maine law.

13 **Maine Uniform Probate Code Comment (§5-418)**

14 Former Title 18-A, section 5-418 required that a conservator provide a copy of an
15 inventory to a protected person who can be located, is 14 years of age or older and is
16 capable of understanding; by adopting Uniform Probate Code section 5-418, this section
17 is endorsing a view of conservatorship that more clearly encourages participation by the
18 protected person in management of the protected person's affairs to the maximum extent
19 of the protected person's ability.

20 **Maine Uniform Probate Code Comment (§5-419)**

21 This section does not retain provisions under previous Maine law concerning
22 sanctions for failure to file an inventory. The court retains discretion to impose
23 appropriate sanctions and take other necessary steps based on breach of fiduciary duty.

24 **Maine Uniform Probate Code Comment (§5-420)**

25 This section adopts the Uniform Probate Code provisions concerning the monitoring
26 of conservators and allows courts to retain systems currently in place for monitoring; it
27 carries forward from former Title 18-A, section 5-419, subsection (d) penalty provisions
28 related to failure of the conservator to file an accounting.

29 **Maine Uniform Probate Code Comment (§5-421)**

30 This section does not constitute a substantive change to Maine law.

31 **Maine Uniform Probate Code Comment (§5-424)**

1 This section does not constitute a substantive change to Maine law.

2 **Maine Uniform Probate Code Comment (§5-425)**

3 This section does not retain the provision of previous Maine law giving a conservator
4 of the estate of an unmarried minor, as to whom no one has parental rights, the duties and
5 powers of a guardian of the minor; a guardian of the minor can be appointed if needed.

6 This section includes language in subsection 2, paragraph W, subparagraph (2)
7 similar to language in the Maine Uniform Trust Code, section 816, subsection 21,
8 paragraph B, which recognizes that Maine has not adopted the Uniform Custodial Trust
9 Act, but other states have.

10 **Maine Uniform Probate Code Comment (§5-426)**

11 This section has no counterpart in the former Title 18-A. It is consistent with
12 language in the Maine Uniform Trust Code, section 807.

13 **Maine Uniform Probate Code Comment (§5-427)**

14 This section adopts Uniform Probate Code language that clarifies that distributions
15 are permissible not only for the health and welfare of the protected person but also for
16 others who are in fact dependent on the protected person without being dependents.

17 **Maine Uniform Probate Code Comment (§5-428)**

18 This section adds to the Uniform Probate Code additional requirements for notice to
19 individuals likely to be affected by a conservator's request for authority to exercise the
20 powers of a personal representative.

21 **Maine Uniform Probate Code Comment (§5-429)**

22 This section adopts Uniform Probate Code section 5-429, which allows a conservator
23 to disallow a claim at any time before it has been paid; this is a change from previous
24 Maine law.

25 **Maine Uniform Probate Code Comment (§5-430)**

26 This section adopts Uniform Probate Code language modified to conform liability for
27 violation of environmental law with the Maine Uniform Trust Code, section 1010,
28 subsection 2.

29 **Maine Uniform Probate Code Comment (§5-431)**

1 This section does not include the list found in previous Maine law of reasons to
2 disallow termination of a conservatorship and adds a requirement that the conservator's
3 final report be filed within 30 days after distribution.

4 **Maine Uniform Probate Code Comment (§5-432)**

5 This section, copied from former Title 18-A, Article 5, Part 5-A, expands Maine law
6 pertaining to registration of guardianship orders so that orders relating to minors as well
7 as to adults may be registered.

8 **Maine Uniform Probate Code Comment (§5-433)**

9 This section consolidates similar provisions of former Title 18-A, Article 5, Parts 4
10 and 5 pertaining to registration of conservatorship orders so that orders relating to minors
11 as well as to adults are covered, and provides a single procedure for dealing with foreign
12 conservatorships.

13 **Maine Uniform Probate Code Comment (§5-434)**

14 This section consolidates similar provisions of former Title 18-A, Article 5, Parts 4
15 and 5 pertaining to the effect of the registration of conservatorship orders so that orders
16 relating to minors as well as to adults are covered, and clarifies in a single statute the
17 authority of foreign conservators.

18 **ARTICLE 6**

19 **NONPROBATE TRANSFERS ON DEATH**

20 **PART 1**

21 **PROVISIONS RELATING TO EFFECT OF DEATH**

22 **§6-101. Nonprobate transfers on death**

23 **1. Nonprobate transfer on death nontestamentary.** A provision for a nonprobate
24 transfer on death in an insurance policy, contract of employment, bond, mortgage,
25 promissory note, certificated or uncertificated security, account agreement, custodial
26 agreement, deposit agreement, compensation plan, pension plan, individual retirement
27 plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement
28 or other written instrument of a similar nature is nontestamentary. Also nontestamentary
29 is a written provision that:

30 A. Money or other benefits due to, controlled by or owned by a decedent before
31 death must be paid after the decedent's death to a person whom the decedent
32 designates either in the instrument or in a separate writing, including a will, executed
33 either before or at the same time as the instrument or later;

1 B. Money due or to become due under the instrument ceases to be payable in the
2 event of death of the promisee or the promisor before payment or demand; or

3 C. Any property controlled by or owned by the decedent before death that is the
4 subject of the instrument passes to a person the decedent designates either in the
5 instrument or in a separate writing, including a will, executed either before or at the
6 same time as the instrument or later.

7 **2. Rights of creditors.** Nothing in this section limits the rights of creditors under
8 other laws of this State.

9 **§6-102. Liability of nonprobate transferees for creditor claims and statutory**
10 **allowances**

11 **1. "Nonprobate transfer" defined.** As used in this section, "nonprobate transfer"
12 means a valid transfer effective at death, other than a transfer of a survivorship interest in
13 a joint tenancy of real estate, by a transferor whose last domicile was in this State, to the
14 extent that the transferor immediately before death had power, acting alone, to prevent
15 the transfer by revocation or withdrawal and instead to use the property for the benefit of
16 the transferor or apply the property to discharge claims against the transferor's probate
17 estate.

18 **2. Liability of nonprobate transferee.** Except as otherwise provided by statute, a
19 transferee of a nonprobate transfer is subject to liability to any probate estate of the
20 decedent for allowed claims against the decedent's probate estate and statutory
21 allowances to the decedent's spouse and children to the extent the estate is insufficient to
22 satisfy those claims and allowances. The liability of a nonprobate transferee may not
23 exceed the value of nonprobate transfers received or controlled by that transferee.

24 **3. Priority of liability.** Nonprobate transferees are liable for the insufficiency
25 described in subsection 2 in the following order of priority:

26 A. A transferee designated in the decedent's will or any other governing instrument,
27 as provided in the instrument;

28 B. The trustee of a trust serving as the principal nonprobate instrument in the
29 decedent's estate plan as shown by its designation as devisee of the decedent's
30 residuary estate or by other facts or circumstances, to the extent of the value of the
31 nonprobate transfer received or controlled; and

32 C. Other nonprobate transferees, in proportion to the values received.

33 **4. Interests of beneficiaries to satisfy liability.** Unless otherwise provided by the
34 trust instrument, interests of beneficiaries in all trusts incurring liabilities under this
35 section abate as necessary to satisfy the liability, as if all of the trust instruments were a
36 single will and the interests were devised under it.

37 **5. Instrument direct apportionment; conflicts.** A provision made in one
38 instrument may direct the apportionment of the liability among the nonprobate transferees
39 taking under that instrument or any other governing instrument. If a provision in one
40 instrument conflicts with a provision in another, the later one prevails.

1 6. Liability enforceable in this State. Upon due notice to a nonprobate transferee,
2 the liability imposed by this section is enforceable in proceedings in this State, whether or
3 not the transferee is located in this State.

4 7. Written demand for proceeding. A proceeding under this section may not be
5 commenced unless the personal representative of the decedent's estate has received a
6 written demand for the proceeding from the surviving spouse or a child, to the extent that
7 statutory allowances are affected, or a creditor. If the personal representative declines or
8 fails to commence a proceeding after demand, a person making demand may commence
9 the proceeding in the name of the decedent's estate at the expense of the person making
10 the demand and not of the estate. A personal representative who declines in good faith to
11 commence a requested proceeding incurs no personal liability for declining.

12 8. Deadline for proceedings. A proceeding under this section must be commenced
13 within one year after the decedent's death, but a proceeding on behalf of a creditor whose
14 claim was allowed after proceedings challenging disallowance of the claim may be
15 commenced within 60 days after final allowance of the claim.

16 9. Liability of obligor, trustee. Unless a written notice asserting that a decedent's
17 probate estate is nonexistent or insufficient to pay allowed claims and statutory
18 allowances has been received from the decedent's personal representative, the following
19 provisions apply.

20 A. Payment or delivery of assets by a financial institution, register or other obligor to
21 a nonprobate transferee in accordance with the terms of the governing instrument
22 controlling the transfer releases the obligor from all claims for amounts paid or assets
23 delivered.

24 B. A trustee receiving or controlling a nonprobate transfer is released from liability
25 under this section with respect to any assets distributed to the trust's beneficiaries.
26 Each beneficiary to the extent of the distribution received becomes liable for the
27 amount of the trustee's liability attributable to assets received by the beneficiary.

28 **PART 2**

29 **MULTIPLE-PARTY ACCOUNTS**

30 **SUBPART 1**

31 **DEFINITIONS AND GENERAL PROVISIONS**

32 **§6-201. Definitions**

33 As used in this Part, unless the context otherwise indicates, the following terms have
34 the following meanings.

35 1. Account. "Account" means a contract of deposit between a depositor and a
36 financial institution and includes a checking account, savings account, certificate of
37 deposit and share account.

1 **2. Agent.** "Agent" means a person authorized to make account transactions for a
2 party.

3 **3. Beneficiary.** "Beneficiary" means a person named as one to whom sums on
4 deposit in an account are payable on request after death of all parties or for whom a party
5 is named as trustee.

6 **4. Financial institution.** "Financial institution" means an organization authorized to
7 do business under state or federal laws relating to financial institutions and includes a
8 bank, trust company, savings bank, building and loan association, savings and loan
9 company or association and credit union.

10 **5. Multiple-party account.** "Multiple-party account" means an account payable on
11 request to one or more of 2 or more parties, whether or not a right of survivorship is
12 mentioned.

13 **6. Party.** "Party" means a person who, by the terms of an account, has a present
14 right, subject to request, to payment from the account other than as a beneficiary or agent.

15 **7. Payment.** "Payment," as it relates to payment of sums on deposit, includes
16 withdrawal, payment to a party or 3rd person pursuant to a check or other request and a
17 pledge of sums on deposit by a party or a setoff, reduction or other disposition of all or
18 part of an account pursuant to a pledge.

19 **8. POD designation.** "POD designation" means the designation of:

20 A. A beneficiary in an account payable on request to one party during the party's
21 lifetime and on the party's death to one or more beneficiaries, or to one or more
22 parties during their lifetimes and on death of all of them to one or more beneficiaries;
23 or

24 B. A beneficiary in an account in the name of one or more parties as trustee for one
25 or more beneficiaries if the relationship is established by the terms of the account and
26 there is no subject of the trust other than the sums on deposit in the account, whether
27 or not payment to the beneficiary is mentioned.

28 **9. Receive.** "Receive," as it relates to notice to a financial institution, means receipt
29 in the office or branch office of the financial institution in which the account is
30 established or, if the terms of the account require notice at a particular place, in the place
31 required.

32 **10. Request.** "Request" means a request for payment complying with all terms of
33 the account, including special requirements concerning necessary signatures and
34 regulations of the financial institution. If terms of the account condition payment on
35 advance notice, a request for payment is treated as immediately effective and a notice of
36 intent to withdraw is treated as a request for payment.

37 **11. Sums on deposit.** "Sums on deposit" means the balance payable on an account,
38 including interest and dividends earned, whether or not included in the current balance.

1 and any deposit life insurance proceeds added to the account by reason of death of a
2 party.

3 **12. Terms of the account.** "Terms of the account" includes the deposit agreement
4 and other terms and conditions, including the form, of the contract of deposit.

5 **§6-202. Limitation on scope of Part**

6 This Part does not apply to:

7 **1. Business purpose.** An account established for a partnership, joint venture or
8 other organization for a business purpose;

9 **2. Controlled by agent or trustee.** An account controlled by one or more persons
10 as an agent or trustee for a corporation, unincorporated association or charitable or civic
11 organization; or

12 **3. Other relationship.** A fiduciary or trust account in which the relationship is
13 established other than by the terms of the account.

14 **§6-203. Types of account; existing accounts**

15 **1. Single-party or multiple-party accounts.** An account may be for a single party
16 or multiple parties. A multiple-party account may be with or without a right of
17 survivorship between the parties. Subject to section 6-212, subsection 3, either a single-
18 party account or a multiple-party account may have a POD designation, an agency
19 designation or both.

20 **2. Accounts governed by this Part.** An account established before, on or after the
21 effective date of this Part, whether in the form prescribed in section 6-204 or in any other
22 form, is either a single-party account or a multiple-party account, with or without right of
23 survivorship and with or without a POD designation or an agency designation, within the
24 meaning of this Part and is governed by this Part.

25 **§6-204. Forms**

26 **1. Form.** A contract of deposit that contains provisions in substantially the
27 following form establishes the type of account provided, and the account is governed by
28 the provisions of this Part applicable to an account of that type.

29 **UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT FORM**

30 **PARTIES [Name One or More Parties]:**

31

32

33 **OWNERSHIP [Select One and Initial]:**

34 SINGLE-PARTY ACCOUNT

35 MULTIPLE-PARTY ACCOUNT

1 Parties own account in proportion to net contributions unless there is clear and
2 convincing evidence of a different intent.

3 RIGHTS AT DEATH [Select One and Initial]:

4 SINGLE-PARTY ACCOUNT

5 At death of party, ownership passes as part of party's estate.

6 SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH)
7 DESIGNATION

8 [Name One or More Beneficiaries]:

9

10

11 At death of party, ownership passes to POD beneficiaries and is not part of
12 party's estate.

13 MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

14 At death of party, ownership passes to surviving parties.

15 MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
16 AND POD (PAY ON DEATH) DESIGNATION

17 [Name One or More Beneficiaries]:

18

19

20 At death of last surviving party, ownership passes to POD beneficiaries and is not
21 part of last surviving party's estate.

22 MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

23 At death of party, deceased party's ownership passes as part of deceased party's
24 estate.

25 AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

26 Agents may make account transactions for parties but have no ownership or
27 rights at death unless named as POD beneficiaries.

28 [To Add Agency Designation to Account, Name One or More Agents]:

29

30

31 [Select One and Initial]:

32 AGENCY DESIGNATION SURVIVES DISABILITY OR
33 INCAPACITY OF PARTIES

34 AGENCY DESIGNATION TERMINATES ON DISABILITY OR
35 INCAPACITY OF PARTIES

1 **§6-212. Rights at death**

2 **1. Multiple-party account.** Except as otherwise provided in this Part, on death of a
3 party sums on deposit in a multiple-party account belong to the surviving party or parties.
4 If 2 or more parties survive and one is the surviving spouse of the decedent, the amount to
5 which the decedent, immediately before death, was beneficially entitled under section
6 6-211 belongs to the surviving spouse. If 2 or more parties survive and none is the
7 surviving spouse of the decedent, the amount to which the decedent, immediately before
8 death, was beneficially entitled under section 6-211 belongs to the surviving parties in
9 equal shares and augments the proportion to which each survivor, immediately before the
10 decedent's death, was beneficially entitled under section 6-211, and the right of
11 survivorship continues between the surviving parties.

12 **2. POD designation.** In an account with a POD designation:

13 A. On death of one of 2 or more parties, the rights in sums on deposit are governed
14 by subsection 1; and

15 B. On death of the sole party or the last survivor of 2 or more parties, sums on
16 deposit belong to the surviving beneficiary or beneficiaries. If 2 or more
17 beneficiaries survive, sums on deposit belong to them in equal and undivided shares,
18 and there is no right of survivorship in the event of death of a beneficiary thereafter.
19 If no beneficiary survives, sums on deposit belong to the estate of the last surviving
20 party.

21 **3. No POD designation; no right of survivorship.** Sums on deposit in a single-
22 party account without a POD designation, or in a multiple-party account that, by the
23 terms of the account, is without right of survivorship, are not affected by death of a party,
24 but the amount to which the decedent, immediately before death, was beneficially entitled
25 under section 6-211 is transferred as part of the decedent's estate. A POD designation in
26 a multiple-party account without right of survivorship is ineffective. For purposes of this
27 section, designation of an account as a tenancy in common establishes that the account is
28 without right of survivorship.

29 **4. Liability for unpaid requests for payment.** The ownership right of a surviving
30 party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests
31 for payment made by a party before the party's death, whether paid by the financial
32 institution before or after death or unpaid. The surviving party or beneficiary, or the
33 decedent's estate, is liable to the payee of an unpaid request for payment. The liability is
34 limited to a proportionate share of the amount transferred under this section, to the extent
35 necessary to discharge the request for payment.

36 **§6-213. Alteration of rights**

37 **1. Rights determined by terms of account.** Rights at the death of a party under
38 section 6-212 are determined by the terms of the account at the death of the party. A
39 party may alter the terms of the account by a notice signed by the party and given to the
40 financial institution to change the terms of the account or to stop or vary payment under
41 the terms of the account. To be effective, the notice must be received by the financial
42 institution during the party's lifetime.

1 2. Right of survivorship not altered by will. A right of survivorship arising from
2 the express terms of the account, section 6-212 or a POD designation may not be altered
3 by a will.

4 **§6-214. Accounts and transfers nontestamentary**

5 Except as provided in Article 2, Part 2 or as a consequence of and to the extent
6 directed by section 6-102, a transfer resulting from the application of section 6-212 is
7 effective by reason of the terms of the account involved and this Part and is not
8 testamentary or subject to Articles 1 to 4.

9 **SUBPART 3**

10 **PROTECTION OF FINANCIAL INSTITUTIONS**

11 **§6-221. Authority of financial institution**

12 A financial institution may enter into a contract of deposit for a multiple-party
13 account to the same extent as it may enter into a contract of deposit for a single-party
14 account, and may provide for a POD designation and an agency designation in either a
15 single-party account or a multiple-party account. A financial institution need not inquire
16 as to the source of a deposit to an account or as to the proposed application of a payment
17 from an account.

18 **§6-222. Payment on multiple-party account**

19 A financial institution, on request, may pay sums on deposit in a multiple-party
20 account to:

21 1. One or more of the parties. One or more of the parties, whether or not another
22 party is disabled, incapacitated or deceased when payment is requested and whether or
23 not the party making the request survives another party; or

24 2. Personal representative. The personal representative, if any, or, if there is none,
25 the heirs or devisees of a deceased party if proof of death is presented to the financial
26 institution showing that the deceased party was the survivor of all other persons named on
27 the account either as a party or beneficiary, unless the account is without right of
28 survivorship under section 6-212.

29 **§6-223. Payment on POD designation**

30 A financial institution, on request, may pay sums on deposit in an account with a
31 POD designation to:

32 1. One or more of the parties. One or more of the parties, whether or not another
33 party is disabled, incapacitated or deceased when the payment is requested and whether
34 or not a party survives another party;

1 **2. Beneficiaries.** The beneficiary or beneficiaries if proof of death is presented to
2 the financial institution showing that the beneficiary or beneficiaries survived all persons
3 named as parties; or

4 **3. Personal representative.** The personal representative, if any, or, if there is none,
5 the heirs or devisees of a deceased party if proof of death is presented to the financial
6 institution showing that the deceased party was the survivor of all other persons named on
7 the account either as a party or beneficiary.

8 **§6-224. Payment to designated agent**

9 A financial institution, on request of an agent under an agency designation for an
10 account, may pay to the agent sums on deposit in the account, whether or not a party is
11 disabled, incapacitated or deceased when the request is made or received and whether or
12 not the authority of the agent terminates on the disability or incapacity of a party.

13 **§6-225. Payment to minor**

14 If a financial institution is required or permitted to make payment pursuant to this
15 Part to a minor designated as a beneficiary, payment may be made pursuant to the Maine
16 Uniform Transfers to Minors Act.

17 **§6-226. Discharge**

18 **1. Payments in accordance with terms of account.** Payment made pursuant to this
19 Part in accordance with the terms of the account discharges the financial institution from
20 all claims for amounts so paid, whether or not the payment is consistent with the
21 beneficial ownership of the account as between parties, beneficiaries or their successors.
22 Payment may be made whether or not a party, beneficiary or agent is disabled,
23 incapacitated or deceased when payment is requested, received or made.

24 **2. Payments after receipt of notice.** Protection under this section does not extend
25 to payments made after a financial institution has received written notice from a party, or
26 from the personal representative, surviving spouse or heir or devisee of a deceased party,
27 to the effect that payments in accordance with the terms of the account, including one
28 having an agency designation, should not be permitted, and the financial institution has
29 had a reasonable opportunity to act on the notice when the payment is made. Unless the
30 notice is withdrawn by the person giving it, the successor of any deceased party must
31 concur in a request for payment if the financial institution is to be protected under this
32 section. Unless a financial institution has been served with process in an action or
33 proceeding, no other notice or other information shown to have been available to the
34 financial institution affects its right to protection under this section.

35 **3. Notice of dispute; refusal to make payments.** A financial institution that
36 receives written notice pursuant to this section that a dispute exists as to the rights of the
37 parties may refuse, without liability, to make payments in accordance with the terms of
38 the account.

39 **4. Rights of parties in disputes.** Protection of a financial institution under this
40 section does not affect the rights of parties in disputes between themselves or their

1 successors concerning the beneficial ownership of sums on deposit in accounts or
2 payments made from accounts.

3 **§6-227. Setoff**

4 Without qualifying any other statutory right to setoff or lien and subject to any
5 contractual provision, if a party is indebted to a financial institution, the financial
6 institution has a right to setoff against the account. The amount of the account subject to
7 setoff is the proportion to which the party is, or immediately before death was,
8 beneficially entitled under section 6-211 or, in the absence of proof of that proportion, an
9 equal share with all parties.

10 **PART 3**

11 **TRANSFER ON DEATH SECURITY REGISTRATION**

12 **§6-301. Definitions**

13 As used in this Part, unless the context otherwise indicates, the following terms have
14 the following meanings.

15 **1. Beneficiary form.** "Beneficiary form" means a registration of a security that
16 indicates the present owner of the security and the intention of the owner regarding the
17 person who will become the owner of the security upon the death of the owner.

18 **2. Register.** "Register" means to issue a certificate showing the ownership of a
19 certificated security or, in the case of an uncertificated security, to initiate or transfer an
20 account showing ownership of securities.

21 **3. Registering entity.** "Registering entity" means a person that originates or
22 transfers a security title by registration and includes a broker maintaining security
23 accounts for customers and a transfer agent or other person acting for or as an issuer of
24 securities.

25 **4. Security.** "Security" means a share, participation or other interest in property, in a
26 business or in an obligation of an enterprise or other issuer and includes a certificated
27 security, an uncertificated security and a security account.

28 **5. Security account.** "Security account" means:

29 A. A reinvestment account associated with a security, a securities account with a
30 broker, a cash balance in a brokerage account, cash, interest, earnings or dividends
31 earned or declared on a security in an account, a reinvestment account or a brokerage
32 account, whether or not credited to the account before the owner's death; or

33 B. A cash balance or other property held for or due to the owner of a security as a
34 replacement for or product of an account security, whether or not credited to the
35 account before the owner's death.

1 **§6-302. Registration in beneficiary form; sole or joint tenancy ownership**

2 Only individuals whose registration of a security shows sole ownership by one
3 individual or multiple ownership by 2 or more individuals with right of survivorship,
4 rather than as tenants in common, may obtain registration in beneficiary form. Multiple
5 owners of a security registered in beneficiary form hold as joint tenants with right of
6 survivorship and not as tenants in common.

7 **§6-303. Registration in beneficiary form; applicable law**

8 A security may be registered in beneficiary form if the form is authorized by this Part
9 or a similar statute of the state of organization of the issuer or registering entity, the
10 location of the registering entity's principal office, the office of the registering entity's
11 transfer agent or the registering entity's office making the registration or by this Part or a
12 similar statute of the law of the state listed as the owner's address at the time of
13 registration. A registration governed by the law of a jurisdiction in which this Part or
14 similar legislation is not in force or was not in force when a registration in beneficiary
15 form was made is nevertheless presumed to be valid and authorized as a matter of
16 contract law.

17 **§6-304. Origination of registration in beneficiary form**

18 A security, whether evidenced by certificate or account, is registered in beneficiary
19 form when the registration includes a designation of a beneficiary to take the ownership
20 at the death of the owner or the deaths of all multiple owners.

21 **§6-305. Form of registration in beneficiary form**

22 Registration in beneficiary form may be shown by the words "transfer on death" or
23 the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after
24 the name of the registered owner and before the name of a beneficiary.

25 **§6-306. Effect of registration in beneficiary form**

26 The designation of a transfer on death, or "TOD," beneficiary on a registration in
27 beneficiary form has no effect on ownership until the owner's death. A registration of a
28 security in beneficiary form may be canceled or changed at any time by the sole owner or
29 all then-surviving owners without the consent of the beneficiary.

30 **§6-307. Ownership on death of owner**

31 On death of a sole owner or the last to die of all multiple owners, ownership of
32 securities registered in beneficiary form passes to the beneficiary or beneficiaries who
33 survive all owners. On proof of death of all owners and compliance with any applicable
34 requirements of the registering entity, a security registered in beneficiary form may be
35 reregistered in the name of the beneficiary or beneficiaries who survived the death of all
36 owners. Until division of the security after the death of all owners, multiple beneficiaries
37 surviving the death of all owners hold their interests as tenants in common. If no
38 beneficiary survives the death of all owners, the security belongs to the estate of the
39 deceased sole owner or the estate of the last to die of all multiple owners.

1 **§6-308. Protection of registering entity**

2 **1. Security registration in beneficiary form not required; protections.** A
3 registering entity is not required to offer or to accept a request for security registration in
4 beneficiary form. If a registration in beneficiary form is offered by a registering entity,
5 the owner requesting registration in beneficiary form assents to the protections given to
6 the registering entity by this Part.

7 **2. Registration to be implemented on death.** By accepting a request for
8 registration of a security in beneficiary form, the registering entity agrees that the
9 registration will be implemented on death of the deceased owner as provided in this Part.

10 **3. Registering entity discharged from all claims; exceptions.** A registering entity
11 is discharged from all claims to a security by the estate, creditors, heirs or devisees of a
12 deceased owner if the registering entity registers a transfer of the security in accordance
13 with section 6-307 and does so in good faith reliance on:

14 A. The registration;

15 B. This Part; and

16 C. Information provided to the registering entity by affidavit of the personal
17 representative of the deceased owner, by the surviving beneficiary or by the surviving
18 beneficiary's representatives or other information available to the registering entity.

19 The protections of this Part do not extend to a reregistration or payment made after a
20 registering entity has received written notice from any claimant to any interest in the
21 security objecting to implementation of a registration in beneficiary form. No other
22 notice or other information available to the registering entity affects its right to protection
23 under this Part.

24 **4. Rights of beneficiaries in disputes.** The protection provided by this Part to the
25 registering entity of a security does not affect the rights of beneficiaries in disputes
26 between themselves and other claimants to ownership of the security transferred or its
27 value or proceeds.

28 **§6-309. Nontestamentary transfer on death**

29 A transfer on death resulting from a registration in beneficiary form is effective by
30 reason of the contract regarding the registration between the owner and the registering
31 entity and this Part and is not testamentary.

32 **§6-310. Terms, conditions and forms for registration**

33 **1. Terms and conditions.** A registering entity offering to accept registrations in
34 beneficiary form may establish the terms and conditions under which it will receive
35 requests:

36 A. For registrations in beneficiary form; and

1 B. For implementation of registrations in beneficiary form, including requests for
2 cancellation of previously registered transfer on death, or "TOD," beneficiary
3 designations and requests for reregistration to effect a change of beneficiary.

4 The terms and conditions so established may provide for proving death, avoiding or
5 resolving any problems concerning fractional shares, designating primary and contingent
6 beneficiaries and substituting a named beneficiary's descendants to take the place of the
7 named beneficiary in the event of the beneficiary's death. Substitution may be indicated
8 by appending to the name of the primary beneficiary the letters LDPS, standing for
9 "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's
10 descendants who survive the owner for a beneficiary who fails to so survive, the
11 descendants to be identified and to share in accordance with the law of the beneficiary's
12 domicile at the owner's death governing inheritance by descendants of an intestate. Other
13 forms of identifying beneficiaries who are to take on one or more contingencies, and rules
14 for providing proofs and assurances needed to satisfy reasonable concerns by registering
15 entities regarding conditions and identities relevant to accurate implementation of
16 registrations in beneficiary form, may be contained in a registering entity's terms and
17 conditions.

18 **2. Forms.** The following are illustrations of registrations in beneficiary form that a
19 registering entity may authorize:

20 A. Sole owner - sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.:

21 B. Multiple owners - sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD
22 John S. Brown Jr.; and

23 C. Multiple owners - primary and secondary (substituted) beneficiaries: John S.
24 Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown
25 or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

26 **§6-311. Application of Part**

27 This Part applies to registrations of securities in beneficiary form made before, on or
28 after June 30, 1998 by decedents dying on or after June 30, 1998.

29 **Maine Uniform Probate Code Comment (§6-101)**

30 This section does not constitute a substantive change to Maine law. Maine has
31 retained subsection (b) from former Title 18-A, section 6-201, which was a nonuniform
32 provision.

33 **Maine Uniform Probate Code Comment (§6-102)**

34 There is no counterpart to this section in former Title 18-A, but the concepts for the
35 most part were previously included in various sections of Maine law, including the Maine
36 Uniform Trust Code. The section serves a useful function of addressing these issues in a
37 comprehensive way and establishing an order of priority in the procedure for enforcing
38 claims against various nonprobate assets. One significant change is to shorten the time
39 period for bringing a claim under this section from 2 years after the decedent's date of

1 death to one year. The section does not supersede existing law that insulates death
2 benefits in life insurance contracts, retirement plans or individual retirement accounts
3 from creditors' claims.

4 **Maine Uniform Probate Code Comment (§6-201)**

5 Maine adopts the Uniform Probate Code wording to coordinate definitions and
6 consolidate the application of payable on death, or "POD," accounts and so-called Totten
7 Trusts into the comprehensive framework of POD accounts through appropriate
8 definitions of "beneficiary," "party" and "POD designation." The term "joint account"
9 used throughout former Title 18-A, section 6-201 is replaced with "multiple-party
10 account," and other accounts previously designated under former Maine law as multiple-
11 party accounts are addressed through definitions of "POD designation" and "beneficiary"
12 as well as through other provisions of the Maine Uniform Probate Code.

13 **Maine Uniform Probate Code Comment (§6-202)**

14 This section does not constitute a substantive change to Maine law.

15 **Maine Uniform Probate Code Comment (§6-203)**

16 There is no counterpart to this section in former Title 18-A. This section coordinates
17 with the adoption of forms under the Maine Uniform Probate Code, section 6-204 and
18 sets out clearly the options when an account is established.

19 **Maine Uniform Probate Code Comment (§6-204)**

20 There is no counterpart to this section in former Title 18-A. The design of this form
21 encourages the depositor and financial institution to consider the rights of a party to the
22 account during a party's lifetime and the distribution of the account after a party's death.
23 Since the form is not required to make the terms of the multiple-party account effective, it
24 offers flexibility and a helpful alternative for depositors.

25 **Maine Uniform Probate Code Comment (§6-205)**

26 There is no counterpart to this section in former Title 18-A. This section allows
27 financial institutions to offer an option to depositors who seek the convenience of an
28 agency relationship but intend the proceeds of an account to pass according to the
29 depositor's will or to the depositor's heirs after death. While not supplanting the
30 comprehensive Maine Uniform Power of Attorney Act, this section offers a limited
31 agency role for specific financial accounts.

32 **Maine Uniform Probate Code Comment (§6-206)**

33 This section does not constitute a substantive change to Maine law.

34 **Maine Uniform Probate Code Comment (§6-211)**

1 In the absence of proof otherwise, subsection 2 creates a presumption, as between
2 parties married to each other, that the net contribution of each party is an equal amount.

3 **Maine Uniform Probate Code Comment (§6-212)**

4 Maine law is revised to delete the right to rebut the presumption that amounts held in
5 a joint account pass to the surviving joint tenant. Prior Maine law permitted the personal
6 representative of an estate to claim proceeds passed to the estate if there was "clear and
7 convincing evidence of a different intention at the time the account [was] created."

8 This section includes the presumption that the deceased spouse's interest in a
9 multiple-party account passes to the surviving spouse. In most cases, any other party to a
10 multiple-party account with spouses is a child of the spouses and the intent is to pass the
11 interest after death to that child but not to increase the child's lifetime interest.

12 The substance of subsection 4 is new to Maine law and clarifies that a surviving
13 party's interest in a multiple-party account can be reduced by outstanding checks or other
14 withdrawals by the deceased party that were made prior to death. Such reductions might
15 also include repayment of any automatic deposit, such as a Social Security payment, or
16 automatic withdrawals for the bills of a decedent.

17 **Maine Uniform Probate Code Comment (§6-213)**

18 This section does not constitute a substantive change to Maine law.

19 **Maine Uniform Probate Code Comment (§6-214)**

20 This section does not constitute a substantive change to Maine law.

21 **Maine Uniform Probate Code Comment (§6-221)**

22 This section does not constitute a substantive change to Maine law other than by
23 incorporating the agency designation adopted in the Maine Uniform Probate Code,
24 section 6-205 and related sections.

25 **Maine Uniform Probate Code Comment (§6-222)**

26 This section does not constitute a substantive change to Maine law.

27 **Maine Uniform Probate Code Comment (§6-223)**

28 This section includes in subsection 1 an additional protection to financial institutions
29 that was not part of the former Title 18-A, section 6-110.

30 **Maine Uniform Probate Code Comment (§6-224)**

31 There is no counterpart to this section in former Title 18-A. This section coordinates

1 with the Maine Uniform Probate Code, section 6-205 regarding the designation of an
2 agent.

3 **Maine Uniform Probate Code Comment (§6-225)**

4 There is no counterpart to this section in former Title 18-A. This section provides for
5 the efficient and economical transfer of funds to a minor. The cost and delay associated
6 with probate court proceedings to appoint a guardian or conservator can be substantial
7 compared with the need to provide for the efficient and economical transfer of an
8 account, and the protections under the Maine Uniform Transfers to Minors Act are
9 sufficient.

10 **Maine Uniform Probate Code Comment (§6-226)**

11 The Maine Uniform Probate Code does not include the clause in the Uniform Probate
12 Code, section 6-226(c) that permits a financial institution to refuse payment if it receives
13 any nonwritten notice giving the financial institution "reason to believe that a dispute
14 exists" as to payment rights. The Maine Probate and Trust Law Advisory Commission
15 determined that this clause was vague and created unnecessary uncertainty with respect to
16 a financial institution's right to withhold payment to a party and should not be adopted.

17 **Maine Uniform Probate Code Comment (§6-227)**

18 This section does not constitute a substantive change to Maine law.

19 **Maine Uniform Probate Code Comment (§6-301)**

20 This section does not constitute a substantive change to Maine law.

21 **Maine Uniform Probate Code Comment (§6-302)**

22 Maine does not recognize the ownership forms of tenancy by the entirety and
23 community property, so they are not included in the Uniform TOD Security Registration
24 Act.

25 **Maine Uniform Probate Code Comment (§6-303)**

26 This section does not constitute a substantive change to Maine law.

27 **Maine Uniform Probate Code Comment (§6-304)**

28 This section does not constitute a substantive change to Maine law.

29 **Maine Uniform Probate Code Comment (§6-305)**

30 This section does not constitute a substantive change to Maine law.

31 **Maine Uniform Probate Code Comment (§6-306)**

1 This section replaces former Title 18-A, section 6-312, which permitted changes of
2 beneficiary of a security by will.

3 **Maine Uniform Probate Code Comment (§6-307)**

4 This section does not constitute a substantive change to Maine law.

5 **Maine Uniform Probate Code Comment (§6-308)**

6 This section does not constitute a substantive change to Maine law.

7 **Maine Uniform Probate Code Comment (§6-309)**

8 This section does not constitute a substantive change to Maine law.

9 **Maine Uniform Probate Code Comment (§6-310)**

10 This section does not constitute a substantive change to Maine law.

11 **ARTICLE 7**

12 **TRUST ADMINISTRATION**

13 **PART 1**

14 **POWERS OF TRUSTEES**

15 **§7-101. Prohibitions and requirements applicable to trusts that are private**
16 **foundations**

17 **1. Prohibited acts.** In the administration of any trust that is a private foundation, as
18 defined in Section 509 of the Internal Revenue Code of 1986, a charitable trust, as
19 defined in Section 4947(a)(1) of the Internal Revenue Code of 1986, or a split-interest
20 trust, as defined in Section 4947(a)(2) of the Internal Revenue Code of 1986, the
21 following acts are prohibited:

22 A. Engaging in any act of self-dealing, as defined in Section 4941(d) of the Internal
23 Revenue Code of 1986, that would give rise to any liability for the tax imposed by
24 Section 4941(a) of the Internal Revenue Code of 1986;

25 B. Retaining any excess business holdings, as defined in Section 4943(c) of the
26 Internal Revenue Code of 1986, that would give rise to any liability for the tax
27 imposed by Section 4943(a) of the Internal Revenue Code of 1986;

28 C. Making any investments that would jeopardize the carrying out of any of the
29 exempt purposes of the trust, within the meaning of Section 4944 of the Internal
30 Revenue Code of 1986, so as to give rise to any liability for the tax imposed by
31 Section 4944(a) of the Internal Revenue Code of 1986; and

1 D. Making any taxable expenditures, as defined in Section 4945(d) of the Internal
2 Revenue Code of 1986, that would give rise to any liability for the tax imposed by
3 Section 4945(a) of the Internal Revenue Code of 1986.

4 This section does not apply to split-interest trusts or to amounts of split-interest trusts that
5 are not subject to the prohibitions applicable to private foundations by reason of the
6 provisions of Section 4947 of the Internal Revenue Code of 1986.

7 **2. Required distributions.** In the administration of any trust that is a private
8 foundation or a charitable trust, there must be distributed, for the purposes specified in the
9 trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the
10 tax imposed by Section 4942(a) of the Internal Revenue Code of 1986.

11 **3. Exception, contrary to terms of trust.** Subsections 1 and 2 do not apply to any
12 trust to the extent that a court of competent jurisdiction determines that the application
13 would be contrary to the terms of the instrument governing the trust and that the trust
14 instrument may not properly be changed to conform to subsections 1 and 2.

15 **4. Attorney General's powers.** Nothing in this section impairs the rights and
16 powers of the courts or the Attorney General of this State with respect to any trust.

17 **5. Internal Revenue Code.** All references to sections of the Internal Revenue Code
18 of 1986 are deemed to include future amendments to the referenced sections and
19 corresponding provisions of future internal revenue laws.

20 **§7-102. Trustees authorized to invest trust funds in affiliated investments;**
21 **limitations**

22 **1. Authorization.** An association, corporation or financial institution authorized to
23 exercise trust powers in this State while acting as a fiduciary is authorized to purchase for
24 the fiduciary estate, directly from underwriters or distributors or in the secondary market,
25 bonds or other securities underwritten or distributed by that association, corporation or
26 financial institution or an affiliate or by a syndicate that includes that association,
27 corporation or financial institution and securities of an investment company registered
28 under the federal Investment Company Act of 1940, 15 United States Code, Section
29 80a-1 et seq., as amended, for which that association, corporation or financial institution
30 or an affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager,
31 shareholder servicing agent or custodian. A person acting as a cofiduciary with an
32 association, corporation or financial institution or an affiliate is authorized to consent to
33 the investment in such interests.

34 **2. Limitations.** The authority granted pursuant to subsection 1 may not be
35 exercised:

36 A. If the investment is prohibited by the instrument, judgment, decree or order
37 creating the fiduciary relationship; or

38 B. Unless, in the case of cofiduciaries, the association, corporation or financial
39 institution or an affiliate procures the consent of its cofiduciaries to the investment.

1 3. Disclosures. The disclosures required by this section must be provided by a
2 statement or letter mailed to the last known address of each person to whom statements
3 for the fiduciary estate are provided. The disclosures may be provided separately or as
4 part of other documents of the fiduciary estate. If made part of other documents of the
5 fiduciary estate, the disclosures must be printed clearly and conspicuously on those
6 documents.

7 A. A trustee purchasing bonds or securities pursuant to this section shall disclose in
8 writing all capacities in which the trustee or an affiliate acts for the issuer of those
9 bonds or securities and that the trustee or an affiliate may have an interest in the
10 underwriting or distribution of those bonds or securities.

11 B. If the securities purchased pursuant to subsection 1 are shares of an investment
12 company subject to this section, the trustee shall disclose the services provided and
13 the receipt of compensation for those services before the initial purchase and
14 annually.

15 **§7-103. Qualification of foreign trustee**

16 A foreign corporate trustee is required to qualify as a foreign corporation doing
17 business in this State if it maintains the principal place of administration of any trust
18 within the State. A foreign cotrustee is not required to qualify in this State solely because
19 its cotrustee maintains the principal place of administration in this State. Unless otherwise
20 doing business in this State, local qualification by a foreign trustee, corporate or
21 individual, is not required in order for the trustee to receive distribution from a local
22 estate or to hold, invest in, manage or acquire property located in this State or maintain
23 litigation. Nothing in this section affects a determination of what other acts require
24 qualification as doing business in this State.

25 **PART 2**

26 **COMMON TRUST FUNDS**

27 **§7-201. Definitions; establishment of common trust funds**

28 1. Definitions. As used in this Part, unless the context otherwise indicates, the
29 following terms have the following meanings.

30 A. "Common trust fund" means a trust or fund maintained by a bank or trust
31 company exclusively for the collective investment or reinvestment of money
32 contributed to the trust or fund by the bank or trust company, or an affiliated bank or
33 trust company, as a fiduciary, including a trustee of a trust or fund for the primary
34 purpose of paying employee benefits of any kind.

35 B. "Fiduciary" includes a trustee, executor, administrator, guardian and custodian
36 under a uniform transfers to minors act.

37 2. Common trust funds. A bank or trust company qualified to act as fiduciary in
38 this State may establish and operate common trust funds for the purpose of furnishing
39 investments to itself as fiduciary or to itself and others as cofiduciaries, and for the
40 purposes of furnishing investments to affiliated banks, within the meaning of Section

1 1504 of the Internal Revenue Code of 1986, acting for themselves and others as
2 cofiduciaries, and the bank or trust company may, as the fiduciary or cofiduciary or
3 acting for affiliated banks alone or with their cofiduciaries, invest funds lawfully held for
4 investment in interests in common trust funds, if the investment is not prohibited by the
5 instrument, judgment, decree or order creating the fiduciary relationship and if, in the
6 case of cofiduciaries, the bank or trust company or affiliate procures the consent of its
7 cofiduciaries to the investment. A person acting as a cofiduciary with the bank or trust
8 company or affiliate is authorized to consent to the investment in the interests.

9 **§7-202. Court accountings**

10 Unless ordered by decree of the Superior Court, the bank or trust company operating
11 common trust funds, referred to in this section as "the accountant," is not required to
12 render a court accounting with regard to the funds, but the accountant may by petition to
13 the Superior Court or the probate court in the county where the accountant has its
14 principal place of business secure approval of the accounting on such conditions as the
15 court may establish. Whenever a petition for the allowance of such an account is
16 presented, the court having jurisdiction shall assign a time and place for hearing and shall
17 cause public notice to be given by publication 3 weeks successively in a newspaper
18 published in the county whose court has jurisdiction. In addition, the court shall, except to
19 the extent as the several instruments creating the trusts participating in the common trust
20 fund provide otherwise, order personal notice upon all known beneficiaries of the
21 participating trust estates who have a place of residence known to the accountant.
22 Personal notice to known beneficiaries having a place of residence known to the
23 accountant must be made by a written notice deposited in the mails addressed to each
24 known beneficiary at the known place of residence at least 14 days before the time of
25 hearing, or by a written notice either in hand or left at the known place of residence 14
26 days at least before the time of hearing. The method of service and the form of the notice
27 must be as the court orders. "Place of residence known to the accountant" as used in this
28 section includes only places of residence actually known to the accountant and does not
29 include residences that could be discovered upon investigation but do not in the due
30 course of business come to the actual knowledge of the accountant. The allowance of an
31 account is conclusive as to all matters shown in the account upon all persons then or
32 thereafter interested in the funds invested in the common trust funds.

33 **§7-203. Application of Part**

34 This Part applies to fiduciary relationships in existence on September 1, 1951 or
35 established after that date.

36 **PART 3**

37 **BANK AND TRUST COMPANY NOMINEES**

38 **§7-301. Registration in name of nominees**

39 A state or national bank or trust company, when acting in this State as a fiduciary or
40 cofiduciary with others, may with the consent of its cofiduciary or cofiduciaries, if any,
41 who are authorized to give consent, cause an investment held in that capacity to be

1 registered and held in the name of a nominee or nominees of the bank or trust company.
2 The bank or trust company is liable for the acts of a nominee with respect to a registered
3 investment. "Fiduciary" as used in this Part includes, but is not limited to, personal
4 representatives, guardians, conservators, trustees, agents and custodians.

5 **§7-302. Separate records**

6 The records of a bank or trust company must at all times show the ownership of
7 investments held in the name of nominees; such investments must be in the possession
8 and control of the bank or trust company and must be kept separate and apart from the
9 assets of the bank or trust company.

10 **§7-303. Applicability of provisions**

11 This Part governs fiduciaries and cofiduciaries acting under wills, agreements, court
12 orders and other instruments existing on January 1, 1981 or made after that date. Nothing
13 contained in this Part may be construed as authorizing a departure from or variation of the
14 express words or limitations set forth in a will, agreement, court order or other instrument
15 creating or defining the fiduciary's duties and powers.

16 **PART 4**

17 **UNIFORM PRINCIPAL AND INCOME ACT OF 1997**

18 **SUBPART 1**

19 **DEFINITIONS AND FIDUCIARY DUTIES**

20 **§7-401. Short title**

21 This Part may be cited as the "Uniform Principal and Income Act of 1997."

22 **§7-402. Definitions**

23 As used in this Part, unless the context otherwise indicates, the following terms have
24 the following meanings.

25 **1. Accounting period.** "Accounting period" means a calendar year unless another
26 12-month period is selected by a fiduciary. "Accounting period" includes a portion of a
27 calendar year or other 12-month period that begins when an income interest begins or
28 ends when an income interest ends.

29 **2. Beneficiary.** "Beneficiary" includes, in the case of a decedent's estate, an heir and
30 devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

31 **3. Fiduciary.** "Fiduciary" means a personal representative or a trustee. "Fiduciary"
32 includes an executor, administrator, successor personal representative, special
33 administrator and a person performing substantially the same function.

1 **4. Income.** "Income" means money or property that a fiduciary receives as current
2 return from a principal asset. "Income" includes a portion of receipts from a sale,
3 exchange or liquidation of a principal asset, to the extent provided in subpart 4.

4 **5. Income beneficiary.** "Income beneficiary" means a person to whom net income
5 of a trust is or may be payable.

6 **6. Income interest.** "Income interest" means the right of an income beneficiary to
7 receive all or part of net income, whether the terms of the trust require it to be distributed
8 or authorize it to be distributed in the trustee's discretion.

9 **7. Mandatory income interest.** "Mandatory income interest" means the right of an
10 income beneficiary to receive net income that the terms of the trust require the fiduciary
11 to distribute.

12 **8. Net income.** "Net income" means the total receipts allocated to income during an
13 accounting period minus the disbursements made from income during the period, plus or
14 minus transfers under this Part to or from income during the period.

15 **9. Person.** "Person" means an individual; corporation; business trust; estate; trust;
16 partnership; limited liability company; association; joint venture; government;
17 governmental subdivision, agency or instrumentality; public corporation; or any other
18 legal or commercial entity.

19 **10. Principal.** "Principal" means property held in trust for distribution to a
20 remainder beneficiary when the trust terminates.

21 **11. Remainder beneficiary.** "Remainder beneficiary" means a person entitled to
22 receive principal when an income interest ends.

23 **12. Terms of a trust.** "Terms of a trust" means the manifestation of the intent of a
24 settlor or decedent with respect to the trust, expressed in a manner that admits of its proof
25 in a judicial proceeding, whether by written or spoken words or by conduct.

26 **13. Trustee.** "Trustee" includes an original, additional or successor trustee, whether
27 or not appointed or confirmed by a court.

28 **§7-403. Fiduciary duties; general principles**

29 **1. Allocating receipts and disbursements.** In allocating receipts and disbursements
30 to or between principal and income and with respect to any matter within the scope of
31 subparts 2 and 3, a fiduciary:

32 A. Shall administer a trust or estate in accordance with the terms of the trust or the
33 will, even if there is a different provision in this Part;

34 B. May administer a trust or estate by the exercise of a discretionary power of
35 administration given to the fiduciary by the terms of the trust or the will, even if the
36 exercise of the power produces a result different from a result required or permitted
37 by this Part;

1 C. Shall administer a trust or estate in accordance with this Part if the terms of the
2 trust or the will do not contain a different provision or do not give the fiduciary a
3 discretionary power of administration; and

4 D. Shall add a receipt or charge a disbursement to principal to the extent that the
5 terms of the trust and this Part do not provide a method for allocating the receipt or
6 disbursement to or between principal and income.

7 **2. Fair and reasonable administration.** In exercising the power to adjust under
8 section 7-404, subsection 1 or a discretionary power of administration regarding a matter
9 within the scope of this Part, whether granted by the terms of a trust, a will or this Part, a
10 fiduciary shall administer a trust or estate impartially, based on what is fair and
11 reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the
12 will clearly manifest an intention that the fiduciary favor or that the fiduciary may favor
13 one or more of the beneficiaries. A determination in accordance with this Part is
14 presumed to be fair and reasonable to all of the beneficiaries.

15 **§7-404. Trustee's power to adjust**

16 **1. Power to adjust between principal and income.** A trustee may adjust between
17 principal and income by allocating an amount of income to principal or an amount of
18 principal to income to the extent the trustee considers appropriate if the terms of the trust
19 describe the amount that may or must be distributed to a beneficiary by referring to the
20 trust's income and the trustee determines, after applying the provisions of section 7-403,
21 subsection 1, that the trustee is unable to comply with section 7-403, subsection 2.

22 **2. Factors.** In deciding whether and to what extent to exercise the power conferred
23 by subsection 1, a trustee shall consider all factors relevant to the trust and its
24 beneficiaries, including the following factors to the extent they are relevant:

25 A. The nature, purpose and expected duration of the trust;

26 B. The intent of the settlor;

27 C. The identity and circumstances of the beneficiaries and, to the extent reasonably
28 known to the trustee, the needs of the beneficiaries for present and future
29 distributions authorized or required by the terms of the trust;

30 D. The needs for liquidity, regularity of income and preservation and appreciation of
31 capital;

32 E. The assets held in the trust; the extent to which they consist of financial assets,
33 interests in closely held enterprises, tangible and intangible personal property or real
34 property; the extent to which an asset is used by a beneficiary; and whether an asset
35 was purchased by the trustee or received from the settlor;

36 F. The net amount allocated to income under the other sections of this Part and the
37 increase or decrease in the value of the principal assets, which the trustee may
38 estimate as to assets for which market values are not readily available;

39 G. Whether and to what extent the terms of the trust give the trustee the power to
40 invade principal or accumulate income or prohibit the trustee from invading principal

1 or accumulating income, and the extent to which the trustee has exercised a power
2 from time to time to invade principal or accumulate income;

3 H. The actual and anticipated effect of economic conditions on principal and income
4 and effects of inflation and deflation; and

5 I. The anticipated tax consequences of an adjustment.

6 **3. Adjustments not permitted.** A trustee may not make an adjustment under this
7 section if any of the following applies:

8 A. The adjustment would diminish the income interest in a trust that requires all of
9 the income to be paid at least annually to a spouse and for which an estate tax or gift
10 tax marital deduction would be allowed, in whole or in part, if the trustee did not
11 have the power to make the adjustment;

12 B. The adjustment would reduce the actuarial value of the income interest in a trust
13 to which a person transfers property with the intent to qualify for a gift tax exclusion;

14 C. The adjustment would change the amount payable to a beneficiary as a fixed
15 annuity or a fixed fraction of the value of the trust assets;

16 D. The adjustment is from any amount that is permanently set aside for charitable
17 purposes under a will or the terms of a trust, unless both income and principal are so
18 set aside;

19 E. The trustee's possession or exercise of the power to make an adjustment would
20 cause an individual to be treated as the owner of all or part of the trust for income tax
21 purposes and the individual would not be treated as the owner if the trustee did not
22 possess the power to make an adjustment;

23 F. The trustee's possession or exercise of the power to make an adjustment would
24 cause all or part of the trust assets to be included for estate tax purposes in the estate
25 of an individual who has the power to remove a trustee or appoint a trustee, or both,
26 and the assets would not be included in the estate of the individual if the trustee did
27 not possess the power to make an adjustment;

28 G. The trustee is a beneficiary of the trust; or

29 H. The trust has been converted to a unitrust under section 7-405.

30 **4. Cotrustees.** If subsection 3, paragraph E, F or G applies to a trustee and there is
31 more than one trustee, a cotrustee to whom the provision does not apply may make the
32 adjustment unless the exercise of the power by the remaining trustee or trustees is
33 prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or
34 more trustees serving they must act by agreement or by any majority or percentage
35 consensus may not be construed to prohibit the remaining trustee or trustees from
36 possessing or exercising the power to make the adjustment.

37 **5. Release of power to adjust.** A trustee may release the entire power conferred by
38 subsection 1 or may release only the power to adjust from income to principal or the
39 power to adjust from principal to income if the trustee is uncertain about whether
40 possessing or exercising the power will cause a result described in subsection 3,
41 paragraphs A to F or if the trustee determines that possessing or exercising the power will

1 or may deprive the trust of a tax benefit or impose a tax burden not described in
2 subsection 3. The release of the power to adjust may be permanent or for a specified
3 period, including a period measured by the life of an individual.

4 **6. Terms of trust deny power of adjustment.** Terms of a trust that limit the power
5 of a trustee to make an adjustment between principal and income do not affect the
6 application of this section unless it is clear from the terms of the trust that the terms are
7 intended to deny the trustee the power of adjustment conferred by subsection 1.

8 **§7-405. Power to convert to unitrust**

9 **1. Convert to unitrust; requirements.** Unless expressly prohibited by the terms of
10 the trust, a trustee may release the power to adjust under section 7-404 and convert a trust
11 into a unitrust as described in this section if all of the following apply:

12 A. The trustee determines that the conversion will improve the ability of the trustee
13 to carry out the intent of the settlor and the purposes of the trust;

14 B. The trustee gives written notice of the trustee's intention to release the power to
15 adjust and to convert the trust into a unitrust and of how the unitrust will operate,
16 including what initial decisions the trustee will make under this section, to the
17 following beneficiaries:

18 (1) All beneficiaries who are currently eligible to receive income from the trust;
19 and

20 (2) All beneficiaries who would receive, if no power of appointment were
21 exercised, a distribution of principal if the trust were to terminate immediately
22 prior to the giving of notice;

23 C. There is at least one beneficiary eligible to receive income and at least one
24 beneficiary who would receive principal as described in paragraph B; and

25 D. No beneficiary objects to the conversion to a unitrust in a writing delivered to the
26 trustee within 60 days of the mailing of the notice required under paragraph B.

27 **2. Petition to convert.** If a beneficiary timely objects to the conversion to a unitrust
28 under subsection 1 or if the requirements of subsection 1, paragraph C are not met, the
29 trustee may petition the court to approve the conversion to a unitrust. A beneficiary may
30 request a trustee to convert to a unitrust and, if the trustee does not convert, the
31 beneficiary may petition the court to order the conversion. Upon receipt of a petition by
32 the trustee or a beneficiary, the court shall approve the conversion or direct the requested
33 conversion if the court concludes that the conversion will better enable the trustee to carry
34 out the intent of the settlor and the purposes of the trust.

35 **3. Factors.** In deciding whether to exercise the power conferred by subsection 1, a
36 trustee shall consider the following factors to the extent they are relevant:

37 A. The nature, purpose and expected duration of the trust;

38 B. The identity and circumstances of the beneficiaries and, to the extent reasonably
39 known to the trustee, the needs of the beneficiaries for present and future
40 distributions authorized or required by the terms of the trust;

- 1 C. The needs for liquidity, regularity of income and preservation and appreciation of
2 capital;
- 3 D. The assets held in the trust; the extent to which they consist of financial assets,
4 interests in closely held enterprises, tangible and intangible personal property or real
5 property; and the extent to which an asset is used by a beneficiary;
- 6 E. Whether and to what extent the terms of the trust give the trustee the power to
7 invade principal or accumulate income or prohibit the trustee from invading principal
8 or accumulating income, and the extent to which the trustee has exercised a power
9 from time to time to invade principal or accumulate income;
- 10 F. The actual and anticipated effect of economic conditions on principal and income
11 and effects of inflation and deflation; and
- 12 G. The anticipated tax consequences of the conversion.

13 **4. After conversion; requirements.** After a trust is converted to a unitrust, all of
14 the following apply:

- 15 A. The trustee shall follow an investment policy seeking a total return for the
16 investments held by the trust, whether the return is to be derived from appreciation of
17 capital, from earnings and distributions from capital or from both;
- 18 B. The trustee shall make regular distributions in accordance with the terms of the
19 trust construed in accordance with the provisions of this section; and
- 20 C. "Income" in the terms of the trust means an annual distribution, known as the
21 "unitrust distribution," equal to 4%, known as the "payout percentage," of the net fair
22 market value of the trust's assets, whether such assets would be considered income or
23 principal under other provisions of this Part, averaged over the lesser of the 3
24 preceding years and the period during which the trust has been in existence.

25 **5. Trustee's determination.** The trustee of a unitrust subject to this section may in
26 the trustee's discretion from time to time determine all of the following:

- 27 A. The effective date of a conversion to a unitrust;
- 28 B. The provisions for prorating a unitrust distribution for a short year in which a
29 beneficiary's right to payment commences or ceases;
- 30 C. The frequency of unitrust distributions during the year;
- 31 D. The effect of other payments from or contributions to the trust on the trust's
32 valuation;
- 33 E. Whether to value the trust's assets annually or more frequently;
- 34 F. What valuation dates to use;
- 35 G. How frequently to value nonliquid assets and whether to estimate their value;
- 36 H. Whether to omit from the calculation of the unitrust distribution trust property
37 occupied or possessed by a beneficiary; and
- 38 I. Any other matters necessary for the proper functioning of the unitrust.

1 **6. After conversion; allocation provisions.** After a trust is converted to a unitrust,
2 the following allocation provisions apply to the trust:

3 A. Expenses that would be deducted from income if the trust were not a unitrust may
4 not be deducted from the unitrust distribution; and

5 B. Unless otherwise provided by the terms of the trust, the unitrust distribution must
6 be paid from net income, as net income would be determined if the trust were not a
7 unitrust. To the extent net income is insufficient, the unitrust distribution must be
8 paid from net realized short-term capital gains. To the extent net income and net
9 realized short-term capital gains are insufficient, the unitrust distribution must be paid
10 from net realized long-term capital gains. To the extent net income and net realized
11 short-term and long-term capital gains are insufficient, the unitrust distribution must
12 be paid from the principal of the trust.

13 **7. Petition for changes.** The trustee of a unitrust subject to this section or, if the
14 trustee declines to do so, a beneficiary may petition the court to do any of the following:

15 A. Select a payout percentage other than 4%;

16 B. Provide for a distribution of net income, as would be determined if the trust were
17 not a unitrust, in excess of the unitrust distribution if such distribution is necessary to
18 preserve a tax benefit;

19 C. Average the valuation of the trust's net assets over a period other than 3 years; or

20 D. Reconvert from a unitrust. Upon a reconversion, the power to adjust under
21 section 7-404 is revived.

22 **8. Conversion does not affect certain trust provisions.** A conversion to a unitrust
23 does not affect a provision in the terms of the trust directing or authorizing the trustee to
24 distribute principal or authorizing a beneficiary to withdraw a portion or all of the
25 principal.

26 **9. Conversion not permitted.** A trustee may not convert a trust into a unitrust if
27 any of the following applies:

28 A. Payment of the unitrust distribution would change the amount payable to a
29 beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

30 B. The unitrust distribution would be made from any amount that is permanently set
31 aside for charitable purposes under a will or the terms of the trust unless both income
32 and principal are so set aside;

33 C. The trustee's possession or exercise of the power to convert would cause an
34 individual to be treated as the owner of all or part of the trust for income tax
35 purposes, and the individual would not be treated as the owner if the trustee did not
36 possess the power to convert;

37 D. The trustee's possession or exercise of the power to convert would cause all or
38 part of the trust assets to be included for estate tax purposes in the estate of an
39 individual who has the power to remove a trustee or appoint a trustee, or both, and

1 the assets would not be included in the estate of the individual if the trustee did not
2 possess the power to convert;

3 E. The conversion would result in the disallowance of an estate tax or gift tax marital
4 deduction that would be allowed if the trustee did not have the power to convert; or

5 F. The trustee is a beneficiary of the trust.

6 **10. Conversion by cotrustee.** If subsection 9, paragraph C, D or F applies to a
7 trustee and there is more than one trustee, a cotrustee to whom the provision does not
8 apply may convert the trust unless the exercise of the power by the remaining trustee or
9 trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there
10 are 2 or more trustees serving they must act by agreement or by any majority or
11 percentage consensus may not be construed to prohibit the remaining trustee or trustees
12 from exercising the power to convert. If subsection 9, paragraph C, D or F applies to all
13 the trustees, the trustees may petition the court to direct a conversion.

14 **11. Release of power to convert.** A trustee may release the power conferred by
15 subsection 1 to convert to a unitrust if the trustee is uncertain about whether possessing or
16 exercising the power will cause a result described in subsection 9, paragraph C, D or E or
17 if the trustee determines that possessing or exercising the power will or may deprive the
18 trust of a tax benefit or impose a tax burden not described in subsection 9. The release of
19 the power to convert to a unitrust may be permanent or for a specified period, including a
20 period measured by the life of an individual.

21 **§7-406. Judicial review of discretionary powers**

22 **1. Court determination of abuse of fiduciary's discretion.** A court may not
23 change a fiduciary's decision to exercise or not to exercise a discretionary power
24 conferred by this Part unless it determines that the decision was an abuse of the
25 fiduciary's discretion. A court may not determine that a fiduciary abused the fiduciary's
26 discretion merely because the court would have exercised the discretion in a different
27 manner or would not have exercised the discretion.

28 **2. Abuse of discretion; remedy.** If a court determines that a fiduciary has abused
29 the fiduciary's discretion in exercising a discretionary power conferred by this Part, the
30 remedy is to restore the income and remainder beneficiaries to the positions they would
31 have occupied if the fiduciary had not abused the fiduciary's discretion, according to the
32 provisions of this subsection:

33 A. To the extent that the abuse of discretion has resulted in no distribution to a
34 beneficiary or a distribution that is too small, the court shall require the fiduciary to
35 distribute from the trust to the beneficiary an amount that the court determines will
36 restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;

37 B. To the extent that the abuse of discretion has resulted in a distribution to a
38 beneficiary that is too large, the court shall restore the beneficiaries or the trust, or
39 both, in whole or in part, to their appropriate positions by requiring the fiduciary to
40 withhold an amount from one or more future distributions to the beneficiary who
41 received the distribution that was too large or requiring that beneficiary or that

1 beneficiary's estate to return some or all of the distribution to the trust,
2 notwithstanding a spendthrift or similar provision;

3 C. If the abuse of discretion concerns the power to convert a trust into a unitrust, the
4 court shall require the trustee either to convert the trust to a unitrust or to reconvert
5 from a unitrust; and

6 D. To the extent that the court is unable, after applying paragraphs A, B and C, to
7 restore the beneficiaries or the trust, or both, to the positions they would have
8 occupied if the fiduciary had not abused the fiduciary's discretion, the court may
9 require the fiduciary to pay an appropriate amount from the fiduciary's own funds to
10 one or more of the beneficiaries or the trust, or both.

11 **3. Proposed exercise or nonexercise of discretion; court determination.** Upon a
12 petition by the fiduciary, a court having jurisdiction over the trust or estate shall
13 determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary
14 power conferred by this Part will result in an abuse of the fiduciary's discretion. If the
15 petition describes the proposed exercise or nonexercise of the power and contains
16 sufficient information to inform the beneficiaries of the reasons for the proposal, the facts
17 upon which the fiduciary relies and an explanation of how the income and remainder
18 beneficiaries will be affected by the proposed exercise or nonexercise of the power, a
19 beneficiary who challenges the proposed exercise or nonexercise has the burden of
20 establishing that it will result in an abuse of discretion.

21 **SUBPART 2**

22 **DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST**

23 **§7-421. Determination and distribution of net income**

24 After a decedent dies, in the case of an estate, or after an income interest in a trust
25 ends, the provisions of this section apply.

26 **1. Determination of net income and net principal.** A fiduciary of an estate or of a
27 terminating income interest shall determine the amount of net income and net principal
28 receipts received from property specifically given to a beneficiary under the provisions of
29 subparts 3 to 5 that apply to trustees and the provisions of subsection 5. The fiduciary
30 shall distribute the net income and net principal receipts to the beneficiary who is to
31 receive the specific property.

32 **2. Requirements for determinations.** A fiduciary shall determine the remaining
33 net income of a decedent's estate or a terminating income interest under the provisions of
34 subparts 3 to 5 that apply to trustees and by:

35 A. Including in net income all income from property used to discharge liabilities;

36 B. Paying from income or principal, in the fiduciary's discretion, fees of attorneys,
37 accountants and fiduciaries; court costs and other expenses of administration; and
38 interest on death taxes; but the fiduciary may pay those expenses from income of
39 property passing to a trust for which the fiduciary claims an estate tax marital or

1 charitable deduction only to the extent that the payment of those expenses from
2 income will not cause the reduction or loss of the deduction; and

3 C. Paying from principal all other disbursements made or incurred in connection
4 with the settlement of a decedent's estate or the winding up of a terminating income
5 interest, including debts, funeral expenses, disposition of remains, exempt property
6 and allowances distributable pursuant to Article 2, Part 4 and death taxes and related
7 penalties that are apportioned to the estate or terminating income interest by the will,
8 the terms of the trust or applicable law.

9 **3. Distribution to beneficiary.** A fiduciary shall distribute to a beneficiary who
10 receives a pecuniary amount outright the interest or any other amount provided by the
11 will, the terms of the trust or applicable law from net income determined under
12 subsection 2 or from principal to the extent that net income is insufficient. If a
13 beneficiary is to receive a pecuniary amount outright from a trust after an income interest
14 ends and no interest or other amount is provided for by the terms of the trust or applicable
15 law, the fiduciary shall distribute the interest or other amount to which the beneficiary
16 would be entitled under applicable law if the pecuniary amount were required to be paid
17 under a will under section 3-904.

18 **4. Distribution to other beneficiary.** A fiduciary shall distribute the net income
19 remaining after distributions required by subsection 3 in the manner described in section
20 7-422 to all other beneficiaries, including a beneficiary who receives a pecuniary amount
21 in trust, even if the beneficiary holds an unqualified power to withdraw assets from the
22 trust or other presently exercisable general power of appointment over the trust.

23 **5. Reduction of principal or income receipts not permitted.** A fiduciary may not
24 reduce principal or income receipts from property described in subsection 1 because of a
25 payment described in section 7-461 or 7-462 to the extent that the will, the terms of the
26 trust or applicable law requires the fiduciary to make the payment from assets other than
27 the property or to the extent that the fiduciary recovers or expects to recover the payment
28 from a 3rd party. The net income and principal receipts from the property are determined
29 by including all of the amounts the fiduciary receives or pays with respect to the property,
30 whether those amounts accrued or became due before, on or after the date of a decedent's
31 death or an income interest's terminating event, and by making a reasonable provision for
32 amounts that the fiduciary believes the estate or terminating income interest may become
33 obligated to pay after the property is distributed.

34 **§7-422. Distribution to residuary and remainder beneficiaries**

35 **1. Distribution based on fractional interest.** Each beneficiary described in section
36 7-421, subsection 4 is entitled to receive a portion of the net income equal to the
37 beneficiary's fractional interest in undistributed principal assets, using values as of the
38 distribution date. If a fiduciary makes more than one distribution of assets to
39 beneficiaries to whom this section applies, each beneficiary, including one who does not
40 receive part of the distribution, is entitled, as of each distribution date, to the net income
41 the fiduciary has received after the date of death or terminating event or earlier
42 distribution date but has not distributed as of the current distribution date.

1 **2. Determination of share.** In determining a beneficiary's share of net income, the
2 provisions of this subsection apply:

3 A. The beneficiary is entitled to receive a portion of the net income equal to the
4 beneficiary's fractional interest in the undistributed principal assets immediately
5 before the distribution date, including assets that later may be sold to meet principal
6 obligations;

7 B. The beneficiary's fractional interest in the undistributed principal assets must be
8 calculated without regard to property specifically given to a beneficiary and property
9 required to pay pecuniary amounts not in trust;

10 C. The beneficiary's fractional interest in the undistributed principal assets must be
11 calculated on the basis of the aggregate value of those assets as of the distribution
12 date without reducing the value by any unpaid principal obligation; and

13 D. The distribution date for purposes of this section may be the date as of which the
14 fiduciary calculates the value of the assets if that date is reasonably near the date on
15 which assets are actually distributed.

16 **3. Records required if not all distributed.** If a fiduciary does not distribute all of
17 the collected but undistributed net income to each person as of a distribution date, the
18 fiduciary shall maintain appropriate records showing the interest of each beneficiary in
19 that net income.

20 **4. Application of provisions.** A fiduciary may apply the provisions of this section,
21 to the extent that the fiduciary considers it appropriate, to net gain or loss realized after
22 the date of death or terminating event or earlier distribution date from the disposition of a
23 principal asset if this section applies to the income from the asset.

24 SUBPART 3

25 APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

26 §7-431. When right to income begins and ends

27 **1. Beginning of income interest.** An income beneficiary is entitled to net income
28 from the date on which the income interest begins. An income interest begins on the date
29 specified in the terms of the trust or, if no date is specified, on the date an asset becomes
30 subject to a trust or successive income interest.

31 **2. Asset subject to trust.** An asset becomes subject to a trust:

32 A. On the date it is transferred to the trust in the case of an asset that is transferred to
33 a trust during the transferor's life;

34 B. On the date of a testator's death in the case of an asset that becomes subject to a
35 trust by reason of a will, even if there is an intervening period of administration of the
36 testator's estate; or

37 C. On the date of an individual's death in the case of an asset that is transferred to a
38 fiduciary by a 3rd party because of the individual's death.

1 **3. Successive income interest.** An asset becomes subject to a successive income
2 interest on the day after the preceding income interest ends, as determined under
3 subsection 4, even if there is an intervening period of administration to wind up the
4 preceding income interest.

5 **4. Ending of income interest.** An income interest ends on the day before an income
6 beneficiary dies or another terminating event occurs or on the last day of a period during
7 which there is no beneficiary to whom a trustee may distribute income.

8 **§7-432. Apportionment of receipts and disbursements when decedent dies or**
9 **income interest begins**

10 **1. Application to principal.** A trustee shall allocate an income receipt or
11 disbursement other than one to which section 7-421, subsection 1 applies to principal if
12 its due date occurs before a decedent dies in the case of an estate or before an income
13 interest begins in the case of a trust or successive income interest.

14 **2. Application to income.** A trustee shall allocate an income receipt or
15 disbursement to income if its due date occurs on or after the date on which a decedent
16 dies or an income interest begins and it is a periodic due date. An income receipt or
17 disbursement must be treated as accruing from day to day if its due date is not periodic or
18 it has no due date. The portion of the receipt or disbursement accruing before the date on
19 which a decedent dies or an income interest begins must be allocated to principal and the
20 balance must be allocated to income.

21 **3. Due date.** An item of income or an obligation is due on the date the payor is
22 required to make a payment. If a payment date is not stated, there is no due date for the
23 purposes of this Part. Distributions to shareholders or other owners from an entity to
24 which section 7-441 applies are deemed to be due on the date fixed by the entity for
25 determining who is entitled to receive the distribution or, if no date is fixed, on the
26 declaration date for the distribution. A due date is periodic for receipts or disbursements
27 that must be paid at regular intervals under a lease or an obligation to pay interest or if an
28 entity customarily makes distributions at regular intervals.

29 **§7-433. Apportionment when income interest ends**

30 **1. Undistributed income.** As used in this section, "undistributed income" means net
31 income received before the date on which an income interest ends. "Undistributed
32 income" does not include an item of income or expense that is due or accrued or net
33 income that has been added or is required to be added to principal under the terms of the
34 trust.

35 **2. End of mandatory income interest.** When a mandatory income interest ends, the
36 trustee shall pay to a mandatory income beneficiary who survives that date, or the estate
37 of a deceased mandatory income beneficiary whose death causes the interest to end, the
38 beneficiary's share of the undistributed income that is not disposed of under the terms of
39 the trust unless the beneficiary has an unqualified power to revoke more than 5% of the
40 trust immediately before the income interest ends. In the latter case, the undistributed
41 income from the portion of the trust that may be revoked must be added to principal.

1 **3. Prorate final payment.** When a trustee's obligation to pay a fixed annuity or a
2 fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final
3 payment to the extent required by applicable law to accomplish a purpose of the trust or
4 its settlor relating to income, gift, estate or other tax requirements.

5 **SUBPART 4**

6 **ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST**

7 **§7-441. Character of receipts**

8 **1. Entity.** As used in this section, "entity" means a corporation, partnership, limited
9 liability company, regulated investment company, real estate investment trust, common
10 trust fund or any other organization in which a trustee has an interest other than a trust or
11 estate to which section 7-442 applies, a business or activity to which section 7-443
12 applies or an asset-backed security to which section 7-455 applies.

13 **2. Allocation to income; received from entity.** Except as otherwise provided in
14 this section, a trustee shall allocate to income money received from an entity.

15 **3. Allocation to principal; received from entity.** A trustee shall allocate the
16 following receipts from an entity to principal:

17 A. Property other than money;

18 B. Money received in one distribution or a series of related distributions in exchange
19 for part or all of a trust's interest in the entity;

20 C. Money received in total or partial liquidation of the entity; and

21 D. Money received from an entity that is a regulated investment company or a real
22 estate investment trust if the money distributed is a capital gain dividend for federal
23 income tax purposes.

24 **4. Money received in partial liquidation.** Money is received in partial liquidation:

25 A. To the extent that the entity, at or near the time of a distribution, indicates that it
26 is a distribution in partial liquidation; or

27 B. If the total amount of money and property received in a distribution or series of
28 related distributions is greater than 20% of the entity's gross assets, as shown by the
29 entity's year-end financial statements immediately preceding the initial receipt.

30 **5. Money not received in partial liquidation.** Money is not received in partial
31 liquidation, nor may it be taken into account under subsection 4, paragraph B, to the
32 extent that it does not exceed the amount of income tax that a trustee or beneficiary must
33 pay on taxable income of the entity that distributes the money.

34 **6. Statement about source or character of distribution.** A trustee may rely upon a
35 statement made by an entity about the source or character of a distribution if the
36 statement is made at or near the time of distribution by the entity's board of directors or
37 other person or group of persons authorized to exercise powers to pay money or transfer
38 property comparable to those of a corporation's board of directors.

1 **§7-442. Distribution from trust or estate**

2 A trustee shall allocate to income an amount received as a distribution of income
3 from a trust or an estate in which the trust has an interest other than a purchased interest,
4 and shall allocate to principal an amount received as a distribution of principal from such
5 a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or
6 a decedent or donor transfers an interest in such a trust to a trustee, section 7-441 or 7-455
7 applies to a receipt from the trust.

8 **§7-443. Business and other activities conducted by trustee**

9 **1. Separate accounting for business or other activity.** If a trustee who conducts a
10 business or other activity determines that it is in the best interest of all the beneficiaries to
11 account separately for the business or activity instead of accounting for it as part of the
12 trust's general accounting records, the trustee may maintain separate accounting records
13 for its transactions, whether or not its assets are segregated from other trust assets.

14 **2. Net receipts used for business or other activity.** A trustee who accounts
15 separately for a business or other activity may determine the extent to which its net cash
16 receipts must be retained for working capital, the acquisition or replacement of fixed
17 assets and other reasonably foreseeable needs of the business or activity, and the extent to
18 which the remaining net cash receipts are accounted for as principal or income in the
19 trust's general accounting records. If a trustee sells assets of the business or other
20 activity, other than in the ordinary course of the business or activity, the trustee shall
21 account for the net amount received as principal in the trust's general accounting records
22 to the extent the trustee determines that the amount received is no longer required in the
23 conduct of the business.

24 **3. Separate accounting records activities.** Activities for which a trustee may
25 maintain separate accounting records include:

- 26 A. Retail, manufacturing, service and other traditional business activities;
- 27 B. Farming;
- 28 C. Raising and selling livestock and other animals;
- 29 D. Management of rental properties;
- 30 E. Extraction of minerals and other natural resources;
- 31 F. Timber operations; and
- 32 G. Activities to which section 7-454 applies.

33 **§7-444. Principal receipts**

34 A trustee shall allocate to principal:

35 **1. Assets received.** To the extent not allocated to income under this Part, assets
36 received from a transferor during the transferor's lifetime, a decedent's estate, a trust with
37 a terminating income interest or a payor under a contract naming the trust or its trustee as
38 beneficiary;

1 **2. Received from sale, exchange, liquidation or change in form of asset.** Money
2 or other property received from the sale, exchange, liquidation or change in form of a
3 principal asset, including realized profit, subject to this subpart;

4 **3. Reimbursements because of disbursements.** Amounts recovered from 3rd
5 parties to reimburse the trust because of disbursements described in section 7-462,
6 subsection 1, paragraph G or for other reasons to the extent not based on the loss of
7 income;

8 **4. Proceeds of property taken by eminent domain.** Proceeds of property taken by
9 eminent domain, but a separate award made for the loss of income with respect to an
10 accounting period during which a current income beneficiary had a mandatory income
11 interest is income;

12 **5. Net income without beneficiary.** Net income received in an accounting period
13 during which there is no beneficiary to whom a trustee may or must distribute income;
14 and

15 **6. Other receipts.** Other receipts as provided in sections 7-448 to 7-455.

16 **§7-445. Rental property**

17 To the extent that a trustee accounts for receipts from rental property pursuant to this
18 section, the trustee shall allocate to income an amount received as rent of real or personal
19 property, including an amount received for cancellation or renewal of a lease. An amount
20 received as a refundable deposit, including a security deposit or a deposit that is to be
21 applied as rent for future periods, must be added to principal and held subject to the terms
22 of the lease and is not available for distribution to a beneficiary until the trustee's
23 contractual obligations have been satisfied with respect to that amount.

24 **§7-446. Obligation to pay money**

25 **1. Interest on obligation to pay money; allocate to income.** An amount received
26 as interest, whether determined at a fixed, variable or floating rate, on an obligation to
27 pay money to the trustee, including an amount received as consideration for prepaying
28 principal, must be allocated to income without any provision for amortization of
29 premium.

30 **2. Amount received from sale, redemption or other disposition of obligation to**
31 **pay money; allocate to principal.** A trustee shall allocate to principal an amount
32 received from the sale, redemption or other disposition of an obligation to pay money to
33 the trustee more than one year after it is purchased or acquired by the trustee, including
34 an obligation whose purchase price or value when it is acquired is less than its value at
35 maturity. If the obligation matures within one year after it is purchased or acquired by
36 the trustee, an amount received in excess of its purchase price or its value when acquired
37 by the trust must be allocated to income.

38 **3. Not applicable.** This section does not apply to an obligation to which section
39 7-449, 7-450, 7-451, 7-452, 7-454 or 7-455 applies.

1 **§7-447. Insurance policies and similar contracts**

2 **1. Trust, trustee as beneficiary; allocate to principal.** Except as otherwise
3 provided in subsection 2, a trustee shall allocate to principal the proceeds of a life
4 insurance policy or other contract in which the trust or its trustee is named as beneficiary,
5 including a contract that insures the trust or its trustee against loss for damage to,
6 destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an
7 insurance policy to income if the premiums on the policy are paid from income, and to
8 principal if the premiums are paid from principal.

9 **2. Loss of occupancy, use, income, business profits; allocate to income.** A trustee
10 shall allocate to income proceeds of a contract that insures the trustee against loss of
11 occupancy or other use by an income beneficiary, loss of income or, subject to section
12 7-443, loss of profits from a business.

13 **3. Not applicable.** This section does not apply to a contract to which section 7-449
14 applies.

15 **§7-448. Insubstantial allocations not required**

16 If a trustee determines that an allocation between principal and income required by
17 section 7-449, 7-450, 7-451, 7-452 or 7-455 is insubstantial, the trustee may allocate the
18 entire amount to principal unless one of the circumstances described in section 7-404,
19 subsection 3 applies to the allocation. This power may be exercised by a cotrustee in the
20 circumstances described in section 7-404, subsection 4 and may be released for the
21 reasons and in the manner described in section 7-404, subsection 5. An allocation is
22 presumed to be insubstantial if:

23 **1. Increase or decrease of less than 10%.** The amount of the allocation would
24 increase or decrease net income in an accounting period, as determined before the
25 allocation, by less than 10%; or

26 **2. Value of asset less than 10%.** The value of the asset producing the receipt for
27 which the allocation would be made is less than 10% of the total value of the trust's assets
28 at the beginning of the accounting period.

29 **§7-449. Deferred compensation, annuities and similar payments**

30 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
31 following terms have the following meanings.

32 **A. "Payment"** means a payment that a trustee may receive over a fixed number of
33 years or during the life of one or more individuals because of services rendered or
34 property transferred to the payor in exchange for future payments. "Payment"
35 includes a payment made in money or property from the payor's general assets or
36 from a separate fund created by the payor. For the purposes of subsections 4, 5, 6
37 and 7, "payment" also includes any payment from any separate fund, regardless of the
38 reason for the payment.

1 B. "Separate fund" includes a private or commercial annuity, an individual
2 retirement account and a pension, profit-sharing, stock-bonus or stock-ownership
3 plan.

4 **2. Payment is interest or dividend; allocate to income.** To the extent that a
5 payment is characterized as interest, a dividend or a payment made in lieu of interest or a
6 dividend, a trustee shall allocate the payment to income. The trustee shall allocate to
7 principal the balance of the payment and any other payment received in the same
8 accounting period that is not characterized as interest, a dividend or an equivalent
9 payment.

10 **3. Payment not interest or dividend; allocation based on if required.** If no part
11 of a payment is characterized as interest, a dividend or an equivalent payment, and all or
12 part of the payment is required to be made, a trustee shall allocate to income 10% of the
13 part that is required to be made during the accounting period and the balance to principal.
14 If no part of a payment is required to be made or the payment received is the entire
15 amount to which the trustee is entitled, the trustee shall allocate the entire payment to
16 principal. For purposes of this subsection, a payment is not required to be made to the
17 extent that it is made because the trustee exercises a right of withdrawal.

18 **4. Payment qualifies for marital deduction.** Except as otherwise provided in
19 subsection 5, subsections 6 and 7 apply and subsections 2 and 3 do not apply in
20 determining the allocation of a payment made from a separate fund to a trust:

21 A. That qualifies for the marital deduction under the federal Internal Revenue Code,
22 26 United States Code, Section 2056(b)(7) (2010), as amended, and for which either
23 such an election has been made for federal purposes or for which an election under
24 the pertinent provisions of the laws of the State to qualify as Maine qualified
25 terminable interest property has been made; or

26 B. That qualifies for the marital deduction under the federal Internal Revenue Code,
27 26 United States Code, Section 2056(b)(5) (2010), as amended.

28 **5. Series of payments qualify for marital deduction.** Subsections 4, 6 and 7 do not
29 apply if and to the extent that the series of payments would, without the application of
30 subsection 4, qualify for the marital deduction under the federal Internal Revenue Code,
31 26 United States Code, Section 2056(b)(7)(C) (2010), as amended.

32 **6. Internal income of separate fund.** A trustee shall determine the internal income
33 of each separate fund for the accounting period as if the separate fund were a trust subject
34 to this Part. Upon request of the surviving spouse, the trustee shall demand that the
35 person administering the separate fund distribute the internal income to the trust. The
36 trustee shall allocate a payment from the separate fund to income to the extent of the
37 internal income of the separate fund and distribute that amount to the surviving spouse.
38 The trustee shall allocate the balance of the payment to principal. Upon request of the
39 surviving spouse, the trustee shall allocate principal to income to the extent the internal
40 income of the separate fund exceeds payments made from the separate fund to the trust
41 during the accounting period.

1 **7. Value of separate fund.** If a trustee cannot determine the internal income of a
2 separate fund but can determine the value of the separate fund, the internal income of the
3 separate fund is deemed to equal 4% of the fund's value, according to the most recent
4 statement of value preceding the beginning of the accounting period. If the trustee can
5 determine neither the internal income of the separate fund nor the fund's value, the
6 internal income of the fund is deemed to equal the product of the interest rate and the
7 present value of the expected future payments, as determined under the federal Internal
8 Revenue Code, 26 United States Code, Section 7520 (2010), as amended, for the month
9 preceding the accounting period for which the computation is made.

10 **8. Not applicable.** This section does not apply to a payment to which section 7-450
11 applies.

12 **§7-450. Liquidating asset**

13 **1. Liquidating asset.** As used in this section, "liquidating asset" means an asset
14 whose value will diminish or terminate because the asset is expected to produce receipts
15 for a period of limited duration. "Liquidating asset" includes a leasehold, patent,
16 copyright, royalty right and right to receive payments during a period of more than one
17 year under an arrangement that does not provide for the payment of interest on the unpaid
18 balance. "Liquidating asset" does not include a payment subject to section 7-449,
19 resources subject to section 7-451, timber subject to section 7-452, an activity subject to
20 section 7-454, an asset subject to section 7-455 or any asset for which the trustee
21 establishes a reserve for depreciation under section 7-463.

22 **2. Allocation.** A trustee shall allocate to income 10% of the receipts from a
23 liquidating asset and the balance to principal.

24 **§7-451. Minerals, water and other natural resources**

25 **1. Allocation of receipts.** To the extent that a trustee accounts for receipts from an
26 interest in minerals or other natural resources pursuant to this section, the trustee shall
27 allocate them as follows:

28 A. If received as nominal delay rental or nominal annual rent on a lease, a receipt
29 must be allocated to income;

30 B. If received from a production payment, a receipt must be allocated to income if
31 and to the extent that the agreement creating the production payment provides a
32 factor for interest or its equivalent. The balance must be allocated to principal;

33 C. If an amount received as a royalty, shut-in-well payment, take-or-pay payment,
34 bonus or delay rental is more than nominal, 90% must be allocated to principal and
35 the balance to income; and

36 D. If an amount is received from a working interest or any other interest not provided
37 for in paragraph A, B or C, 90% of the net amount received must be allocated to
38 principal and the balance to income.

1 **2. Allocation from interest in water.** An amount received on account of an interest
2 in water that is renewable must be allocated to income. If the water is not renewable,
3 90% of the amount must be allocated to principal and the balance to income.

4 **3. Timing of extractions.** This Part applies whether or not a decedent or donor was
5 extracting minerals, water or other natural resources before the interest became subject to
6 the trust.

7 **4. Pre-2002 ownership.** If a trust owns an interest in minerals, water or other
8 natural resources on January 1, 2002, the trustee may allocate receipts from the interest as
9 provided in this Part or in the manner used by the trustee before January 1, 2002. If the
10 trust acquires an interest in minerals, water or other natural resources after January 1,
11 2002, the trustee shall allocate receipts from the interest as provided in this Part.

12 **§7-452. Timber**

13 **1. Allocation of net receipts.** To the extent that a trustee accounts for receipts from
14 the sale of timber and related products pursuant to this section, the trustee shall allocate
15 the net receipts:

16 A. To income to the extent the net receipts do not exceed the product of mean annual
17 growth multiplied by the number of years since the last timber sale, or, if more
18 recent, the date the timber became a part of the trust, multiplied by the stumpage rates
19 obtained, after netting against the stumpage rates obtained the expenses associated
20 with the conduct of the sale;

21 B. To principal to the extent that the proceeds received exceed the amount
22 determined in paragraph A;

23 C. To or between income and principal if the net receipts are from the lease of
24 timberland or from a contract to cut timber from land owned by a trust, by
25 determining the amount of timber removed from the land under the lease or contract
26 and applying the provisions of paragraphs A and B; or

27 D. To principal to the extent that advance payments, bonuses and other payments are
28 not allocated pursuant to paragraph A, B or C.

29 **2. Deduction for depletion.** In determining net receipts to be allocated pursuant to
30 subsection 1, a trustee may deduct and transfer to principal a reasonable amount for
31 depletion.

32 **3. Timing of timber harvests.** This section applies whether or not a decedent or
33 transferor was harvesting timber from the property before it became subject to the trust.

34 **4. Pre-2003 ownership.** If a trust owns an interest in timberland on January 1, 2003,
35 the trustee may allocate net receipts from the sale of timber and related products as
36 provided in this section or in the manner used by the trustee before January 1, 2003. If
37 the trust acquires an interest in timberland after January 1, 2003, the trustee shall allocate
38 net receipts from the sale of timber and related products as provided in this section.

1 **5. Mean annual growth.** For purposes of this section, "mean annual growth"
2 means, at the trustee's option, either:

3 A. The mean annual increment of growth of the timber involved as determined by a
4 licensed professional forester; or

5 B. Forty-five hundredths of a cord per acre of woodland.

6 **§7-453. Property not productive of income**

7 **1. Income to obtain marital deduction.** If a marital deduction is allowed for all or
8 part of a trust whose assets consist substantially of property that does not provide the
9 spouse with sufficient income from or use of the trust assets, and if the amounts that the
10 trustee transfers from principal to income under section 7-404 and distributes to the
11 spouse from principal pursuant to the terms of the trust are insufficient to provide the
12 spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse
13 may require the trustee to make property productive of income, convert property within a
14 reasonable time or exercise the power conferred by section 7-404, subsection 1. The
15 trustee may decide which action or combination of actions to take.

16 **2. Proceeds otherwise are principal.** In cases not governed by subsection 1,
17 proceeds from the sale or other disposition of an asset are principal without regard to the
18 amount of income the asset produces during any accounting period.

19 **§7-454. Derivatives and options**

20 **1. Derivative.** As used in this section, "derivative" means a contract or financial
21 instrument or a combination of contracts and financial instruments that gives a trust the
22 right or obligation to participate in some or all changes in the price of a tangible or
23 intangible asset or group of assets, or changes in a rate, an index of prices or rates or other
24 market indicator for an asset or a group of assets.

25 **2. Allocation to principal.** To the extent that a trustee does not account under
26 section 7-443 for transactions in derivatives, the trustee shall allocate to principal receipts
27 from and disbursements made in connection with those transactions.

28 **3. Options to buy or sell property; paid from or allocated to principal.** If a
29 trustee grants an option to buy property from the trust, whether or not the trust owns the
30 property when the option is granted, grants an option that permits another person to sell
31 property to the trust or acquires an option to buy property for the trust or an option to sell
32 an asset owned by the trust, and the trustee or other owner of the asset is required to
33 deliver the asset if the option is exercised, an amount received for granting the option
34 must be allocated to principal. An amount paid to acquire the option must be paid from
35 principal. A gain or loss realized upon the exercise of an option, including an option
36 granted to a settlor of the trust for services rendered, must be allocated to principal.

37 **§7-455. Asset-backed securities**

38 **1. Asset-backed security.** As used in this section, "asset-backed security" means an
39 asset whose value is based upon the right it gives the owner to receive distributions from

1 the proceeds of financial assets that provide collateral for the security. "Asset-backed
2 security" includes an asset that gives the owner the right to receive from the collateral
3 financial assets only the interest or other current return or only the proceeds other than
4 interest or current return. The term does not include an asset to which section 7-441 or
5 7-449 applies.

6 **2. Payment from interest or current return; allocate to income.** If a trust
7 receives a payment from interest or other current return and from other proceeds of the
8 collateral financial assets, the trustee shall allocate to income the portion of the payment
9 that the payor identifies as being from interest or other current return and shall allocate
10 the balance of the payment to principal.

11 **3. Payments for trust's interest; allocate to income and principal.** If a trust
12 receives one or more payments in exchange for the trust's entire interest in an asset-
13 backed security in one accounting period, the trustee shall allocate the payments to
14 principal. If a payment is one of a series of payments that will result in the liquidation of
15 the trust's interest in the security over more than one accounting period, the trustee shall
16 allocate 10% of the payment to income and the balance to principal.

17 **SUBPART 5**

18 **ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF** 19 **TRUST**

20 **§7-461. Disbursements from income**

21 A trustee shall make the following disbursements from income to the extent that they
22 are not disbursements to which section 7-421, subsection 2, paragraph B or C applies:

23 **1. Compensation.** One-half of the regular compensation of the trustee and of any
24 person providing investment advisory or custodial services to the trustee;

25 **2. Expenses; income and remainder interests.** One-half of all expenses for
26 accountings, judicial proceedings or other matters that involve both the income and
27 remainder interests;

28 **3. Other ordinary expenses.** All of the ordinary expenses other than those specified
29 in subsections 1 and 2 incurred in connection with the administration, management or
30 preservation of trust property and the distribution of income, including interest, ordinary
31 repairs, regularly recurring taxes assessed against principal and expenses of a proceeding
32 or other matter that concerns primarily the income interest; and

33 **4. Recurring premiums.** Recurring premiums on insurance covering the loss of a
34 principal asset or the loss of income from or use of the asset.

35 **§7-462. Disbursements from principal**

36 **1. Required disbursements.** A trustee shall make the following disbursements from
37 principal:

- 1 A. The remaining 1/2 of the disbursements described in section 7-461, subsections 1
2 and 2;
- 3 B. All of the trustee's compensation calculated on principal as a fee for acceptance,
4 distribution or termination and disbursements made to prepare property for sale;
- 5 C. Payments on the principal of a trust debt;
- 6 D. Expenses of a proceeding that concerns primarily principal, including a
7 proceeding to construe the trust or to protect the trust or its property;
- 8 E. Premiums paid on a policy of insurance not described in section 7-461, subsection
9 4 of which the trust is the owner and beneficiary;
- 10 F. Estate, inheritance and other transfer taxes, including penalties, apportioned to the
11 trust; and
- 12 G. Disbursements related to environmental matters, including reclamation, assessing
13 environmental conditions, remedying and removing environmental contamination,
14 monitoring remedial activities and the release of substances, preventing future
15 releases of substances, collecting amounts from persons liable or potentially liable for
16 the costs of those activities, penalties imposed under environmental laws or
17 regulations and other payments made to comply with those laws or regulations,
18 statutory or common law claims by 3rd parties and defending claims based on
19 environmental matters.

20 **2. Encumbered principal asset; transfer to income.** If a principal asset is
21 encumbered with an obligation that requires income from that asset to be paid directly to
22 the creditor, the trustee shall transfer from principal to income an amount equal to the
23 income paid to the creditor in reduction of the principal balance of the obligation.

24 **§7-463. Transfers from income to principal for depreciation**

25 **1. Depreciation.** As used in this section, "depreciation" means a reduction in value
26 due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a
27 useful life of more than one year.

28 **2. Reasonable amount of net cash receipts.** A trustee may transfer to principal a
29 reasonable amount of the net cash receipts from a principal asset that is subject to
30 depreciation, but may not transfer for depreciation any amount:

31 A. Of that portion of real property used or available for use by a beneficiary as a
32 residence or of tangible personal property held or made available for the personal use
33 or enjoyment of a beneficiary;

34 B. During the administration of a decedent's estate; or

35 C. Under this section if the trustee is accounting under section 7-443 for the business
36 or activity in which the asset is used.

37 **3. Separate fund not required.** An amount transferred to principal pursuant to
38 subsection 2 need not be held as a separate fund.

1 **§7-464. Transfers from income to reimburse principal**

2 **1. Transfer to reimburse or provide reserve.** If a trustee makes or expects to
3 make a principal disbursement described in this section, the trustee may transfer an
4 appropriate amount from income to principal in one or more accounting periods to
5 reimburse principal or to provide a reserve for future principal disbursements.

6 **2. Applicable principal disbursement.** Principal disbursements to which
7 subsection 1 applies include the following, but only to the extent that the trustee has not
8 been and does not expect to be reimbursed by a 3rd party:

9 A. An amount chargeable to income but paid from principal because it is unusually
10 large, including extraordinary repairs;

11 B. A capital improvement to a principal asset, whether in the form of changes to an
12 existing asset or the construction of a new asset, including special assessments;

13 C. Disbursements made to prepare property for rental, including tenant allowances,
14 leasehold improvements and broker's commissions;

15 D. Periodic payments on an obligation secured by a principal asset to the extent that
16 the amount transferred from income to principal for depreciation is less than the
17 periodic payments; and

18 E. Disbursements described in section 7-462, subsection 1, paragraph G.

19 **3. Successive income interest.** If the asset whose ownership gives rise to the
20 disbursements becomes subject to a successive income interest after an income interest
21 ends, a trustee may continue to transfer amounts from income to principal as provided in
22 subsection 1.

23 **§7-465. Income taxes**

24 **1. Tax based on receipts allocated to income.** A tax required to be paid by a
25 trustee based on receipts allocated to income must be paid from income.

26 **2. Tax based on receipts allocated to principal.** A tax required to be paid by a
27 trustee based on receipts allocated to principal must be paid from principal, even if the tax
28 is called an income tax by the taxing authority.

29 **3. Tax on trust's share of entity's taxable income.** A tax required to be paid by a
30 trustee on the trust's share of an entity's taxable income must be paid:

31 A. From income to the extent that receipts from the entity are allocated only to
32 income;

33 B. From principal to the extent that receipts from the entity are allocated only to
34 principal;

35 C. Proportionately from principal and income to the extent that receipts from the
36 entity are allocated to both income and principal; and

37 D. From principal to the extent that the tax exceeds the total receipts from the entity.

1 4. Adjustments because of deduction for payments to beneficiary. After
2 applying subsections 1 to 3, the trustee shall adjust income or principal receipts to the
3 extent that the trust's taxes are reduced because the trust receives a deduction for
4 payments made to a beneficiary.

5 **§7-466. Adjustments between principal and income because of taxes**

6 **1. Adjustments to offset shifting of interests or benefits.** A fiduciary may make
7 adjustments between principal and income to offset the shifting of economic interests or
8 tax benefits between income beneficiaries and remainder beneficiaries that arise from:

9 A. Elections and decisions, other than those described in subsection 2, that the
10 fiduciary makes from time to time regarding tax matters;

11 B. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary
12 as a result of a transaction involving or a distribution from the estate or trust; or

13 C. The ownership by an estate or trust of an interest in an entity whose taxable
14 income, whether or not distributed, is includable in the taxable income of the estate,
15 trust or a beneficiary.

16 **2. Increase in estate tax, reduction in income taxes.** If the amount of an estate tax
17 marital deduction or charitable contribution deduction is reduced because a fiduciary
18 deducts an amount paid from principal for income tax purposes instead of deducting it for
19 estate tax purposes, and as a result estate taxes paid from principal are increased and
20 income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or
21 beneficiary that benefits from the decrease in income tax shall reimburse the principal
22 from which the increase in estate tax is paid. The total reimbursement must equal the
23 increase in the estate tax to the extent that the principal used to pay the increase would
24 have qualified for a marital deduction or charitable contribution deduction but for the
25 payment. The proportionate share of the reimbursement for each estate, trust or
26 beneficiary whose income taxes are reduced must be the same as its proportionate share
27 of the total decrease in income tax. An estate or trust shall reimburse principal from
28 income.

29 **SUBPART 6**

30 **MISCELLANEOUS PROVISIONS**

31 **§7-471. Uniformity of application and construction**

32 In applying and construing this Part, consideration must be given to the need to
33 promote uniformity of the law with respect to its subject matter among states that enact it.

34 **§7-472. Application of Part to all trusts and estates**

35 This Part applies to every trust or decedent's estate, including those in existence on
36 January 1, 2003, beginning with the first fiscal year of the trust or decedent's estate that
37 begins on or after January 1, 2003, except as otherwise expressly provided in the will or
38 terms of the trust or in this Part.

1 **§7-473. Transitional matters**

2 Section 7-449 applies to a trust described in section 7-449, subsection 4 on and after
3 the following dates:

4 **1. Trust not funded as of January 1, 2012.** If the trust is not funded as of January
5 1, 2012, the date of the decedent's death;

6 **2. Trust initially funded in 2012.** If the trust is initially funded in the calendar year
7 beginning January 1, 2012, the date of the decedent's death; or

8 **3. All other trusts.** If the trust is not described in subsection 1 or 2, January 1, 2012.

9 **ARTICLE 8**

10 **MISCELLANEOUS PROVISIONS**

11 **PART 1**

12 **RECEIVERSHIPS FOR MISSING AND ABSENT PERSONS**

13 **§8-101. Estates of absentees; petition**

14 If a person entitled to or having an interest in property within the jurisdiction of the
15 State has disappeared or absconded from the place within or outside the State where the
16 person was last known to be, has no agent in the State and it is not known where the
17 person is, or if a person, having a spouse or minor child dependent to any extent upon the
18 person for support, has disappeared or absconded without making sufficient provision for
19 support and it is not known where the person is, or, if it is known that the person is
20 outside the State, anyone who would under the law of the State be entitled to administer
21 the estate of the absentee if the absentee were deceased may file a petition under oath in
22 the court for the county where the property is situated. The petition must state the name,
23 age, occupation and last known residence or address of the absentee, the date and
24 circumstances of the disappearance and the names and residences of other persons,
25 whether members of the absentee's family or otherwise, of whom inquiry may be made.
26 The petition must also contain a schedule of the absentee's known property, real and
27 personal, and its location within the State and request that such property be taken
28 possession of and a receiver appointed under this Part.

29 **§8-102. Warrant**

30 Upon receipt of a petition under section 8-101, the court may issue a warrant, which
31 may run throughout the State, directed to the public administrator in the county where the
32 property or some of it is situated, commanding the public administrator to take possession
33 of the property listed in the schedule and expeditiously make return of the warrant with a
34 schedule of the property taken. The public administrator shall cause any portion of the
35 warrant relating to land to be recorded in the registry of deeds for the county where the
36 land is located. The public administrator is entitled to the fees allowed by the court for
37 servicing the warrant, but may not receive more than those established by law for similar

1 service upon a writ of attachment. The fees and the costs of publishing and serving the
2 notice must be paid by the petitioner. If a receiver is appointed under section 8-105, the
3 fees must be repaid by the receiver to the petitioner and the receiver may be compensated
4 for these fees under section 8-112.

5 **§8-103. Notice**

6 Upon the return of a warrant issued under section 8-102, the court shall issue a notice
7 reciting the substance of the petition, warrant and return, which must be addressed to the
8 absentee, to all persons who claim an interest in the absentee's property and to all whom it
9 may concern, ordering them to appear at a time and place named and show cause why a
10 receiver of the property should not be appointed to hold and dispose of the property listed
11 in the schedule under this Part.

12 **§8-104. Publication**

13 The return day may not be less than 30 days nor more than 60 days after the date of
14 the notice. The court shall order the notice to be published once in each of 3 successive
15 weeks in one or more newspapers within the county in which the petition was filed under
16 section 8-101 and a copy of the notice to be mailed to the last known address of the
17 absentee. The court may order additional and alternative notice to be given within or
18 outside the State.

19 **§8-105. Hearing; appointment of receiver of property; bond**

20 The absentee or a person who claims an interest in any of the property may appear
21 and show cause why the petition should not be granted. The court may, after hearing,
22 dismiss the petition and order that the property in possession of the public administrator
23 be returned to the person entitled to the property or it may appoint as receiver a person
24 who, under the law of the State, is entitled to administer the estate of the absentee if the
25 absentee were deceased or, if no eligible person is known or if all eligible persons decline
26 to serve, the court may appoint the public administrator as receiver of the property in the
27 possession of the public administrator and named in the schedule. If a receiver is
28 appointed, the court shall find and record the date of the absentee's disappearance or
29 absconding and the receiver shall give bond to the State of Maine in a sum and under the
30 conditions ordered by the court.

31 **§8-106. Possession by receiver**

32 After approval of a bond under section 8-105, the court may order the public
33 administrator to transfer and deliver to the receiver possession of the property under the
34 warrant. The receiver shall file a schedule of the property received in the registry of
35 probate.

36 **§8-107. Collection of debts**

37 In addition to property transferred to the receiver under section 8-106, the receiver
38 shall take possession of any other property within the State that belongs to the absentee
39 and demand and collect all debts due the absentee from any person in the State and hold
40 the same as if it had been transferred and delivered to the receiver by the public

1 administrator. If the receiver takes any additional real estate, the receiver shall file a
2 certificate describing the real estate with the register of deeds for the county where the
3 real estate is located.

4 **§8-108. Appointment of receiver for absentee's debts**

5 If an absentee has left no corporeal property within the State, but there are debts or
6 obligations due or owing the absentee from persons in the State, a petition may be filed as
7 provided in section 8-101, stating the nature and amount of the absentee's known debts
8 and obligations and praying that a receiver may be appointed. Upon receipt of the
9 petition, the court may issue a notice as provided in section 8-103 without issuing a
10 warrant and may, upon the return of the notice and after a hearing, dismiss the petition or
11 appoint a receiver and authorize and direct the receiver to demand and collect the
12 absentee's debts and obligations. The receiver shall give bond as provided in section
13 8-105 and shall hold the proceeds of the absentee's debts and obligations and all property
14 received by the receiver and distribute the same as provided in this Part.

15 **§8-109. Perishable goods**

16 The court may make orders for the care, custody, leasing and investing of all property
17 and its proceeds in the possession of the receiver. If any of the property consists of live
18 animals or is perishable or cannot be kept without great or disproportionate expense, the
19 court may, after the return of the warrant, order the property to be sold at public or private
20 sale. Upon petition of the receiver, the court may order all or part of the property,
21 including the absentee's rights in land, to be sold at public or private sale to supply money
22 for payments authorized by this Part or for reinvestment approved by the court.

23 **§8-110. Support of dependents**

24 The court may order the absentee's property or its proceeds acquired by mortgage,
25 lease or sale to be applied in payment of expenses incurred or that may be incurred to
26 support and maintain the absentee's spouse and dependent children and to discharge any
27 debts and claims for spousal support proved against the absentee.

28 **§8-111. Arbitration of claims**

29 The court may authorize the receiver appointed under section 8-108 to adjust by
30 arbitration or compromise any demand in favor of or against the absentee's estate.

31 **§8-112. Compensation; cessation of duties**

32 The receiver appointed under section 8-108 may receive compensation and
33 disbursements ordered by the court, to be paid out of the absentee's property or proceeds.
34 If, within 8 years after the date of the disappearance or absconding found by the court
35 under section 8-105, the absentee appears or a personal representative, assignee in
36 insolvency or trustee in bankruptcy of the absentee is appointed, the receiver shall
37 account for, deliver and pay over the remainder of the absentee's property. If the absentee
38 does not appear and claim the absentee's property within 8 years, all of the absentee's
39 right, title and interest in the property, real or personal, or the proceeds thereof, ceases,
40 and no action may be brought by the absentee.

1 on such notice to the surety or sureties as the court may direct. Such agreement does not
2 in any manner release from or change the liability of the principal or sureties under the
3 terms of the bond.

4 **§8-204. Approval of bond by judge**

5 Except as otherwise provided by sections 3-603 to 3-606, 4-204, 4-207, 5-415, 5-416,
6 5-433 and 5-434 and Title 18-B, section 702, a bond required to be given to the State of
7 Maine or the court or to be filed in the probate office is insufficient until it has been
8 examined by the court and approved by the court in writing.

9 **§8-205. Insufficient sureties**

10 When the sureties in a bond under section 8-204 are insufficient, the court, on
11 petition of any person interested and with notice to the principal, may require a new bond
12 with sureties approved by the court.

13 **§8-206. Discharge of surety**

14 On application of any surety or principal of a bond under this Part, the court, after
15 notice to all parties interested, may discharge the surety or sureties from all liability for
16 any subsequent breach but not for any prior breaches and may require a new bond of the
17 principal with sureties approved by the court.

18 **§8-207. New bonds or removal of principal**

19 In proceedings under sections 8-205 and 8-206, if the principal does not give a new
20 bond within the time ordered by the court, the principal must be removed and another
21 appointed.

22 **§8-208. Reduction of liability where signed by surety company**

23 If a surety company becomes surety on a bond given to the State of Maine, the court
24 may, upon petition of any party in interest and after notice to all interested parties, reduce
25 the amount for which the principal and surety are liable for a subsequent violation of the
26 conditions of the bond.

27 **§8-209. Actions on bonds**

28 Actions or proceedings on probate bonds of any kind payable to the State of Maine or
29 the court may be commenced by any person interested in the estate or other matter for
30 which the bond was given, either in the probate court in which the bond was filed or in
31 the Superior Court of the county in which the bond was filed.

32 **§8-210. Principal made party in action against surety**

33 If the principal of the bond resides in the State when an action is brought under
34 section 8-209, and is not made a party to the action, or if at the trial or on proceedings on
35 a judgment against the sureties only the principal is in the State, the court, at the request

1 of any such surety, may postpone or continue the action long enough to summon or bring
2 the principal into court.

3 **§8-211. Proceedings and judgment**

4 With approval of the court after a continuance is issued under section 8-210, the
5 surety may request a writ, in the form prescribed by the court, to arrest the principal, if
6 liable to arrest, or to attach the principal's estate and summon the principal to appear and
7 answer as a defendant in the action. If, 14 days after service of the writ, the principal
8 fails to appear at the time appointed and judgment is rendered for the plaintiff, the
9 judgment must be against the principal and the other defendants as if the principal had
10 been a party. Any attachment made on the writ may be used to satisfy the judgment as if
11 the attachment had been issued in the original action.

12 **§8-212. Limitation of actions on bonds**

13 Except in the case of personal representatives provided for under sections 3-1005 and
14 3-1007, and whenever applicable under section 8-201, an action on a bond must be
15 commenced within 6 years after the principal has been cited by the court to appear to
16 settle the account or, if not cited, within 6 years from the time of the breach of the bond,
17 unless the breach is fraudulently concealed by the principal or surety from the persons
18 pecuniarily interested and who are parties to the action, in which case the action must be
19 commenced within 3 years from the time the breach is discovered.

20 **§8-213. Judicial authorization of actions**

21 The court may expressly authorize or instruct a personal representative or other
22 fiduciary, on the court's own initiative or on the complaint of any interested person, to
23 commence an action on the bond for the benefit of the estate. Nothing in this section may
24 be deemed to limit the power or duty of a successor fiduciary to bring proceedings the
25 fiduciary is authorized to bring without express court authorization under section 3-606,
26 subsection 1, paragraph D; section 5-416, subsection 1, paragraph C; Title 18-B, section
27 702; or any other provision of law.

28 **§8-214. Forfeiture for failure to account when ordered**

29 When it appears in an action on a bond against a principal that the principal is unable
30 to account for personal property of the estate that the principal has received, execution
31 must be awarded against the principal for the full value of the unaccounted-for property,
32 without any allowance for charges of administration or debts paid.

33 **§8-215. Judgment in trust for all interested**

34 Every judgment and execution in an action on the bond must be recovered by the
35 court in trust for all interested parties. The judge shall order the delinquent fiduciary, if
36 still in office, to account for the amount or to assign the amount to the fiduciary's
37 successor to be collected and distributed or otherwise disposed of as assets.

38 **PART 3**

1 EFFECTIVE DATE

2 §8-301. Time of taking effect; provisions for transition

3 1. Effective date. This Code takes effect on January 1, 1981.

4 2. Applicability. Except as provided elsewhere in this Code, on the effective date of
5 this Code:

6 A. The Code applies to any wills of decedents who die after the effective date;

7 B. The Code applies to any proceedings in court pending on the effective date or
8 commenced after the effective date regardless of the time of the death of the decedent
9 except to the extent that in the opinion of the court the former procedure should be
10 made applicable in a particular case in the interest of justice or because of
11 infeasibility of application of the procedure of this Code;

12 C. Every personal representative, including a person administering an estate of a
13 minor or incompetent holding an appointment on the effective date of January 1,
14 1981, continues to hold the appointment but has only the powers conferred by this
15 Code and is subject to the duties imposed with respect to any act occurring or done
16 after the effective date, and a guardian appointed prior to January 1, 1981 has the
17 powers conferred by this Code on guardians and conservators, unless otherwise
18 limited by the original order of appointment or subsequent court order under this
19 Code;

20 D. An act done before the effective date in any proceeding and any accrued right is
21 not impaired by this Code. If a right is acquired, extinguished or barred upon the
22 expiration of a prescribed period of time that has commenced to run by the provisions
23 of any statute before the effective date, the provisions remain in force with respect to
24 that right;

25 E. Any rule of construction or presumption provided in this Code applies to
26 instruments executed and multiple party accounts opened before the effective date
27 unless there is a clear indication of a contrary intent; and

28 F. For an adoption decree entered before the effective date and not amended after the
29 effective date, the child is the child of both the natural and adopting parents for
30 purposes of intestate succession, notwithstanding section 2-119, unless the decree
31 provides otherwise.

32 ARTICLE 9

33 ADOPTION

34 PART 1

35 GENERAL PROVISIONS

1 **§9-101. Short title**

2 This Article may be known and cited as "the Adoption Act."

3 **§9-102. Definitions**

4 As used in this Article, unless the context otherwise indicates, the following terms
5 have the following meanings.

6 **1. Adoptee.** "Adoptee" means a person who will be or who has been adopted,
7 regardless of whether the person is a child or an adult.

8 **2. Adult.** "Adult" means a person who is 18 years of age or older.

9 **3. Child.** "Child" means a person who is under 18 years of age.

10 **4. Consent.** "Consent," used as a noun, means a voluntary agreement to an adoption
11 by a specific petitioner that is executed by a parent or custodian of the adoptee.

12 **5. Department.** "Department" means the Department of Health and Human
13 Services.

14 **6. Genetic father.** "Genetic father" means the man whose sperm fertilized the egg
15 of a child's genetic mother.

16 **7. Genetic mother.** "Genetic mother" means the woman whose egg was fertilized
17 by the sperm of a child's genetic father.

18 **8. Genetic parent.** "Genetic parent" means a child's genetic father or genetic
19 mother.

20 **9. Licensed child-placing agency.** "Licensed child-placing agency" means an
21 agency, person, group of persons, organization, association or society licensed to operate
22 in this State pursuant to Title 22, chapter 1671.

23 **10. Parent.** "Parent" means a person who, with respect to a child:

24 A. Has established a parent-child relationship with the child under Title 19-A,
25 chapter 61; or

26 B. When no person described in paragraph A exists, is the legal guardian of the
27 child.

28 **11. Petitioner.** "Petitioner" means a person filing a petition to adopt an adult or a
29 child, and includes both petitioners under a joint petition, except as otherwise provided in
30 this Article.

31 **12. Putative father.** "Putative father" means a man who is the alleged genetic father
32 of a child but whose paternity has not been legally established.

1 **13. Surrender and release.** "Surrender and release," used as a noun, means a
2 voluntary relinquishment of all parental rights to a child to the department or a licensed
3 child-placing agency for the purpose of placement for adoption.

4 **§9-103. Jurisdiction**

5 **1. Probate Court jurisdiction.** Subject to Title 4, section 152, subsection 5-A, the
6 Probate Court has exclusive jurisdiction over the following:

7 A. Petitions for adoption;

8 B. Consents and reviews of withholdings of consent by persons other than a parent;

9 C. Surrenders and releases;

10 D. Termination of parental rights proceedings brought pursuant to section 9-204;

11 E. Proceedings to determine the rights of putative fathers of children whose
12 adoptions or surrenders and releases are pending before the Probate Court; and

13 F. Reviews conducted pursuant to section 9-205.

14 **2. District Court jurisdiction.** The District Court has jurisdiction to conduct
15 hearings pursuant to section 9-205. The District Court has jurisdiction over any matter
16 described in subsection 1 if the proceeding concerns a child over whom the District Court
17 has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

18 **§9-104. Venue; transfer**

19 **1. Venue if adoptee placed by agency or department.** If an adoptee is placed by a
20 licensed child-placing agency or the department, the petition for adoption must be filed in
21 the court in the county where:

22 A. The petitioner resides;

23 B. The adoptee resides or was born; or

24 C. An office of the agency that placed the adoptee for adoption is located.

25 **2. Venue if agency or department not involved in placement.** If an adoptee is not
26 placed by a licensed child-placing agency or the department, the petition for adoption
27 must be filed in the county where the adoptee resides or where the petitioners reside.

28 **3. Transfer.** If, in the interests of justice or for the convenience of the parties, the
29 court finds that the matter should be heard in another probate court, the court may
30 transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the
31 court.

32 **§9-105. Rights of adopted persons**

33 Except as otherwise provided by law, an adopted person has all the same rights,
34 including inheritance rights, that a child born to the adoptive parents would have. An
35 adoptee also retains the right to inherit from the adoptee's genetic parents if the adoption
36 decree so provides, as specified in section 2-119, subsection 6.

1 **§9-106. Legal representation**

2 **1. Attorney for genetic parents.** The genetic parents are entitled to an attorney for
3 any hearing held pursuant to this Article. If the genetic mother or the genetic or putative
4 father wants an attorney but is unable to afford one, the genetic mother or the genetic or
5 putative father may request the court to appoint an attorney. If the court finds either or
6 both of them indigent, the court shall appoint and pay the reasonable costs and expenses
7 of the attorney of the indigent party. The attorney may not be the attorney for the
8 adoptive parents.

9 **2. Attorney for minor indigent genetic parent.** When the adoptee is unrelated to
10 the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive
11 parents to represent a minor indigent genetic parent at every stage of the proceedings
12 unless the minor indigent genetic parent refuses representation or the court determines
13 that representation is unnecessary.

14 **§9-107. Indian Child Welfare Act of 1978**

15 The federal Indian Child Welfare Act of 1978, United States Code, Title 25, Section
16 1901 et seq. governs all proceedings under this Article that pertain to an Indian child as
17 defined in that Act.

18 **§9-108. Application of prior laws**

19 The laws in effect on December 31, 2018 apply to proceedings for which any of the
20 following occurred before January 1, 2019:

21 **1. Consent.** The filing of a consent;

22 **2. Surrender and release.** The filing of a surrender and release;

23 **3. Waiver of notice.** The filing of a waiver of notice by a father or putative father
24 under former Title 19, section 532-C;

25 **4. Order terminating parental rights.** The issuance of an order terminating
26 parental rights; or

27 **5. Adoption petition.** The filing of a petition for adoption.

28 **PART 2**

29 **ESTABLISHMENT OF PATERNAL RIGHTS AND TERMINATION OF**
30 **PARENTAL RIGHTS**

31 **§9-201. Establishment of paternity**

32 **1. Affidavit of paternity.** When the genetic mother of a child born out of wedlock
33 wishes to consent to the adoption of the child or to execute a surrender and release for the
34 purpose of adoption of the child and the putative father has not consented to the adoption
35 of the child or joined in a surrender and release for the purpose of adoption of the child or
36 waived his right to notice, the genetic mother must file an affidavit of paternity with the

1 court so that the court may determine how to give notice of the proceedings to the
2 putative father.

3 **2. Notice of intent to consent or execute surrender and release.** If a court finds
4 from the affidavit of the genetic mother submitted pursuant to subsection 1 that the
5 putative father's whereabouts are known, the court shall order that notice of the mother's
6 intent to consent to adoption or to execute a surrender and release, or the mother's actual
7 consent or surrender and release, for the purpose of adoption of the child, be served upon
8 the putative father. If the court finds that the putative father's whereabouts are unknown,
9 the court shall order notice by publication in accordance with the Maine Rules of Probate
10 Procedure. If the genetic mother does not know or refuses to tell the court who the
11 genetic father is, the court may order publication in accordance with the Maine Rules of
12 Probate Procedure in a newspaper of general circulation in the area where the petition is
13 filed, where the genetic mother became pregnant or where the putative father is most
14 likely to be located. The notice must specify the names of the genetic mother and the
15 child.

16 **3. Waiver of notice.** A putative father or a legal father who is not the genetic father
17 may waive his right to notice under this section in a document acknowledged before a
18 notary public or a judge. The notary public may not be an attorney who represents either
19 the mother or any person who is likely to become the legal guardian, custodian or parent
20 of the child.

21 A. The waiver of notice must indicate that the putative father or legal father
22 understands that the waiver of notice operates as a consent to adoption or a surrender
23 and release for the purposes of adoption for any adoption of the child and that by
24 signing the waiver of notice the putative father or legal father voluntarily gives up
25 any rights to the child.

26 B. The waiver of notice may state that the putative father or legal father neither
27 admits nor denies paternity.

28 C. The legal father shall attach to the waiver of notice an affidavit stating that,
29 although he is the legal father, he is not the genetic father.

30 **4. Petition by putative father for parental rights.** If, after notice under this
31 section, the putative father wishes to establish parental rights to the child, he must, within
32 20 days after notice has been given or within a longer period of time as ordered by the
33 court, petition the court to grant to him parental rights. The petition must include an
34 allegation that the putative father is in fact the genetic father of the child.

35 **5. Hearing date.** Upon receipt of a petition under subsection 4, the court shall fix a
36 date for a hearing to determine the putative father's parental rights to the child.

37 **6. Appointment of attorneys.** The court shall appoint an attorney who is not the
38 attorney for the putative father, the genetic mother or the potential transferee agency or a
39 potential adoptive parent to represent the child and to protect the child's interests in the
40 proceedings under this section.

1 **7. Notice of hearing.** Notice of a hearing under this section must be given to the
2 putative father, the genetic mother, the attorney for the child and any other parties the
3 court determines appropriate. Notice need not be given to a putative father or a legal
4 father who is not the genetic father and who has waived his right to notice as provided in
5 subsection 3.

6 **8. Studies and reports.** Upon order of the court, the department or licensed child-
7 placing agency shall furnish studies and reports relevant to the proceedings under this
8 section.

9 **9. Findings; putative father declared parent.** If, after a hearing under this section,
10 the court finds that the putative father is the genetic father, that he is willing and able to
11 protect the child from jeopardy and has not abandoned the child, that he is willing and
12 able to take responsibility for the child and that it is in the best interests of the child, the
13 court shall declare the putative father the child's parent with all the attendant rights and
14 responsibilities.

15 **10. Findings; putative father.** If the court finds that the putative father has not
16 petitioned or appeared within the period required by this section or has not met the
17 requirements of subsection 9, the court shall rule that the putative father has no parental
18 rights and that only the genetic mother of the child need consent to adoption or a
19 surrender and release.

20 **§9-202. Surrender and release; consent**

21 **1. Surrender and release or consent; presence of judge.** With the approval of the
22 court of any county within the State and after a determination by the court that a
23 surrender and release or a consent is in the best interest of the child, the parents or
24 surviving parent of a child may at any time after the child's birth:

25 A. Surrender and release all parental rights to the child and the custody and control
26 of the child to a licensed child-placing agency or the department to enable the
27 licensed child-placing agency or the department to have the child adopted by a
28 suitable person; or

29 B. Consent to have the child adopted by a specified petitioner.

30 The parents or the surviving parent must execute the surrender and release or the consent
31 in the presence of the judge. The adoptee, if 14 years of age or older, must execute the
32 consent in the presence of the judge. The waiver of notice by the legal father who is not
33 the genetic father or putative father is governed by section 9-201, subsection 3.

34 **2. Approval of surrender and release or consent.** The court may approve a
35 surrender and release or a consent only if:

36 A. A licensed child-placing agency or the department certifies to the court that
37 counseling was provided or was offered and refused. This requirement does not
38 apply if:

39 (1) One of the petitioners is a blood relative; or

40 (2) The adoptee is an adult;

1 B. The court has explained the individual's parental rights and responsibilities, the
2 effects of the surrender and release or the consent, that in all but specific situations
3 the individual has the right to revoke the surrender and release or consent within 3
4 days and the existence of the adoption registry and the services available under Title
5 22, section 2706-A. The individual does not have the right to revoke the consent
6 when the individual is a consenting party and also a petitioner;

7 C. The court determines that the surrender and release or the consent has been duly
8 executed and was given freely after the parent was informed of the parent's rights;
9 and

10 D. Except when a consenting party is also a petitioner, at least 3 days have elapsed
11 since the parents or parent executed the surrender and release or the consent and the
12 parents or parent did not withdraw or revoke the surrender and release or consent
13 before the judge or, if the judge was not available, before the register.

14 **3. Original; copies.** The original surrender and release or consent must be filed in
15 the court where the surrender and release or the consent is executed. An attested copy of
16 the surrender and release or consent must be filed in the court in which the petition is
17 filed. The court in which the surrender and release or the consent is executed shall
18 provide an attested copy to each surrendering or consenting party and an attested copy to
19 the transferring agency. The copy given to the surrendering or consenting party must
20 contain a statement explaining the importance of keeping the court informed of a current
21 name and address.

22 **4. Valid after 3 days; exception.** A surrender and release or a consent is not valid
23 until 3 days after it has been executed, except that consent by a parent petitioning to adopt
24 that parent's own child with that parent's spouse is valid upon signature.

25 **5. Consent acknowledged.** Consent may be acknowledged before a notary public
26 who is not an attorney for the adopting parents or a partner, associate or employee of an
27 attorney for the adopting parents when consent is given by:

28 A. The department or a licensed child-placing agency; or

29 B. A public agency or a duly licensed private agency to which parental rights have
30 been transferred under the law of another state or country.

31 **6. Final and irrevocable; exceptions.** Except as provided in subsection 7 and
32 section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable
33 when duly executed.

34 **7. Consent; limitations.** A consent is final only for the adoption consented to, and if
35 that petition for adoption is withdrawn or dismissed or if the adoption is not finalized
36 within 18 months of the execution of the consent, a review must be held pursuant to
37 section 9-205.

38 **8. Surrender and release or consent from another state.** The court shall accept a
39 surrender and release or a consent by a court of comparable jurisdiction in another state if
40 the court receives an affidavit from a member of that state's bar or a certificate from that
41 court of comparable jurisdiction stating that:

1 A. The party executing the surrender and release or the consent followed the
2 procedure required to make a surrender and release or a consent valid in the state in
3 which it was executed; and

4 B. The court of comparable jurisdiction advised the person executing the surrender
5 and release or the consent of the consequences of the surrender and release or the
6 consent under the laws of the state in which the surrender and release or the consent
7 was executed.

8 The court shall accept a waiver of notice by a putative father or a legal father who is not
9 the genetic father that meets the requirements of section 9-201, subsection 3.

10 **§9-203. Duties and responsibilities subsequent to surrender and release**

11 Without notice to the parent or parents, the surrender and release authorized pursuant
12 to section 9-202 may be transferred together with all rights under section 9-202 from the
13 transferee agency to the department or from the department as original transferee to any
14 licensed child-placing agency. If the licensed child-placing agency or the department is
15 unable to find a suitable adoptive home for a child surrendered and released by a parent
16 or parents, the licensed child-placing agency or the department to whom custody and
17 control of that child have been surrendered and released or transferred shall request a
18 review pursuant to section 9-205.

19 **§9-204. Termination of parental rights**

20 **1. Petition for termination; Probate Court or District Court.** A petition for
21 termination of parental rights may be brought in the Probate Court in which a petition for
22 adoption is properly filed as part of that petition for adoption except when the District
23 Court has exclusive jurisdiction over the child pursuant to Title 4, section 152, subsection
24 5-A.

25 **2. Title 22, chapter 1071, subchapter 6 applies.** Except as otherwise provided by
26 this section, a termination of parental rights petition is subject to the provisions of Title
27 22, chapter 1071, subchapter 6.

28 **3. Guardian ad litem for child.** The court may appoint a guardian ad litem for a
29 child who is the subject of a petition for termination of parental rights under subsection 1.
30 The appointment must be made as soon as possible after the petition for termination of
31 parental rights is initiated.

32 A. The court shall pay reasonable costs and expenses for the guardian ad litem.

33 B. In general, the guardian ad litem shall act in pursuit of the best interests of the
34 child. The guardian ad litem must be given access to all reports and records relevant
35 to the case and investigate to ascertain the facts. The investigation must include,
36 when possible and appropriate:

37 (1) Reviewing records of psychiatric, psychological or physical examinations of
38 the child, parents or other persons having or seeking care or custody of the child;

39 (2) Review of relevant school records and other pertinent materials;

1 (3) Interviewing the child with or without other persons present; and

2 (4) Interviews with parents, guardians, teachers and other persons who have been
3 involved in caring for or treating the child.

4 The guardian ad litem may subpoena, examine and cross-examine witnesses and shall
5 make recommendations to the court.

6 **§9-205. Review**

7 **1. Judicial review required; 18 months.** The court shall conduct a judicial review
8 if:

9 A. A child is not adopted within 18 months of the execution of a surrender and
10 release;

11 B. The adoption is not finalized within 18 months of the consent to an adoption by a
12 parent or parents; or

13 C. A petition for adoption is not finalized within 18 months.

14 **2. Determination whether adoption viable plan; review; plan; District Court.** If
15 after judicial review under subsection 1, the court determines that adoption is still a viable
16 plan for the child, the court shall schedule another judicial review within 2 years. If the
17 court determines that adoption is no longer a viable plan, the court shall attempt to notify
18 the genetic parents, who must be given an opportunity to present an acceptable plan for
19 the child. If either or both parents are able and willing to assume physical custody of the
20 child, the court shall declare the surrender and release or the consent void.

21 If the genetic parents are not notified or are unable or unwilling to assume physical
22 custody of the child or if the court determines that placement of the child with the genetic
23 parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, the
24 case must be transferred to the District Court for a hearing pursuant to Title 22, section
25 4038-A.

26 **PART 3**

27 **ADOPTION PROCEDURES**

28 **§9-301. Petition for adoption and change of name; filing fee**

29 A husband and wife jointly or an unmarried person, resident or nonresident of the
30 State, may petition the court to adopt a person, regardless of age, and to change that
31 person's name. The fee for filing the petition is \$65 plus:

32 **1. National criminal history record check fee.** The fee for a national criminal
33 history record check for noncriminal justice purposes set by the Federal Bureau of
34 Investigation for each prospective adoptive parent who is not the genetic parent of the
35 child; and

36 **2. State criminal history record check fee.** The fee for a state criminal history
37 record check for noncriminal justice purposes established pursuant to Title 25, section

1 1541, subsection 6 for each prospective adoptive parent who is not the genetic parent of
2 the child.

3 **§9-302. Consent for adoption**

4 **1. Written consent.** Before an adoption is granted, written consent to the adoption
5 must be given by:

6 A. The adoptee, if the adoptee is 14 years of age or older;

7 B. Each of the adoptee's living parents, except as provided in subsection 2;

8 C. A person or agency having legal custody or guardianship of the adoptee if the
9 adoptee is a child or to whom the child has been surrendered and released, except that
10 the person's or agency's lack of consent, if adjudged unreasonable by a court, may be
11 overruled by the court. In order for the court to find that the person or agency acted
12 unreasonably in withholding consent, the petitioner must prove, by a preponderance
13 of the evidence, that the person or agency acted unreasonably. The court may hold a
14 pretrial conference to determine who will proceed. The court may determine that
15 even though the burden of proof is on the petitioner, the person or agency should
16 proceed if the person or agency has important facts necessary to the petitioner in
17 presenting the petitioner's case. The court shall consider the following:

18 (1) Whether the person or agency determined the needs and interests of the child;

19 (2) Whether the person or agency determined the ability of the petitioner and
20 other prospective families to meet the child's needs;

21 (3) Whether the person or agency made the decision consistent with the facts;

22 (4) Whether the harm of removing the child from the child's current placement
23 outweighs any inadequacies of that placement; and

24 (5) All other factors that have a bearing on a determination of the reasonableness
25 of the person's or agency's decision in withholding consent; and

26 D. A guardian appointed by the court, if the adoptee is a child, when the child has no
27 living parent, guardian or legal custodian who may consent.

28 A petition for adoption must be pending before a consent is executed.

29 **2. Consent not required.** Consent to adoption is not required of:

30 A. A putative father or a legal father who is not the genetic father if he:

31 (1) Received notice and failed to respond to the notice within the prescribed time
32 period;

33 (2) Waived his right to notice under section 9-201, subsection 3;

34 (3) Failed to meet the standards of section 9-201, subsection 9; or

35 (4) Holds no parental rights regarding the adoptee under the laws of the foreign
36 country in which the adoptee was born;

- 1 B. A parent whose parental rights have been terminated under Title 22, chapter 1071,
2 subchapter 6;
- 3 C. A parent who has executed a surrender and release pursuant to section 9-202;
- 4 D. A parent whose parental rights have been voluntarily or judicially terminated and
5 transferred to a public agency or a duly licensed private agency pursuant to the laws
6 of another state or country; or
- 7 E. A parent of an adoptee who is 18 years of age or older.

8 **3. Consent by department; notice.** When the department consents to the adoption
9 of a child in its custody, the department shall immediately notify:

- 10 A. The District Court in which the action under Title 22, chapter 1071 is pending;
11 and
- 12 B. The guardian ad litem for the child.

13 **§9-303. Petition**

14 **1. Sworn; contents.** A petition for adoption must be sworn to by the petitioner and
15 must include:

- 16 A. The full name, age and place of residence of the petitioner and, if married, the
17 place and date of marriage;
- 18 B. The date and place of birth of the adoptee, if known;
- 19 C. The birth name of the adoptee, any other names by which the adoptee has been
20 known and the adoptee's proposed new name, if any;
- 21 D. The residence of the adoptee at the time of the filing of the petition;
- 22 E. A statement of the petitioner's intention to establish a parent-child relationship
23 between the petitioner and the adoptee and a statement that the petitioner is a fit and
24 proper person able to care and provide for the adoptee's welfare;
- 25 F. The names and addresses of all persons or agencies known to the petitioner that
26 affect the custody of, visitation with or access to the adoptee;
- 27 G. The relationship, if any, of the petitioner to the adoptee;
- 28 H. The names and addresses of the department and the licensed child-placing
29 agency, if any;
- 30 I. The names and addresses of all persons known to the petitioner at the time of filing
31 from whom consent to the adoption is required; and
- 32 J. If the petition is for the adoption of a minor child, a statement that the petitioner
33 acknowledges that after the adoption is finalized, the transfer of the long-term care
34 and custody of the adoptee without a court order is prohibited under Title 17-A,
35 section 553, subsection 1, paragraphs C and D.

1 **2. Information to be shared and updated.** A petitioner shall indicate to the court
2 what information the petitioner is willing to share with the genetic parents and under what
3 circumstances and shall provide a mechanism for updating that information.

4 **3. Caption.** The caption of a petition for adoption may be styled "In the Matter of
5 the Adoption Petition of (name of adoptee)." The petitioner must also be designated in
6 the caption.

7 **§9-304. Investigation; guardian ad litem; registry**

8 **1. Background check; study and report.** Upon the filing of a petition for adoption
9 of a minor child, the court shall request a background check and shall direct the
10 department or a licensed child-placing agency to conduct a study and make a report to the
11 court.

12 A. The study must include an investigation of the conditions and antecedents of the
13 child to determine whether the child is a proper subject for adoption and whether the
14 proposed home is suitable for the child. The department or licensed child-placing
15 agency shall submit the report to the court within 60 days.

16 (1) If the court has a report that provides sufficient, current information, the
17 court may waive the requirement of a study and report.

18 (2) If the petitioner is a blood relative of the child, the court may waive the
19 requirement of a study and report.

20 B. The court shall request a background check for each prospective adoptive parent
21 who is not the genetic parent of the child. The background check must include a
22 screening for child abuse cases in the records of the department and criminal history
23 record information obtained from the Maine Criminal Justice Information System and
24 the Federal Bureau of Investigation.

25 (1) The criminal history record information obtained from the Maine Criminal
26 Justice Information System must include a record of public criminal history
27 record information as defined in Title 16, section 703, subsection 8.

28 (2) The criminal history record information obtained from the Federal Bureau of
29 Investigation must include other state and national criminal history record
30 information.

31 (3) Each prospective parent who is not the genetic parent of the child shall
32 submit to having fingerprints taken. The State Police, upon receipt of the
33 fingerprint card, may charge the court for the expenses incurred in processing
34 state and national criminal history record checks. The State Police shall take or
35 cause to be taken the applicant's fingerprints and shall forward the fingerprints to
36 the State Bureau of Identification so that the bureau can conduct state and
37 national criminal history record checks. Except for the portion of the payment, if
38 any, that constitutes the processing fee charged by the Federal Bureau of
39 Investigation, all money received by the State Police for purposes of this
40 paragraph must be paid over to the Treasurer of State. The money must be
41 applied to the expenses of administration incurred by the Department of Public
42 Safety.

1 (4) The subject of a Federal Bureau of Investigation criminal history record
2 check may obtain a copy of the criminal history record check by following the
3 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.
4 The subject of a state criminal history record check may inspect and review the
5 criminal history record information pursuant to Title 16, section 709.

6 (5) State and federal criminal history record information may be used by the
7 court for the purpose of screening prospective adoptive parents in determining
8 whether the adoption is in the best interests of the child.

9 (6) Information obtained pursuant to this paragraph is confidential. The results
10 of background checks received by the court are for official use only and may not
11 be disseminated outside the court except as required under Title 22, section
12 4011-A.

13 (7) The expense of obtaining the information required by this paragraph is
14 incorporated in the adoption filing fee established in section 9-301. The court
15 shall collect the total fee and transfer the appropriate funds to the Department of
16 Public Safety and the department.

17 The court may waive the background check of a prospective adoptive parent if a previous
18 background check was completed by a court or by the department under this subsection
19 within a reasonable period of time and the court is satisfied that nothing new that would
20 be included in the background check has transpired since the last background check.

21 This subsection does not authorize the court to request a background check for the genetic
22 parent who is also the current legal parent of the child.

23 **2. Background checks by department.** The department may, pursuant to rules
24 adopted by the department, at any time before the filing of the petition for adoption,
25 conduct background checks for each prospective adoptive parent of a minor child in its
26 custody.

27 A. The department may request a background check for each prospective adoptive
28 parent who is not the genetic parent of the child. The background check must include
29 criminal history record information obtained from the Maine Criminal Justice
30 Information System and the Federal Bureau of Investigation.

31 (1) The criminal history record information obtained from the Maine Criminal
32 Justice Information System must include a record of public criminal history
33 record information as defined in Title 16, section 703, subsection 8.

34 (2) The criminal history record information obtained from the Federal Bureau of
35 Investigation must include other state and national criminal history record
36 information.

37 (3) Each prospective parent who is not the genetic parent of the child shall
38 submit to having fingerprints taken. The State Police, upon receipt of the
39 fingerprint card, may charge the department for the expenses incurred in
40 processing state and national criminal history record checks. The State Police
41 shall take or cause to be taken the applicant's fingerprints and shall forward the
42 fingerprints to the State Bureau of Identification so that the bureau can conduct

1 state and national criminal history record checks. Except for the portion of the
2 payment, if any, that constitutes the processing fee charged by the Federal Bureau
3 of Investigation, all money received by the State Police for purposes of this
4 paragraph must be paid over to the Treasurer of State. The money must be
5 applied to the expenses of administration incurred by the Department of Public
6 Safety.

7 (4) The subject of a Federal Bureau of Investigation criminal history record
8 check may obtain a copy of the criminal history record check by following the
9 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.
10 The subject of a state criminal history record check may inspect and review the
11 criminal history record information pursuant to Title 16, section 709.

12 (5) State and federal criminal history record information may be used by the
13 department for the purpose of screening prospective adoptive parents in
14 determining whether the adoption is in the best interests of the child.

15 (6) Information obtained pursuant to this paragraph is confidential. The results
16 of background checks received by the department are for official use only and
17 may not be disseminated outside the department except to a court considering a
18 petition for adoption under subsection 1.

19 B. Rules adopted by the department pursuant to this subsection are routine technical
20 rules as defined in Title 5, chapter 375, subchapter 2-A.

21 **3. Child's background.** This subsection governs the collection and disclosure of
22 information about the background of a child subject to a petition for adoption under
23 subsection 1.

24 A. The department, the licensed child-placing agency or any other person who acts
25 to place or assist in placing a child for adoption shall obtain medical and genetic
26 information about the genetic parents and the child. Specifically, the department, the
27 licensed child-placing agency or any other person who acts to place or assist in
28 placing the child for adoption shall attempt to obtain:

29 (1) A current medical, psychological and developmental history of the child,
30 including an account of the child's prenatal care and medical condition at birth,
31 results of newborn screening, any drug or medication taken by the child's genetic
32 mother during pregnancy, any subsequent medical, psychological or psychiatric
33 examination and diagnosis, any physical, sexual or emotional abuse suffered by
34 the child and a record of any immunizations and health care received since birth;
35 and

36 (2) Relevant information concerning the medical, psychological and social
37 history of the genetic parents, including any known disease or hereditary
38 disposition to disease, the history of use of drugs and alcohol, the health of the
39 genetic mother during her pregnancy and the health of the genetic parents at the
40 time of the child's birth.

41 B. Prior to the child being placed for adoption, the department, the licensed child-
42 placing agency or any other person who acts to place or assist in placing the child for

1 adoption shall provide the information described in paragraph A to the prospective
2 adoptive parents.

3 C. If the department, the licensed child-placing agency or any other person who acts
4 to place or assists in placing the child for adoption has specific, articulable reasons to
5 question the truth or accuracy of any of the information obtained, those reasons must
6 be disclosed in writing to the prospective adoptive parents.

7 D. The prospective adoptive parents must be informed in writing if any of the
8 information described in this subsection cannot be obtained, either because the
9 records are unavailable or because the genetic parents are unable or unwilling to
10 consent to its disclosure or to be interviewed.

11 E. If, after a child is placed for adoption and either before or after the adoption is
12 final, the child suffers a serious medical or mental illness for which the specific
13 medical, psychological or social history of the genetic parents or the child may be
14 useful in diagnosis or treatment, the prospective adoptive or adoptive parents may
15 request that the department, the licensed child-placing agency or any other person
16 who placed or assisted to place the child attempt to obtain additional information.
17 The department, licensed child-placing agency or other person shall attempt to obtain
18 the information promptly and shall disclose any information collected to the
19 prospective adoptive or adoptive parents as soon as reasonably possible. The
20 department, licensed child-placing agency or other person may charge a fee to the
21 prospective adoptive or adoptive parents to cover the cost of obtaining and providing
22 the additional information. Fees collected by the department must be dedicated to
23 defray the costs of obtaining and providing the additional information. Fees may be
24 reduced or waived for low-income prospective adoptive or adoptive parents.

25 F. The department, the licensed child-placing agency or any other person who acts to
26 place or assist in placing the child for adoption shall file the information collected
27 with the court and, if it appears that the adoption will be granted and this information
28 has not previously been made available to the adoptive parents pursuant to Title 22,
29 section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall
30 make the information available to the adoptive parents, prior to issuing the decree
31 pursuant to subsection 8, with protection for the identity of persons other than the
32 child.

33 G. If the child to be placed for adoption is from a foreign country that has
34 jurisdiction over the child and the prospective adoptive parents are United States
35 citizens, compliance with federal and international adoption laws is deemed to be in
36 compliance with this subsection.

37 **4. Rebuttable presumption; sexual offenses.** There is a rebuttable presumption
38 that the petitioner would create a situation of jeopardy for the child if the adoption were
39 granted and that the adoption is not in the best interest of the child if the court finds that
40 the petitioner for the adoption of a minor child:

41 A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection
42 6-A, paragraph A in which the victim was a minor at the time of the offense and the
43 petitioner was at least 5 years older than the minor at the time of the offense, except
44 that, if the offense was gross sexual assault under Title 17-A, section 253, subsection

1 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is
2 substantially similar to that contained in Title 17-A, section 253, subsection 1,
3 paragraph B or C, and the minor victim submitted as a result of compulsion, the
4 presumption applies regardless of the ages of the petitioner and the minor victim at
5 the time of the offense; or

6 B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually
7 abusing a person who was a minor at the time of the abuse.

8 The petitioner may present evidence to rebut the presumption.

9 **5. Probationary period.** The court may require that a minor child subject to a
10 petition for adoption under this section live for one year in the home of the petitioner
11 before the petition is granted and that the child, during all or part of this probationary
12 period, be under the supervision of the department or a licensed adoption agency.

13 **6. Guardian ad litem.** The court may appoint a guardian ad litem for a minor child
14 subject to a petition for adoption under this section at any time during the proceedings.

15 **7. Adoption registry and services.** Before the adoption of a minor child is decreed,
16 the court shall ensure that the petitioners are informed of the existence of the adoption
17 registry and the services available under Title 22, section 2706-A.

18 **8. Declaration; name change.** If the court is satisfied with the identity and relations
19 of the parties to a petition for adoption under this section, with the ability of the petitioner
20 to bring up and educate the child properly, considering the condition of the child's genetic
21 parents, and with the fitness and propriety of the adoption, the court shall make a decree
22 setting forth the facts and declaring that from that date the child is the child of the
23 petitioner and that the child's name is changed, without requiring public notice of that
24 change.

25 **9. Certified copy of birth certificate; certificate of adoption.** A certified copy of
26 the birth certificate of the child proposed for adoption must be presented with the petition
27 for adoption if the certified copy can be obtained or made available by filing a delayed
28 birth registration. After the adoption has been decreed, the register shall file a certificate
29 of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished
30 by the state registrar.

31 **10. Transfer of long-term care or custody without court order.** Before the
32 adoption is decreed under subsection 8, the court shall ensure that the petitioners are
33 informed that the transfer of the long-term care and custody of the child without a court
34 order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

35 **§9-305. Evidence; procedure**

36 The court may proceed as follows in considering a petition for adoption.

37 **1. Adoptee interview.** The court may interview any adoptee, and shall interview an
38 adoptee who is 12 years of age or older, outside the presence of the prospective adoptive
39 parents, to determine the adoptee's attitudes and desires about the adoption and other
40 relevant issues.

1 **2. Inspection of records; disclosure.** The court may conduct an inspection in
2 camera of records of relevant child protective proceedings and may disclose only that
3 information necessary for the determination of any issue before the court. Any disclosure
4 of information must be done pursuant to Title 22, section 4008, subsection 3.

5 **3. Recording; expenses.** The parties may request a recording of the proceedings.
6 The requesting party shall pay the expense of the recording.

7 **§9-306. Allowable payments; expenses**

8 **1. Allowable payments by or on behalf of petitioner.** Except when one of the
9 petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following
10 expenses may be paid by or on behalf of a petitioner in any proceeding under this Article:

11 A. The actual cost of legal services related to the surrender and release or the consent
12 and to the adoption process;

13 B. Prenatal and postnatal counseling expenses for the genetic mother;

14 C. Prenatal, birthing and other related medical expenses for the genetic mother;

15 D. Necessary transportation expenses to obtain the services listed in paragraphs A, B
16 and C;

17 E. Foster care expenses for the child;

18 F. Necessary living expenses for the genetic mother and the child;

19 G. For the genetic father, legal and counseling expenses related to the surrender and
20 release, the consent and the adoption process; and

21 H. Fees to a licensed child-placing agency providing services in connection with the
22 pending adoption.

23 **2. Full accounting of disbursements by petitioner.** Prior to the dispositional
24 hearing pursuant to section 9-308, the petitioner shall file a full accounting of all
25 disbursements of anything of value made or agreed to be made by or on behalf of the
26 petitioner in connection with the adoption. The accounting report must be signed under
27 penalty of perjury and must be submitted to the court on or before the date the final
28 decree is granted. The accounting report must be itemized and show the services related
29 to the adoption or to the placement of the adoptee for adoption that were received by the
30 adoptee's genetic parents, by the adoptee or on behalf of the petitioner. The accounting
31 must include the dates of each payment and the names and addresses of each attorney,
32 physician, hospital, licensed child-placing agency or other person or organization who
33 received funds or anything of value from the petitioner in connection with the adoption or
34 the placement of the adoptee with the petitioner or participated in any way in the handling
35 of the funds, either directly or indirectly. This subsection does not apply when one of the
36 petitioners is a blood relative or the adoptee is an adult.

37 **3. Payments not contingent; other expenses and payments prohibited.** Payment
38 for expenses allowable under subsection 1 may not be contingent upon any future
39 decision a genetic parent might make pertaining to the child. Other expenses or payments
40 to genetic parents are not authorized.

1 **§9-307. Adoption not granted**

2 If the court determines that it is unable to finalize an adoption to which genetic
3 parents have consented, the court shall notify the genetic parents that the court has not
4 granted the adoption and shall conduct a review pursuant to section 9-205.

5 **§9-308. Final decree; dispositional hearing**

6 **1. Final decree of adoption; requirements.** The court shall grant a final decree of
7 adoption if the petitioner who filed the petition has been heard or has waived hearing and
8 the court is satisfied from the hearing or record that:

9 A. All necessary consents, relinquishments or terminations of parental rights have
10 been duly executed and filed with the court;

11 B. An adoption study, when required by section 9-304, has been filed with the court;

12 C. A list of all disbursements as required by section 9-306 has been filed with the
13 court;

14 D. The petitioner is a suitable adopting parent and desires to establish a parent-child
15 relationship with the adoptee;

16 E. The best interests of the adoptee, described in subsection 2, are served by the
17 adoption;

18 F. The petitioner has acknowledged that the petitioner understands that the transfer
19 of the long-term care and custody of an adoptee who is a minor child without a court
20 order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D;
21 and

22 G. All requirements of this Article have been met.

23 **2. Best interests of adoptee.** In determining the best interests of an adoptee, the
24 court shall consider and evaluate the following factors to give the adoptee a permanent
25 home at the earliest possible date:

26 A. The love, affection and other emotional ties existing between the adoptee and the
27 adopting person or persons, the genetic parent or genetic parents or the putative
28 father;

29 B. The capacity and disposition of the adopting person or persons, the genetic parent
30 or genetic parents or the putative father to educate and give the adoptee love,
31 affection and guidance and to meet the needs of the adoptee. An adoption may not be
32 delayed or denied because the adoptive parent and the adoptee do not share the same
33 race, color or national origin; and

34 C. The capacity and disposition of the adopting person or persons, the genetic parent
35 or genetic parents or the putative father to provide the adoptee with food, clothing
36 and other material needs, education, permanence and medical care or other remedial
37 care recognized and permitted in place of medical care under the laws of this State.

38 **3. Findings; decree; confidentiality.** The court shall enter its findings in a written
39 final decree that includes the new name of the adoptee. The final decree must further

1 order that from the date of the decree the adoptee is the child of the petitioner and must be
2 accorded the status set forth in section 9-105. If the court determines that it is in the best
3 interest of the adoptee, the court may require that the names of the adoptee and of the
4 petitioner be kept confidential.

5 **4. Notice to genetic parents.** Upon completion of an adoption proceeding, the
6 genetic parents who consented to an adoption or who executed a surrender and release
7 must be notified by the court of the completion by regular mail at their last known
8 address. Notice under this subsection is not required to a genetic parent who is also a
9 petitioner. When the genetic parents' rights have been terminated pursuant to Title 22,
10 section 4055, the notice must be given to the department and the department shall notify
11 the genetic parents of the completion by regular mail at their last known address. Actual
12 receipt of the notice is not a precondition of completion and does not affect the rights or
13 responsibilities of adoptees or adoptive parents.

14 **5. Notice to grandparents.** The department shall notify the grandparents of a child
15 when the child is placed for adoption if the department has received notice that the
16 grandparents were granted reasonable rights of visitation or access under Title 19-A,
17 chapter 59 or Title 22, section 4005-E.

18 **§9-309. Appeals**

19 **1. Appeal; bond not required of child or next friend.** Any party may appeal from
20 any order entered under this Article to the Supreme Judicial Court sitting as the Law
21 Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child
22 or next friend and costs may not be awarded against either.

23 **2. Appeal expedited.** An appeal from any order under this Article must be
24 expedited.

25 **3. Attorney, guardian ad litem continues.** An attorney or guardian ad litem
26 appointed to represent a party in an adoption proceeding continues to represent the
27 interests of that party in any appeal unless otherwise ordered by the court.

28 **§9-310. Records confidential**

29 Notwithstanding any other provision of law and except as provided in Title 22,
30 section 2768, all court records relating to an adoption decreed on or after August 8, 1953
31 are confidential. The court shall keep records of those adoptions segregated from all
32 other court records. If a court determines that examination of records pertaining to a
33 particular adoption is proper, the court may authorize that examination by specified
34 persons, authorize the register to disclose to specified persons any information contained
35 in the records by letter, certificate or copy of the record or authorize a combination of
36 both examination and disclosure.

37 Any medical or genetic information in the court records relating to an adoption must
38 be made available to the adopted child when the adopted child attains 18 years of age and
39 to the adopted child's descendants, adoptive parents or legal guardian on petition of the
40 court.

1 **§9-311. Interstate placements**

2 **1. Certificate of compliance; bring child to this State.** A person or agency who
3 intends to bring a child to this State from another state for the purpose of adoption must
4 provide to the court the certification of compliance as required by the department
5 pursuant to Title 22, chapter 1153 or 1154, as applicable.

6 **2. Certificate of compliance; remove child from this State.** A person or agency
7 who intends to remove a child from this State for the purpose of adoption in another state
8 must obtain from the department certification of compliance with Title 22, chapter 1153
9 or 1154, as applicable, prior to the removal of the child from this State.

10 **3. Department certification required.** The court may not grant a petition to adopt a
11 child who has been brought to or will be removed from this State for the purpose of
12 adoption without department certification of compliance with Title 22, chapter 1153 or
13 1154, as applicable.

14 **4. Civil violation.** An agency or person who fails to comply with this section
15 commits a civil violation for which a fine of not less than \$100 and not more than \$5,000
16 may be adjudged.

17 **§9-312. Foreign adoptions**

18 If an adoption in a foreign country has been finalized and the adopting parents are
19 seeking an adoption under the laws of this State to give recognition to the foreign
20 adoption, a court may enter a decree of adoption based solely upon a judgment of
21 adoption in a foreign country and may order a change of name if requested by the
22 adopting parents. The fee for filing the petition is \$55.

23 **§9-313. Advertisement**

24 **1. Definitions.** As used in this section, the following terms have the following
25 meanings.

26 A. "Advertise" means to communicate by any public medium that originates within
27 this State, including by newspaper, periodical, telephone book listing, outdoor
28 advertising sign, radio or television, or by any computerized communication system,
29 including by e-mail, website, Internet account or any similar medium of
30 communication provided via the Internet.

31 B. "Internet account" means an account created within a bounded system established
32 by an Internet-based service that requires a user to input or store access information
33 in an electronic device in order to view, create, use or edit the user's account
34 information, profile, display, communications or stored data.

35 **2. Advertising prohibited.** A person may not:

36 A. Advertise for the purpose of finding a child to adopt or to otherwise take into
37 permanent physical custody;

1 B. Advertise that the person will find an adoptive home or any other permanent
2 physical placement for a child or arrange for or assist in the adoption, adoptive
3 placement or any other permanent physical placement of a child;

4 C. Advertise that the person will place a child for adoption or in any other permanent
5 physical placement; or

6 D. Advertise for the purpose of finding a person to adopt or otherwise take into
7 permanent custody a particular child.

8 **3. Exceptions.** This section does not prohibit:

9 A. The department or a child-placing agency from advertising in accordance with
10 rules adopted by the department; or

11 B. An attorney licensed to practice in this State from advertising the attorney's
12 availability to practice or provide services relating to the adoption of children.

13 **4. Violation.** A person who violates subsection 2 commits a civil violation for
14 which a fine of not more than \$5,000 may be adjudged.

15 **§9-314. Immunity from liability for good faith reporting; proceedings**

16 A person, including an agent of the department, who participates in good faith in
17 reporting violations of this Article or participates in a related child protection
18 investigation or proceeding is immune from any criminal or civil liability for reporting or
19 participating in the investigation or proceeding. For purposes of this section, "good faith"
20 does not include instances when a false report is made and the person knows the report is
21 false.

22 **§9-315. Annulment of the adoption decree**

23 **1. Annulment; reasons.** The court, on petition of 2 or more persons and after notice
24 and hearing, may reverse and annul an adoption decree for one of the following reasons:

25 A. The court finds that the adoption was obtained as a result of fraud, duress or
26 illegal procedures; or

27 B. The court finds good cause shown consistent with the best interest of the child.

28 **2. Notice.** Notice of a petition to annul must be given to the genetic parents, except
29 those whose parental rights were terminated through a proceeding pursuant to Title 22,
30 section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the
31 adoption including the adoptive parents, an adoptee who is 14 years of age or older and
32 the agency involved in the adoption.

33 **3. Certified copy of annulment.** After the court annuls a decree of adoption, the
34 register shall transmit immediately a certified copy of the annulment to the State
35 Registrar of Vital Statistics.

36 **PART 4**

37 **ADOPTION ASSISTANCE PROGRAM**

1 **§9-401. Authorization; special needs children**

2 **1. Program.** There is established in the Department of Health and Human Services
3 the Adoption Assistance Program, referred to in this Part as "the program."

4 **2. Adoption assistance for special needs children.** Subject to rules and regulations
5 adopted by the department and the federal Department of Health and Human Services, the
6 department may provide through the program adoption assistance for special needs
7 children in its care or custody or in the custody of a nonprofit private licensed child-
8 placing agency in this State if those children are legally eligible for adoption and, when
9 reasonable but unsuccessful efforts have been made to place them without adoption
10 assistance, would not otherwise be adopted without the assistance of this program.

11 **3. One-time adoption expenses.** The department shall, subject to rules and
12 regulations adopted by the department and the federal Department of Health and Human
13 Services, reimburse adoptive parents of a special needs child for one-time adoption
14 expenses when reasonable but unsuccessful efforts have been made to place the child
15 without such assistance.

16 **4. "Special needs child" defined.** As used in this Part, "special needs child" means
17 a child who:

18 A. Has a physical, mental or emotional handicap that makes placement difficult;

19 B. Has a medical condition that makes placement difficult;

20 C. Is a member of a sibling group that includes at least one member who is difficult
21 to place;

22 D. Is difficult to place because of age or race;

23 E. Has been a victim of physical, emotional or sexual abuse or neglect that places the
24 child at risk for future emotional difficulties; or

25 F. Has in that child's family background factors such as severe mental illness,
26 substance abuse, prostitution, genetic or medical conditions or illnesses that place the
27 child at risk for future problems.

28 **5. Funds.** For the purposes of this section, the department is authorized to use funds
29 that are appropriated for child welfare services and funds provided under the United
30 States Social Security Act, Titles IV-B and IV-E.

31 **6. Amount of adoption assistance.** The amount of adoption assistance under the
32 program may vary depending upon the resources of the adoptive parents and the special
33 needs of the child, as well as the availability of other resources, but may not exceed the
34 total cost of caring for the child if the child were to remain in the care or custody of the
35 department, without regard to the source of the funds.

36 **7. Duration of assistance.** The duration of assistance under the program may
37 continue until the cessation of legal parental responsibility or until the parents are no
38 longer supporting the child, at which time the adoption assistance ceases. However, if the
39 child has need of educational benefits or has a physical, mental or emotional handicap,

1 adoption assistance may continue until the adoptee has attained 21 years of age if the
2 adoptee, the parents and the department agree that the need for care and support exists.

3 **8. Children from another state.** Children who are in the custody of a person or
4 agency in another state who are brought to this State for the purpose of adoption are not
5 eligible for adoption assistance through the program except for reimbursement of
6 nonrecurring expenses if the child meets the requirements of the United States Social
7 Security Act, 42 United States Code, Section 673(c).

8 **§9-402. Adoption assistance**

9 **1. Eligible applicants.** An application for the program may be submitted by the
10 following persons:

11 A. A foster parent interested in adopting an eligible child in the foster parent's care;

12 B. A person interested in adopting an eligible child; or

13 C. An adoptive parent who was not informed of the program or of facts relevant to a
14 child's eligibility when adopting a child who was at the time of adoption eligible for
15 participation in the program.

16 **2. Standards for adoption apply.** All applicants for the program must meet
17 department standards for adoption except for financial eligibility.

18 **3. Assistance based on special needs.** Assistance under the program may be
19 provided for special needs only and may be varied based on the special needs of the child.
20 Assistance may be provided for a period of time based on the special needs of the child.

21 **§9-403. Administration**

22 **1. Written agreement before final decree; exceptions; reduction in payments.** A
23 written agreement between an applicant entering into the program and the department
24 must precede the final decree of adoption, except that an application may be filed
25 subsequent to the finalization of the adoption if there were facts relevant to the child's
26 eligibility that were not presented at the time of the request for assistance or if the child
27 was eligible for participation in the program at the time of placement and the adoptive
28 parents were not informed of the program.

29 Except as provided by section 9-401, subsection 8, once an adoption assistance payment
30 is agreed upon and the agreement signed by the prospective adoptive parents, the
31 department may not reduce the adoption assistance payment amounts.

32 **2. Annual determination.** If assistance under the program continues for more than
33 one year, the need for assistance must be annually redetermined. Adoption assistance
34 continues regardless of the state in which the adoptive parents reside, or the state to which
35 the adoptive parents move, as long as the adoptive parents continue to be eligible based
36 on the annual redetermination of need.

37 **3. Transfer to legal guardian; new agreement.** Upon the death of all adoptive
38 parents, adoption assistance under the program may be transferred to the legal guardian as
39 long as the child continues to be eligible for adoption assistance pursuant to the terms of

1 the most recent adoption assistance agreement with the adoptive parents. The department
2 shall enter into a new assistance agreement with the legal guardian.

3 **§9-404. Rules**

4 The department shall adopt rules for the program consistent with this Part.

5 **PART B**

6 **Sec. B-1. 33 MRSA c. 5**, as amended, is repealed.

7 **Sec. B-2. 33 MRSA c. 5-A** is enacted to read:

8 **CHAPTER 5-A**

9 **RULE AGAINST PERPETUITIES**

10 **§111. Statutory rule against perpetuities**

11 **1. Validity of nonvested property interest.** A nonvested property interest is invalid
12 unless:

13 A. When the interest is created, it is certain to vest or terminate no later than 21 years
14 after the death of an individual then alive; or

15 B. The interest either vests or terminates within 90 years after its creation.

16 **2. Validity of general power of appointment subject to a condition precedent.** A
17 general power of appointment not presently exercisable because of a condition precedent
18 is invalid unless:

19 A. When the power is created, the condition precedent is certain to be satisfied or
20 becomes impossible to satisfy no later than 21 years after the death of an individual
21 then alive; or

22 B. The condition precedent either is satisfied or becomes impossible to satisfy within
23 90 years after its creation.

24 **3. Validity of nongeneral or testamentary power of appointment.** A nongeneral
25 power of appointment or a general testamentary power of appointment is invalid unless:

26 A. When the power is created, it is certain to be irrevocably exercised or otherwise to
27 terminate no later than 21 years after the death of an individual then alive; or

28 B. The power is irrevocably exercised or otherwise terminates within 90 years after
29 its creation.

30 **4. Possibility of post-death child disregarded.** In determining whether a nonvested
31 property interest or a power of appointment is valid under subsection 1, paragraph A;
32 subsection 2, paragraph A; or subsection 3, paragraph A, the possibility that a child will
33 be born to an individual after the individual's death is disregarded.

1 **5. Effect of certain "later of"-type language.** Language contained in a governing
2 instrument that measures a period from the creation of a trust or other property
3 arrangement is inoperative to the extent it produces a period of time that exceeds 21 years
4 after the death of the survivor of the specified lives in being if the language seeks:

5 A. To disallow the vesting or termination of any interest or trust beyond the later of:

6 (1) The expiration of a period of time not exceeding 21 years after the death of
7 the survivor of specified lives in being at the creation of the trust or other
8 property arrangement; and

9 (2) The expiration of a period of time that exceeds or might exceed 21 years after
10 the death of the survivor of the specified lives in being at the creation of the trust
11 or other property arrangement;

12 B. To postpone the vesting or termination of any interest or trust until the later of:

13 (1) The expiration of a period of time not exceeding 21 years after the death of
14 the survivor of specified lives in being at the creation of the trust or other
15 property arrangement; and

16 (2) The expiration of a period of time that exceeds or might exceed 21 years after
17 the death of the survivor of the specified lives in being at the creation of the trust
18 or other property arrangement; or

19 C. To operate in effect in any fashion similar to that described in paragraph A or B
20 upon the later of:

21 (1) The expiration of a period of time not exceeding 21 years after the death of
22 the survivor of specified lives in being at the creation of the trust or other
23 property arrangement; and

24 (2) The expiration of a period of time that exceeds or might exceed 21 years after
25 the death of the survivor of the specified lives in being at the creation of the trust
26 or other property arrangement.

27 **§112. When nonvested property interest or power of appointment created**

28 **1. General principles.** Except as provided in subsections 2 and 3 and in section
29 115, subsection 1, the time of creation of a nonvested property interest or a power of
30 appointment is determined under general principles of property law.

31 **2. Unqualified beneficial owner.** For purposes of this chapter, if there is an
32 individual who alone can exercise a power created by a governing instrument to become
33 the unqualified beneficial owner of a nonvested property interest or a property interest
34 subject to a power of appointment described in section 111, subsection 2 or 3, the
35 nonvested property interest or power of appointment is created when the power to
36 become the unqualified beneficial owner terminates.

37 **3. Arising out of transfer of property.** For purposes of this chapter, a nonvested
38 property interest or a power of appointment arising out of a transfer of property to a
39 previously funded trust or other existing property arrangement is created when the

1 nonvested property interest or power of appointment in the original contribution was
2 created.

3 **§113. Reformation**

4 Upon the petition of an interested person, a court shall reform a disposition in the
5 manner that most closely approximates the transferor's manifested plan of distribution
6 and so that the reformed disposition is within the 90 years allowed by section 111,
7 subsection 1, paragraph B; section 111, subsection 2, paragraph B; or section 111,
8 subsection 3, paragraph B if:

9 **1. Nonvested property interest or power of appointment.** A nonvested property
10 interest or a power of appointment becomes invalid under section 111;

11 **2. Class gift.** A class gift is not but might become invalid under section 111 and the
12 time has arrived when the share of any class member is to take effect in possession or
13 enjoyment; or

14 **3. Certain nonvested property interest not validated.** A nonvested property
15 interest that is not validated by section 111, subsection 1, paragraph A can vest but not
16 within 90 years after its creation.

17 **§114. Exclusions from statutory rule against perpetuities**

18 Section 111 does not apply to:

19 **1. Nonvested property interest or power of appointment arising out of**
20 **nondonative transfer; exceptions.** A nonvested property interest or a power of
21 appointment arising out of a nondonative transfer, except a nonvested property interest or
22 a power of appointment arising out of:

23 A. A premarital or postmarital agreement;

24 B. A separation or divorce settlement;

25 C. A spouse's election;

26 D. An arrangement similar to those described in paragraphs A, B and C arising out
27 of a prospective, existing or previous marital relationship between the parties;

28 E. A contract to make or not to revoke a will or trust;

29 F. A contract to exercise or not to exercise a power of appointment;

30 G. A transfer in satisfaction of a duty of support; or

31 H. A reciprocal transfer;

32 **2. Fiduciary's power.** A fiduciary's power relating to the administration or
33 management of assets, including the power of a fiduciary to sell, lease or mortgage
34 property, and the power of a fiduciary to determine principal and income;

35 **3. Power to appoint fiduciary.** A power to appoint a fiduciary;

1 **4. Discretionary power of trustee to distribute.** A discretionary power of a trustee
2 to distribute principal before termination of a trust to a beneficiary having an indefeasibly
3 vested interest in the income and principal;

4 **5. Nonvested property interest held by charity, government or governmental**
5 **agency or subdivision.** A nonvested property interest held by a charity, government or
6 governmental agency or subdivision if the nonvested property interest is preceded by an
7 interest held by another charity, government or governmental agency or subdivision;

8 **6. Not subject to rule or excluded by other statute.** A property interest, power of
9 appointment or arrangement that was not subject to the common law rule against
10 perpetuities or is excluded by another statute of this State; or

11 **7. Trusts to which rule does not apply.** A trust in which the governing instrument
12 provides that the rule against perpetuities does not apply to the trust and under which the
13 trustee or other individual to whom the power is properly granted or delegated has the
14 power under the governing instrument, applicable statute or common law to sell,
15 mortgage or lease property for any period of time beyond the period that is required for
16 an interest created under the governing instrument to vest. This subsection applies to all
17 trusts created by will or inter vivos instrument executed or amended on or after
18 September 18, 1999 and to all trusts created by exercise of power of appointment granted
19 under instruments executed or amended on or after September 18, 1999.

20 **§115. Application**

21 **1. Nonvested property interest or a power of appointment created prior to**
22 **effective date of this chapter.** This subsection governs nonvested property interests and
23 powers of appointment created prior to the effective date of this chapter.

24 A. Except as provided in section 116, subsection 1, this chapter may not be
25 construed to invalidate or modify the terms of any limitation that would have been
26 valid prior to August 20, 1955.

27 B. This chapter applies only to inter vivos instruments taking effect after August 20,
28 1955, to wills if the testator dies after August 20, 1955 and to appointments made
29 after August 20, 1955, including appointments by inter vivos instruments or wills
30 under powers created before August 20, 1955.

31 C. Section 114, subsection 7 applies to all trusts created by will or inter vivos
32 instrument executed or amended on or after September 18, 1999 and to all trusts
33 created by exercise of power of appointment granted under instruments executed or
34 amended on or after September 18, 1999.

35 D. If a nonvested property interest or a power of appointment was created before the
36 effective date of this chapter and is determined in a judicial proceeding, commenced
37 on or after the effective date of this chapter, to violate this State's rule against
38 perpetuities as that rule existed before the effective date of this chapter, a court upon
39 the petition of an interested person may reform the disposition in the manner that
40 most closely approximates the transferor's manifested plan of distribution and so that
41 the reformed disposition is within the limits of the rule against perpetuities applicable
42 when the nonvested property interest or power of appointment was created.

1 **2. Nonvested property interest or a power of appointment created on or after**
2 **effective date of this chapter.** Except as provided by subsection 1, paragraph D, this
3 **chapter applies to a nonvested property interest or a power of appointment that is created**
4 **on or after the effective date of this chapter.**

5 **3. Creation by exercise of a power of appointment.** For purposes of this section, a
6 **nonvested property interest or a power of appointment created by the exercise of a power**
7 **of appointment is created when the power is irrevocably exercised or when a revocable**
8 **exercise becomes irrevocable.**

9 **§116. Contingent interests**

10 **1. Specified contingency within 30 years.** Except as provided in subsection 2, a fee
11 **simple determinable in land or a fee simple in land subject to a right of entry for**
12 **condition broken becomes a fee simple absolute if the specified contingency does not**
13 **occur within 30 years from the date when the fee simple determinable or the fee simple**
14 **subject to a right of entry becomes possessory. If the specified contingency occurs within**
15 **the 30 years, the succeeding interest, which may be an interest in a person other than the**
16 **individual creating the interest or that individual's heirs, becomes possessory or the right**
17 **of entry exercisable notwithstanding the rule against perpetuities.**

18 **2. Contingency within period.** If a fee simple determinable in land or a fee simple
19 **in land subject to a right of entry for condition broken is so limited that the specified**
20 **contingency must occur, if at all, within the period of the rule against perpetuities, the**
21 **interests take effect as limited.**

22 **3. Not applicable to public, charitable or religious purposes; grant to State or**
23 **political subdivision.** This section does not apply:

24 **A. If both the fee simple determinable and the succeeding interest or both the fee**
25 **simple and the right of entry are for public, charitable or religious purposes; or**

26 **B. To a deed, gift or grant to the State or any political subdivision of the State.**

27 **§117. Application of provisions**

28 **This chapter applies to both legal and equitable interests.**

29 **§118. Supersession**

30 **This chapter supersedes the rule of the common law known as the rule against**
31 **perpetuities and it replaces chapter 5.**

32 **Sec. B-3. 33 MRSA §1602-103, sub-§(b),** as enacted by PL 1981, c. 699, is
33 amended to read:

34 (b) Neither the rule against perpetuities nor the provisions of section ~~403~~ 116, as it or
35 its equivalent may be amended from time to time, may be applied to defeat any provision
36 of the declaration, bylaws or rules and regulations adopted pursuant to section 1603-102,
37 subsection (a), paragraph (1).

1 **PART C**

2 **Sec. C-1. 1 MRSA §433, sub-§2-A, ¶D**, as enacted by PL 2015, c. 250, Pt. D,
3 §2, is amended to read:

4 D. Exceptions codified in the following Titles are scheduled to be reviewed by the
5 review committee no later than 2023:

- 6 (1) Title 13;
- 7 (2) Title 13-B;
- 8 (3) Title 13-C;
- 9 (4) Title 14;
- 10 (5) Title 15;
- 11 (6) Title 16;
- 12 (7) Title 17;
- 13 (8) Title 17-A;
- 14 (9) Title ~~18-A~~ 18-C;
- 15 (10) Title 18-B;
- 16 (11) Title 19-A;
- 17 (12) Title 20-A; and
- 18 (13) Title 21-A;

19 **Sec. C-2. 3 MRSA §704**, as enacted by PL 1985, c. 507, §1, is amended to read:

20 **§704. Beneficiaries under disability**

21 Any beneficiary who is entitled to make an election of benefits under subchapter ~~¶~~ 5,
22 but is not lawfully qualified to make that election, shall have that election made in ~~his~~ the
23 beneficiary's behalf by the person authorized to do so by Title ~~18-A~~ 18-C, Article ~~¶~~ 5.

24 **Sec. C-3. 4 MRSA §253**, as amended by PL 1979, c. 540, §7, is further amended
25 to read:

26 **§253. Jurisdiction in court where proceedings originate**

27 Subject to Title ~~18-A~~ 18-C, sections 1-303 and 3-201, and except as otherwise
28 provided in Title ~~18-A~~ 18-C, ~~sections 5-211 and 5-313~~ section 5-106, when a case is
29 originally within the jurisdiction of the probate court in 2 or more counties, the one ~~which~~
30 that first commences proceedings therein retains the same exclusively throughout. The
31 jurisdiction assumed in any case, except in cases of fraud, so far as it depends on the
32 residence of any person or the locality or amount of property, ~~shall~~ may not be contested
33 in any proceeding whatever, except on an appeal or removal from the probate court in the
34 original case or when the want of jurisdiction appears on the same record.

1 **Sec. C-4. 4 MRSA §807, sub-§3, ¶I**, as amended by PL 2001, c. 554, §1 and PL
2 2003, c. 689, Pt. B, §6, is further amended to read:

3 I. A person who is not an attorney, but is representing the Department of Health and
4 Human Services in a child support enforcement matter as provided by Title 14,
5 section 3128-A, subsection 7; Title ~~18-A~~ 18-C, section 5-204; and Title 19-A, section
6 2361, subsection 10;

7 **Sec. C-5. 4 MRSA §807, sub-§3, ¶S**, as amended by PL 2015, c. 195, §1, is
8 further amended to read:

9 S. An individual who is the sole member of a limited liability company or is a
10 member of a limited liability company that is owned by a married couple, registered
11 domestic partners or an individual and that individual's issue as defined in Title ~~18-A~~
12 18-C, section 1-201, subsection ~~(21)~~ 27 who is not an attorney but is appearing for
13 that company in an action for forcible entry and detainer pursuant to Title 14, chapter
14 709.

15 **Sec. C-6. 4 MRSA §1204**, as enacted by PL 1983, c. 853, Pt. C, §§15 and 18, is
16 amended to read:

17 **§1204. Beneficiaries under disability**

18 Any beneficiary who is entitled to make an election of benefits under ~~Subchapter V~~
19 subchapter 5, but is not lawfully qualified to make that election, shall have that election
20 made in ~~his~~ the beneficiary's behalf by the person authorized to do so by Title ~~18-A~~ 18-C,
21 Article ~~5~~.

22 **Sec. C-7. 4 MRSA §1551, sub-§2**, as enacted by PL 2013, c. 406, §1, is amended
23 to read:

24 **2. Guardian ad litem.** "Guardian ad litem" means a person appointed as the court's
25 agent to represent the best interests of one or more children pursuant to Title ~~18-A~~ 18-C,
26 section ~~1-112~~ 1-111, Title 19-A, section 1507 or Title 22, section 4005.

27 **Sec. C-8. 4 MRSA §1551, sub-§3**, as enacted by PL 2013, c. 406, §1, is amended
28 to read:

29 **3. Best interests of the child.** "Best interests of the child" means an outcome that
30 serves or otherwise furthers the health, safety, well-being, education and growth of the
31 child. In applying the standard of best interests of the child in Title ~~18-A~~ 18-C and Title
32 19-A cases, the relevant factors set forth in Title 19-A, section 1653, subsection 3 must be
33 considered.

34 **Sec. C-9. 4 MRSA §1554, sub-§1**, as enacted by PL 2013, c. 406, §1, is amended
35 to read:

36 **1. Role of guardian ad litem.** The court may appoint a guardian ad litem to provide
37 information to assist the court in determining the best interests of the child involved in the
38 determination of parental rights and responsibilities and guardianship of a minor under

1 Title ~~18-A~~ 18-C, in the determination of parental rights and responsibilities under Title
2 19-A, section 904 or 1653 and in the determination of contact with grandparents under
3 Title 19-A, section 1803. The court shall appoint a guardian ad litem in a child protection
4 case under Title 22, chapter 1071.

5 **Sec. C-10. 4 MRSA §1555, sub-§1**, as enacted by PL 2013, c. 406, §1, is
6 amended to read:

7 **1. Appointment of guardian ad litem.** In proceedings to determine parental rights
8 and responsibilities and guardianship of a minor under Title ~~18-A~~ 18-C and in contested
9 proceedings pursuant to Title 19-A, section 904, 1653 or 1803 in which a minor child is
10 involved, the court may appoint a guardian ad litem for the child when the court has
11 reason for special concern as to the welfare of the child. The court may appoint a
12 guardian ad litem on the court's own motion, on the motion of one of the parties or upon
13 agreement of the parties.

14 A. A court may appoint, without any findings, any person listed on the roster. In
15 addition, when a suitable guardian ad litem included on the roster is not available for
16 appointment, a court may, for good cause shown and after consultation with the
17 parties, appoint an attorney admitted to practice in this State who, after consideration
18 by the court of all of the circumstances of the particular case, in the opinion of the
19 appointing court has the necessary skills and experience to serve as a guardian ad
20 litem. For the purposes of this paragraph, good cause may include the appointment
21 of a guardian ad litem on a pro bono basis.

22 B. In determining whether to make an appointment, the court shall consider:

- 23 (1) The wishes of the parties;
- 24 (2) The age of the child;
- 25 (3) The nature of the proceeding, including the contentiousness of the hearing;
- 26 (4) The financial resources of the parties;
- 27 (5) The extent to which a guardian ad litem may assist in providing information
28 concerning the best interests of the child;
- 29 (6) Whether the family has experienced a history of domestic abuse;
- 30 (7) Abuse of the child by one of the parties; and
- 31 (8) Other factors the court determines relevant.

32 **Sec. C-11. 4 MRSA §1557, sub-§1**, as enacted by PL 2013, c. 406, §1, is
33 amended to read:

34 **1. Rules.** The Supreme Judicial Court shall provide by rule for a complaint process
35 concerning guardians ad litem appointed under Title ~~18-A~~ 18-C, Title 19-A and Title 22
36 that provides for at least the following:

37 A. The ability of a party to make a complaint before the final judgment as well as
38 after the final judgment is issued;

- 1 B. Written instructions on how to make a complaint;
- 2 C. Clear criteria for making a complaint;
- 3 D. Transparent policies and procedures concerning the investigation of complaints
- 4 and the provision of information to complainants;
- 5 E. A central database to log and track complaints; and
- 6 F. Policies and procedures for using complaints and investigations for
- 7 recommending the removal of a guardian ad litem from a particular case or other
- 8 consequences or discipline.

9 **Sec. C-12. 5 MRSA §12004-I, sub-§73-B**, as enacted by PL 2009, c. 262, §1, is
 10 amended to read:

11 **73-B.**

12	Probate and Trust	Probate and Trust	Not Authorized	18-A <u>18-C</u> MRSA
13	Law	Law Advisory		§1-801
14		Commission		

15 **Sec. C-13. 5 MRSA §17055, sub-§§1 and 2**, as enacted by PL 1985, c. 801, §§5
 16 and 7, are amended to read:

17 **1. Election of benefit.** If a beneficiary is not lawfully qualified to make an election,
 18 the election ~~shall~~ must be made for ~~him~~ the beneficiary by the person authorized to do so
 19 by Title ~~18-A~~ 18-C, ~~article V~~ Article 5; and

20 **2. Payment of benefit.** Payment of any benefit to an incapacitated person, as
 21 defined in Title ~~18-A~~ 18-C, section ~~5-101~~ 5-102, or a minor ~~shall~~ must be made in
 22 accordance with Title ~~18-A~~ 18-C, ~~article V~~ Article 5.

23 **Sec. C-14. 5 MRSA §17953, sub-§4, ¶B**, as amended by PL 1991, c. 469, §2, is
 24 further amended to read:

25 B. The benefits begin the first month after the death of the qualifying member and
 26 are payable to each dependent child, in accordance with Title ~~18-A~~ 18-C, ~~article V~~
 27 Article 5, until the end of the month in which the child no longer meets the definition
 28 of "dependent child" in section 17001, subsection 12.

29 **Sec. C-15. 5 MRSA §18553, sub-§4, ¶B**, as amended by PL 1991, c. 469, §5, is
 30 further amended to read:

31 B. The benefits begin the first month after the death of the qualifying member and
 32 are payable to each dependent child, in accordance with Title ~~18-A~~ 18-C, ~~article V~~
 33 Article 5, until the end of the month in which the child no longer meets the definition
 34 of "dependent child" in section 17001, subsection 12.

35 **Sec. C-16. 5 MRSA §19507, sub-§4, ¶D**, as enacted by PL 1989, c. 837, §1, is
 36 amended to read:

1 D. If the public guardian established under Title ~~18-A~~ 18-C, ~~article V~~ Article 5,
2 objects under paragraph B, the agency may petition the Probate Court that established
3 the guardianship for permission to represent the person.

4 **Sec. C-17. 9-B MRSA §427, sub-§2, ¶C**, as amended by PL 1979, c. 540, §9, is
5 further amended to read:

6 C. Subject to the provisions of Title ~~18-A~~ 18-C, section ~~6-111~~ 6-222, upon the death
7 or disability of any fiduciary, the value of such deposit or account may be paid, at the
8 option of the institution, and in the absence of notice of the existence and terms of a
9 trust, either to the executor, administrator, conservator or guardian of such fiduciary,
10 or to any substituted fiduciary, or to the person, if any, who is designated on the
11 records of the institution as the beneficiary of such deposit, if of the age of 15 years
12 or upwards, or to the guardian or parent or person standing in loci parentis to such
13 person if under the age of 15 years. Subject to the provisions of Title ~~18-A~~ 18-C,
14 section ~~6-112~~ 6-226, the receipt or acquittance of any such person ~~shall~~ fully
15 ~~exonerate~~ exonerates and ~~discharge~~ discharges the institution from all liability to any
16 person having any interest in such deposit, and the institution ~~shall~~ is not ~~be~~
17 under any duty to see to the proper application of the trust property.

18 **Sec. C-18. 9-B MRSA §427, sub-§4, ¶A**, as amended by PL 1979, c. 540, §10,
19 is further amended to read:

20 A. When a deposit has been made or ~~shall hereafter be~~ is made in any financial
21 institution authorized to do business in this State in the names of 2 or more persons,
22 payable to either, or payable to either or the survivor, such deposit, or any part
23 thereof, or the interest or dividends thereon may be paid to any or either of said
24 persons, whether the other or others be living or not, or to the legal representative of
25 the survivor of said persons if proofs of death are presented to the financial institution
26 showing that the decedent was the last surviving party or if there is clear and
27 convincing evidence that no right of survivorship was intended at the time the
28 account was created. Subject to the provisions of Title ~~18-A~~ 18-C, section ~~6-112~~
29 6-226, the receipt or acquittance of the persons to whom said payment is so made
30 ~~shall be~~ is a valid and sufficient release and discharge to such financial institution for
31 any payment so made.

32 **Sec. C-19. 9-B MRSA §427, sub-§4, ¶B**, as amended by PL 1979, c. 540, §11,
33 is further amended to read:

34 B. All such deposits or accounts, whenever opened or issued, payable to either or the
35 survivor including interest and dividends, in the name of the same persons in any
36 financial institution within this State ~~shall~~, in the absence of fraud or undue influence,
37 upon the death of one of such persons, become the property of the parties as provided
38 in Title ~~18-A~~ 18-C, section ~~6-104~~ 6-212.

39 **Sec. C-20. 9-B MRSA §427, sub-§8, ¶B**, as enacted by PL 1979, c. 540, §12, is
40 amended to read:

41 B. Notwithstanding the provisions of paragraph A, upon presentation of an affidavit
42 under Title ~~18-A~~ 18-C, section 3-1201, a financial institution shall pay the balance of

1 any deposit or account left by a deceased depositor to the depositor's successor under
2 the provisions of Title ~~18-A~~ 18-C, sections 3-1201 and 3-1202. Such payments under
3 this paragraph ~~shall~~ take precedence over payments under paragraph A to the extent
4 of the balance of the deposits or accounts of the deceased depositor at the time the
5 affidavit is presented.

6 **Sec. C-21. 9-B MRSA §427, sub-§10**, as repealed and replaced by PL 2007, c.
7 88, §1, is amended to read:

8 **10. Adverse claim to deposit or account.** Except as provided in Title 11, section
9 4-405, in Title 14, section 4751 and in Title ~~18-A~~ 18-C, sections ~~6-107~~ 6-102 and ~~6-112~~
10 6-226, notice to a financial institution authorized to do business in this State of an adverse
11 claim to a deposit or account standing on its books to the credit of any person is not
12 effectual to cause that institution to recognize the adverse claimant, unless the adverse
13 claimant either procures a restraining order, injunction or other appropriate process
14 against the institution from a court of competent jurisdiction in a civil action to which the
15 person to whose credit the deposit or account stands is made a party or executes to that
16 institution, in a form and with sureties acceptable to the institution, a bond indemnifying
17 the institution from all liability, loss, damage, costs and expenses for and on account of
18 the payment of such adverse claim or the dishonor of checks or other orders of the person
19 to whose credit the deposit or account stands on the books of the institution.

20 This subsection does not apply to the creation, perfection or enforcement of a security
21 interest in a deposit or account other than an assignment of a deposit or account in a
22 consumer transaction as defined in Title 11, section 9-1102, subsection 26.

23 **Sec. C-22. 9-B MRSA §427, sub-§13**, as enacted by PL 1979, c. 540, §13-A, is
24 amended to read:

25 **13. Notice on opening certain accounts.** A signature card or other document
26 establishing a multiple-party account, as defined in Title ~~18-A~~ 18-C, section ~~6-101~~ 6-201,
27 ~~shall~~ must contain a clear and conspicuous printed notice to the depositor that on ~~his~~ the
28 depositor's death the balance in the account will belong to the surviving party.

29 **Sec. C-23. 9-B MRSA §473, sub-§2, ¶C**, as enacted by PL 1997, c. 398, Pt. I,
30 §41, is amended to read:

31 C. Assets held by a trustee, executor, administrator, guardian or other fiduciary may
32 be invested in a common trust fund established under Title ~~18-A~~ 18-C, section ~~7-501~~
33 7-201;

34 **Sec. C-24. 9-B MRSA §476, sub-§1, ¶D**, as enacted by PL 1997, c. 398, Pt. I,
35 §41, is amended to read:

36 D. The court may appoint one or more guardians ad litem to represent the interests of
37 a person:

38 (1) Entitled to receive notice pursuant to paragraph C, who is a minor or who is
39 known by the petitioner or any transferor affiliate to be subject to any other
40 disability, including confinement in a penal institution, and for whom no
41 guardian, other than a transferor affiliate, has been appointed;

1 (2) Of whose estate a transferor affiliate is conservator and for whom no
2 guardian, other than a transferor affiliate, has been appointed; and

3 (3) Whose identity or whereabouts is unknown.

4 Title ~~18-A~~ 18-C, section 1-403 governs in determining the propriety of any such
5 appointments.

6 **Sec. C-25. 13 MRSA §732, sub-§5**, as amended by PL 2015, c. 429, §3, is
7 further amended to read:

8 **5. Legal guardian or personal representative of deceased or incapacitated**
9 **dentist.** For the purposes of this chapter, the legal guardian or personal representative of
10 a dentist licensed under Title 32, chapter 143 may contract with another dentist to
11 continue the operations of the practice of the deceased or incapacitated dentist for a
12 period of up to 24 months after the death or incapacitation of the dentist or until the
13 practice is sold, whichever occurs first. For purposes of this subsection, "personal
14 representative" has the same meaning as in Title ~~18-A~~ 18-C, section 1-201, subsection ~~30~~
15 40.

16 **Sec. C-26. 13 MRSA §732, sub-§6**, as enacted by PL 2013, c. 46, §1, is amended
17 to read:

18 **6. Legal guardian or personal representative of deceased or incapacitated**
19 **veterinarian.** For the purposes of this chapter, the legal guardian or personal
20 representative of a veterinarian licensed under Title 32, chapter 71-A may contract with
21 another veterinarian to continue the operations of the practice of the deceased or
22 incapacitated veterinarian for a period of up to 24 months after the death or incapacitation
23 of the veterinarian or until the practice is sold, whichever occurs first. For purposes of
24 this subsection, "personal representative" has the same meaning as in Title ~~18-A~~ 18-C,
25 section 1-201, subsection ~~30~~ 40.

26 **Sec. C-27. 13-C MRSA §1501, sub-§2, ¶L**, as enacted by PL 2001, c. 640, Pt.
27 A, §2 and affected by Pt. B, §7, is amended to read:

28 L. Engaging as a trustee in those actions defined by Title ~~18-A~~ 18-C, section ~~7-105~~
29 7-103 as not in themselves requiring local qualification of a foreign corporate trustee;
30 or

31 **Sec. C-28. 14 MRSA §6303**, as amended by PL 1979, c. 540, §24, is further
32 amended to read:

33 **§6303. Death of mortgagor or successor**

34 If a person entitled to redeem a mortgaged estate or an equity of redemption ~~which~~
35 that has been sold on execution, or the right to redeem such right, or the right to redeem
36 lands set off on execution, dies without having made a tender for that purpose, a tender
37 may be made and an action for redemption commenced and prosecuted by ~~his~~ the
38 person's personal representative, or by ~~his~~ the person's heirs or devisees subject to the
39 authority of the personal representative over the administration of the estate under Title
40 ~~18-A~~ 18-C, sections 3-709 and 3-711. If the plaintiff in such action dies pending the

1 action, it may be prosecuted to final judgment by ~~his~~ the plaintiff's personal
2 representative, or by ~~his~~ the plaintiff's heirs or devisees subject to the same authority of
3 the personal representative. When a mortgagor resides out of the State, any person may,
4 in ~~his~~ the mortgagor's behalf, tender to the holder of the mortgage the amount due
5 thereon. The tender ~~shall be~~ is as effectual as if made by the mortgagor.

6 **Sec. C-29. 14 MRSA §8104-C**, as enacted by PL 1987, c. 740, §4, is amended to
7 read:

8 **§8104-C. Wrongful death action**

9 Subject to any immunity provided by this chapter or otherwise provided by law,
10 actions for the death of a person brought by the personal representatives of the deceased
11 person against a governmental entity or employee ~~shall~~ must be brought in the same
12 manner that is provided for similar actions in Title ~~18-A~~ 18-C, section ~~2-804~~ 2-807, and
13 amounts recovered ~~shall~~ must be disposed of as required in that section; ~~provided, except~~
14 that the limitations of sections 8104-D and 8105 ~~shall~~ apply.

15 **Sec. C-30. 15 MRSA §321, sub-§1**, as amended by PL 2003, c. 672, §1, is
16 further amended to read:

17 **1. Definition.** For purposes of this section, "family or household members" means
18 spouses or domestic partners or former spouses or former domestic partners, individuals
19 presently or formerly living as spouses, natural parents of the same child, adult household
20 members related by consanguinity or affinity or minor children of any household member
21 when the offender is an adult household member. Holding oneself out to be a spouse is
22 not necessary to constitute "living as spouses." For purposes of this subsection,
23 "domestic partners" has the same meaning as in Title ~~18-A~~ 18-C, section 1-201,
24 subsection ~~(10-A)~~ 14.

25 **Sec. C-31. 16 MRSA §651**, as amended by PL 1979, c. 540, §24-B, is further
26 amended to read:

27 **§651. Rules of evidence**

28 The rules of evidence in special proceedings of a civil nature, such as before referees,
29 auditors and county commissioners, are the same as provided for civil actions. The rules
30 of evidence in courts of probate are as provided in Title ~~18-A~~ 18-C, section ~~4-107~~ 1-106.

31 **Sec. C-32. 17-A MRSA §553-A, sub-§1, ¶¶A and B**, as enacted by PL 2015,
32 c. 233, §1, are amended to read:

33 A. Is the parent of a child or is a person whose consent is required pursuant to Title
34 ~~18-A~~ 18-C, section 9-302 and, in return for placing that child for adoption,
35 intentionally or knowingly solicits or receives monetary payment or other valuable
36 consideration that is not authorized by Title ~~18-A~~ 18-C, section 9-306; or

37 B. With the intent of adopting a child, intentionally or knowingly provides, or offers
38 to provide, the parent of that child or the person whose consent is required pursuant

1 to Title ~~18-A~~ 18-C, section 9-302 with monetary payment or other valuable
2 consideration that is not authorized by Title ~~18-A~~ 18-C, section 9-306.

3 **Sec. C-33. 18 MRSA §4163-A**, as corrected by RR 2001, c. 2, Pt. B, §37 and
4 affected by §58, is amended to read:

5 **§4163-A. Corporation; application**

6 Nothing in sections 4161 to 4163 or this section requires any corporation to file an
7 application pursuant to sections 4161 to 4163 or this section if the corporation is deemed
8 not to be doing business in this State under Title 13-C, section 1501 and Title ~~18-A~~ 18-C,
9 section ~~7-105~~ 7-103.

10 **Sec. C-34. 19-A MRSA §701, sub-§3**, as amended by PL 2011, c. 542, Pt. A,
11 §20, is further amended to read:

12 **3. Persons legally determined to be incapacitated under the law.** A person who
13 has been found to be an incapacitated person, as defined in Title ~~18-A~~ 18-C, section
14 ~~5-101~~ 5-102, subsection ~~(4)~~ 5, by a court of competent jurisdiction and for whom a
15 guardian or limited guardian has been appointed may not contract marriage without the
16 approval of the appointed guardian. For persons under limited guardianship, this
17 subsection applies only if the court has granted the specific power to contract for
18 marriage to the guardian.

19 **Sec. C-35. 19-A MRSA §902, sub-§1, ¶J**, as enacted by PL 2005, c. 594, §3, is
20 amended to read:

21 J. A judicial determination has been made that one of the parties is an incapacitated
22 person, as defined in Title ~~18-A~~ 18-C, section ~~5-101~~ 5-102, for whom a guardian with
23 full powers has been appointed, other than a temporary guardian appointed pursuant
24 to Title ~~18-A~~ 18-C, ~~section 5-310-A~~ sections 5-312 and 5-313.

25 **Sec. C-36. 19-A MRSA §1802, sub-§1**, as amended by PL 2015, c. 296, Pt. C,
26 §19 and affected by Pt. D, §1, is further amended to read:

27 **1. Grandparent.** "Grandparent" is a parent of a child's parent. "Grandparent"
28 includes a parent of a child's parent whose parental rights have been terminated pursuant
29 to Title ~~18-A~~ 18-C, section 9-204 or Title 22, chapter 1071, subchapter 6, but only until
30 the child's adoption.

31 **Sec. C-37. 19-A MRSA §1851, sub-§2**, as enacted by PL 2015, c. 296, Pt. A, §1
32 and affected by Pt. D, §1, is amended to read:

33 **2. Adoption.** Adoption of the child pursuant to Title ~~18-A~~ 18-C, Article 9;

34 **Sec. C-38. 19-A MRSA §2002**, as amended by PL 1999, c. 46, §2, is further
35 amended to read:

1 **§2002. Application**

2 Notwithstanding any other provisions of law, this chapter applies to a court action or
3 administrative proceeding in which a child support order is issued or modified under Title
4 ~~18-A~~ 18-C, section 5-204, this Title or Title 22 and to any court action or administrative
5 proceeding in which past support is awarded.

6 **Sec. C-39. 21-A MRSA §601, sub-§2, ¶B-1**, as enacted by PL 2007, c. 455,
7 §18, is amended to read:

8 B-1. The candidate's name listed on the ballot must be the one approved by the
9 Probate Court, pursuant to Title ~~18-A~~ 18-C, section 1-701, or, in the absence of an
10 applicable court order, the name consistently used by the candidate during the past 2
11 years in filings with governmental agencies and in the transaction of public business,
12 including without limitation transactions relating to voter registration; motor vehicle
13 registrations; driver licenses; a passport; professional licenses; local, state or federal
14 permits of any kind; public benefit programs; and veterans' benefits and social
15 security. If requested by the Secretary of State when there is a question concerning
16 which name should be listed on the ballot, it is the obligation of the candidate to
17 provide documentation to demonstrate consistent use of a particular name.

18 **Sec. C-40. 22 MRSA §14, sub-§2-I, ¶B**, as amended by PL 2003, c. 20, Pt. K,
19 §2, is further amended to read:

20 B. The amount of MaineCare benefits paid and recoverable under this subsection is a
21 claim against the estate of the deceased recipient.

22 (1) As to assets of the recipient included in the probated estate, this claim may be
23 enforced pursuant to Title ~~18-A~~ 18-C, Article 3, Part 8.

24 (2) As to assets of the recipient not included in the probated estate, this claim
25 may be enforced by filing a claim in any court of competent jurisdiction.

26 **Sec. C-41. 22 MRSA §14, sub-§2-I, ¶F**, as amended by PL 2009, c. 150, §3, is
27 further amended to read:

28 F. As used in this subsection, unless the context otherwise indicates, the term
29 "estate" means:

30 (1) All real and personal property and other assets included in the recipient's
31 estate, as defined in Title ~~18-A~~ 18-C, section 1-201; and

32 (2) Any other real and personal property and other assets in which the recipient
33 had any legal interest at the time of death, to the extent of that interest, including
34 assets conveyed to a survivor, heir or assign of the deceased recipient through
35 tenancy in common, survivorship, life estate, living trust, joint tenancy in
36 personal property or other arrangement but not including joint tenancy in real
37 property.

38 **Sec. C-42. 22 MRSA §1711-B, sub-§3, ¶D**, as amended by PL 2015, c. 370, §2,
39 is further amended to read:

1 D. The agent, guardian or surrogate pursuant to the Uniform ~~Health-care~~ Health Care
2 Decisions Act; or

3 **Sec. C-43. 22 MRSA §1711-C, sub-§1, ¶A**, as amended by PL 2009, c. 292, §3
4 and affected by §6, is further amended to read:

5 A. "Authorized representative of an individual" or "authorized representative" means
6 an individual's legal guardian; agent pursuant to Title ~~18-A 18-C~~, section ~~5-802~~
7 ~~5-703~~; agent pursuant to Title ~~18-A 18-C~~, Article 5, Part ~~9 8~~;
8 representative or, after death, that person's personal representative or a person
9 identified in subsection 3-B. For a minor who has not consented to health care
10 treatment in accordance with the provisions of state law, "authorized representative"
11 means the minor's parent, legal guardian or guardian ad litem.

12 **Sec. C-44. 22 MRSA §1711-G, sub-§§2, 3 and 7**, as enacted by PL 2015, c.
13 370, §6, are amended to read:

14 **2. Designation of lay caregiver.** In accordance with this subsection, a hospital
15 licensed under chapter 405, but not a private mental hospital as described in chapter 404,
16 shall allow for the designation of a lay caregiver to provide aftercare to a patient.

17 A. For a patient with capacity to make ~~health-care~~ health care decisions, as described
18 in Title ~~18-A 18-C~~, Article 5, Part ~~8 7~~, the hospital shall provide the patient with at
19 least one opportunity to designate a lay caregiver following the patient's admission to
20 the hospital, or observation at the hospital for a period that includes midnight of at
21 least one calendar day, and prior to the patient's discharge.

22 B. For a patient without capacity to make ~~health-care~~ health care decisions, as
23 described in Title ~~18-A 18-C~~, Article 5, Part ~~8 7~~, the hospital shall provide the
24 patient's legal guardian, agent or surrogate who is reasonably available and acting
25 pursuant to Title ~~18-A 18-C~~, Article 5, Part ~~8 7~~ with at least one opportunity to
26 designate a lay caregiver following the patient's admission to the hospital, or
27 observation at the hospital for a period that includes midnight of at least one calendar
28 day, and prior to the patient's discharge.

29 C. The hospital shall document the designation of a lay caregiver under this
30 subsection in the patient's medical record, including the lay caregiver's name,
31 relationship to the patient, telephone number, address and any other contact
32 information as provided. If the patient or the patient's legal guardian, agent or
33 surrogate who is reasonably available and acting pursuant to Title ~~18-A 18-C~~, Article
34 5, Part ~~8 7~~ declines to designate a lay caregiver, the hospital shall document that
35 decision in the patient's medical record and that documentation constitutes
36 compliance by the hospital with the requirements of this section. A designated lay
37 caregiver may be removed or changed by the patient or the patient's legal guardian,
38 agent or surrogate at any time, so long as the change or removal is documented by the
39 hospital in the patient's medical record.

40 D. Designation of a lay caregiver under this subsection by the patient or the patient's
41 legal guardian, agent or surrogate who is reasonably available and acting pursuant to
42 Title ~~18-A 18-C~~, Article 5, Part ~~8 7~~ is optional. A designated lay caregiver is not
43 obligated under this section to perform any aftercare tasks for the patient.

1 **3. Written consent.** If a lay caregiver is designated under subsection 2, the hospital
2 shall request that the patient or the patient's legal guardian, agent or surrogate who is
3 reasonably available and acting pursuant to Title ~~18-A~~ 18-C, Article 5, Part ~~8~~ 7 provide
4 written consent to release medical information regarding the scope of care to the patient's
5 designated lay caregiver to carry out the purposes of this section. Written consent under
6 this subsection must be provided pursuant to the hospital's established procedures for
7 releasing personal health information and in compliance with state and federal law.

8 **7. Noninterference with health care directives.** The provisions of this section may
9 not be construed to interfere with the rights of an agent of a patient operating under a
10 valid health care directive under Title ~~18-A~~ 18-C, Article 5, Part ~~8~~ 7.

11 **Sec. C-45. 22 MRSA §1826, sub-§2, ¶I**, as amended by PL 2015, c. 247, §1, is
12 further amended to read:

13 I. No contract or agreement may contain a provision that provides for the payment of
14 attorney's fees or any other cost of collecting payments from the resident, except that
15 attorney's fees and costs may be collected against any agent under a power of
16 attorney who breaches the agent's duties as set forth in section 1826-A or Title ~~18-A~~
17 18-C, section ~~5-914~~ 5-814 or against a conservator appointed under Title ~~18-A~~ 18-C,
18 section ~~5-404~~ 5-403 for breach of the conservator's duties.

19 **Sec. C-46. 22 MRSA §2765, sub-§1, ¶A**, as amended by PL 1995, c. 694, Pt. D,
20 §30 and affected by Pt. E, §2, is further amended to read:

21 A. A certificate of adoption as provided in Title ~~18-A~~ 18-C, section 9-304, or a
22 certified copy of the decree of adoption along with the information necessary to
23 identify the original certificate and establish the new certificate of birth, except that a
24 new certificate may not be established if so requested by the adopting parents or the
25 adopted person if the adopted person is at least 18 years of age;

26 **Sec. C-47. 22 MRSA §2765, sub-§1-A, ¶A**, as amended by PL 1995, c. 694, Pt.
27 D, §31 and affected by Pt. E, §2, is further amended to read:

28 A. A certificate of adoption as provided in Title ~~18-A~~ 18-C, section 9-304; and

29 **Sec. C-48. 22 MRSA §2843-A, sub-§9**, as enacted by PL 1993, c. 609, §1, is
30 amended to read:

31 **9. Application.** This section does not apply to the disposition of the remains of a
32 deceased person under chapter 709. This section does not diminish or otherwise alter the
33 authority of a medical examiner or other official authorized under chapter 711. This
34 section does not alter the rights and obligations of the decedent's next of kin under Title
35 ~~18-A~~ 18-C.

36 **Sec. C-49. 22 MRSA §2848, first ¶**, as enacted by PL 2015, c. 193, §2, is
37 amended to read:

38 When a death is presumed to have occurred in the State but the body has not been
39 located, the State Registrar of Vital Statistics shall register a death in accordance with this

1 section upon receipt of a certified copy of an order of a court issued in accordance with
2 Title ~~18-A~~ 18-C, section ~~1-107~~ 1-106, subsection ~~(3)~~ 5.

3 **Sec. C-50. 22 MRSA §3173-E**, as enacted by PL 1993, c. 410, Pt. FF, §9, is
4 amended to read:

5 **§3173-E. Treatment of joint bank accounts in Medicaid eligibility determinations**

6 When determining eligibility for Medicaid, the department shall establish ownership
7 of joint bank accounts in accordance with Title ~~18-A~~ 18-C, section ~~6-103~~ 6-211,
8 subsection ~~(a)~~ 2. If the department determines that funds were withdrawn from a joint
9 account without the consent of the applicant and the applicant owned the funds, the
10 person to whom the funds were transferred is a liable 3rd party and the department shall
11 pursue recovery of the funds in accordance with section 14. The department shall adopt
12 rules to implement this section.

13 **Sec. C-51. 22 MRSA §3472, sub-§10**, as amended by PL 2003, c. 653, §2, is
14 further amended to read:

15 **10. Incapacitated adult.** "Incapacitated adult" means ~~any an~~ an adult who is ~~impaired~~
16 ~~by reason of mental illness, mental deficiency, physical illness or disability to the extent~~
17 ~~that that individual lacks sufficient understanding or capacity to~~ unable to receive and
18 evaluate information or make or communicate responsible informed decisions concerning
19 ~~that individual's person, or to the extent the adult can not effectively manage or apply that~~
20 ~~individual's estate to necessary ends to such an extent that the adult lacks the ability to~~
21 meet essential requirements for physical health, safety or self-care, even with reasonably
22 available appropriate technological assistance.

23 **Sec. C-52. 22 MRSA §3472, sub-§12**, as amended by PL 2003, c. 653, §2, is
24 further amended to read:

25 **12. Protective services.** "Protective services" means services that separate
26 incapacitated or dependent adults from danger. Protective services include, but are not
27 limited to, social, medical and psychiatric services necessary to preserve the incapacitated
28 or dependent adult's rights and resources and to maintain the incapacitated or dependent
29 adult's physical and mental well-being.

30 Protective services may include seeking guardianship or a protective order under Title
31 ~~18-A~~ 18-C, Article 5.

32 **Sec. C-53. 22 MRSA §3473, sub-§2, ¶C**, as enacted by PL 1981, c. 527, §2, is
33 amended to read:

34 C. Petition for guardianship or a protective order under Title ~~18-A~~ 18-C, Article 5,
35 when all less restrictive alternatives have been tried and have failed to protect the
36 incapacitated adult.

37 **Sec. C-54. 22 MRSA §3481, sub-§2**, as amended by PL 1993, c. 652, §8, is
38 further amended to read:

1 **2. Consent refused.** When a private guardian or conservator of an incapacitated
2 adult who consents to the receipt of protective services refuses to allow those services to
3 be provided to the incapacitated adult, the department may petition the Probate Court for
4 removal of the guardian pursuant to Title ~~18-A~~ 18-C, section ~~5-307~~ 5-318, or for removal
5 of the conservator pursuant to Title ~~18-A~~ 18-C, section ~~5-415~~ 5-110. When a caretaker or
6 guardian of an incapacitated adult who consents to the receipt of protective services
7 refuses to allow those services to be provided to the incapacitated adult, the department
8 may petition the Probate Court for temporary guardianship pursuant to Title ~~18-A~~ 18-C,
9 ~~section 5-310-A~~ sections 5-312 and 5-313 or for a protective arrangement pursuant to
10 Title ~~18-A~~ 18-C, section ~~5-409~~ 5-412.

11 **Sec. C-55. 22 MRSA §3482**, as enacted by PL 1981, c. 527, §2, is amended to
12 read:

13 **§3482. Providing for protective services to incapacitated adults who lack the**
14 **capacity to consent**

15 If the department reasonably determines that an incapacitated adult is being abused,
16 neglected or exploited and lacks capacity to consent to protective services, the department
17 may petition the Probate Court for guardianship or conservatorship, in accordance with
18 Title ~~18-A~~ 18-C, section 5-601. The petition must allege specific facts sufficient to show
19 that the incapacitated adult is in need of protective services and lacks capacity to consent
20 to them.

21 **Sec. C-56. 22 MRSA §3483, sub-§1**, as amended by PL 1993, c. 652, §9, is
22 further amended to read:

23 **1. Action.** When the court has exercised the power of a guardian or has appointed
24 the department temporary guardian pursuant to Title ~~18-A~~ 18-C, ~~section 5-310-A~~ sections
25 5-312 and 5-313, and the ward or a caretaker refuses to relinquish care and custody to the
26 court or to the department, then at the request of the department, a law enforcement
27 officer may take any necessary and reasonable action to obtain physical custody of the
28 ward for the department. Necessary and reasonable action may include entering public or
29 private property with a warrant based on probable cause to believe that the ward is there.

30 **Sec. C-57. 22 MRSA §3765**, as enacted by PL 1997, c. 530, Pt. A, §16, is
31 amended to read:

32 **§3765. Payments to guardian or conservator**

33 When a relative with whom a child is living is found by the department to be
34 incapable of taking care of the child's money, payment may be made only to a legally
35 appointed guardian or conservator and, notwithstanding Title ~~18-A~~ 18-C, Article ~~V~~ 5,
36 Part 4, in the matter of infirmities of age or physical disability to manage the child's estate
37 with prudence and understanding, the Probate Court may appoint any suitable person as a
38 conservator.

39 **Sec. C-58. 22 MRSA §4005-E, sub-§1**, as amended by PL 2007, c. 371, §2, is
40 further amended to read:

1 **1. Grandparent visitation and access.** A grandparent who is designated as an
2 interested person or a participant under section 4005-D or who has been granted
3 intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the
4 court to grant reasonable rights of visitation or access. When a child is placed in a
5 prospective adoptive home and the prospective adoptive parents have signed an adoptive
6 placement agreement, a grandparent's right to contact or have access to the child that was
7 granted pursuant to this chapter is suspended. If the adoption is not final within 18
8 months of adoptive placement, then the grandparent whose rights of contact or access
9 were suspended pursuant to this subsection may resume, as a matter of right and without
10 further court order, contact with the child in accordance with the order granting that
11 contact or access, unless the court determines after a hearing that the contact is not in the
12 child's best interests. A grandparent's rights of visitation or access terminate when the
13 adoption is finalized pursuant to Title ~~18-A~~ 18-C, section 9-308. Nothing in this section
14 prohibits prospective adoptive parents from independently facilitating or permitting
15 contact between a child and a grandparent, especially when a court has previously
16 ordered rights of contact.

17 **Sec. C-59. 22 MRSA §4008, sub-§3, ¶B**, as amended by PL 1995, c. 694, Pt. D,
18 §38 and affected by Pt. E, §2, is further amended to read:

19 B. A court on its finding that access to those records may be necessary for the
20 determination of any issue before the court or a court requesting a home study from
21 the department pursuant to Title ~~18-A~~ 18-C, section 9-304 or Title 19-A, section 905.
22 Access to such a report or record is limited to counsel of record unless otherwise
23 ordered by the court. Access to actual reports or records is limited to in camera
24 inspection, unless the court determines that public disclosure of the information is
25 necessary for the resolution of an issue pending before the court;

26 **Sec. C-60. 22 MRSA §4008, sub-§3, ¶G**, as amended by PL 2003, c. 673, Pt. Z,
27 §2, is further amended to read:

28 G. The prospective adoptive parents. Prior to a child being placed for the purpose of
29 adoption, the department shall comply with the requirements of Title ~~18-A~~ 18-C,
30 section 9-304, subsection ~~(b)~~ 3 and section 8205;

31 **Sec. C-61. 22 MRSA §4031, sub-§1, ¶D**, as amended by PL 1995, c. 694, Pt. D,
32 §40 and affected by Pt. E, §2, is further amended to read:

33 D. The District Court has jurisdiction over judicial reviews transferred to the District
34 Court pursuant to Title ~~18-A~~ 18-C, section 9-205.

35 **Sec. C-62. 22 MRSA §4037, sub-§1**, as enacted by PL 2015, c. 187, §1, is
36 amended to read:

37 **1. Adoption.** Custody does not include the right to initiate adoption proceedings
38 without parental consent, except as provided under Title ~~18-A~~ 18-C, section 9-302.

39 **Sec. C-63. 22 MRSA §4038-A**, as amended by PL 2005, c. 372, §5, is further
40 amended to read:

1 **§4038-A. Transfer to District Court**

2 If a case is transferred to the District Court pursuant to Title ~~18-A~~ 18-C, section
3 9-205, the court shall conduct a hearing and enter a dispositional order using the same
4 standards as set forth in section 4036. The court after the hearing and entering of a
5 dispositional order shall conduct reviews in accordance with section 4038 and
6 permanency planning hearings in accordance with section 4038-B.

7 **Sec. C-64. 22 MRSA §4038-B, sub-§4, ¶A**, as enacted by PL 2005, c. 372, §6,
8 is amended to read:

9 A. The permanency plan must determine whether and when, if applicable, the child
10 will be:

11 (1) Returned to a parent. Before the court may enter an order returning the
12 custody of the child to a parent, the parent must show that the parent has carried
13 out the responsibilities set forth in section 4041, subsection 1-A, paragraph B;
14 that to the court's satisfaction the parent has rectified and resolved the problems
15 that caused the removal of the child from home and any subsequent problems that
16 would interfere with the parent's ability to care for the child and protect the child
17 from jeopardy; and that the parent can protect the child from jeopardy;

18 (2) Placed for adoption, in which case the department shall file a petition for
19 termination of parental rights;

20 (3) Cared for by a permanency guardian, as provided in section 4038-C, or a
21 guardian appointed by the Probate Court pursuant to Title ~~18-A~~ 18-C, sections
22 5-204 to 5-206 and 5-207;

23 (4) Placed with a fit and willing relative; or

24 (5) Placed in another planned permanent living arrangement. The District Court
25 may adopt another planned permanent living arrangement as the permanency
26 plan for the child only after the department has documented to the court a
27 compelling reason for determining that it would not be in the best interests of the
28 child to be returned home, be referred for termination of parental rights or be
29 placed for adoption, be cared for by a permanency guardian or be placed with a
30 fit and willing relative.

31 **Sec. C-65. 22 MRSA §4038-C, sub-§2**, as enacted by PL 2005, c. 372, §6, is
32 amended to read:

33 **2. Powers and duties of permanency guardian.** A permanency guardian has all of
34 the powers and duties of a guardian of a minor pursuant to Title ~~18-A~~ 18-C, ~~section 5-209~~
35 sections 5-207 and 5-208.

36 **Sec. C-66. 22 MRSA §4038-E, sub-§7, ¶A**, as amended by PL 2013, c. 267, Pt.
37 B, §20, is further amended to read:

38 A. The department may, pursuant to rules adopted pursuant to Title ~~18-A~~ 18-C,
39 section 9-304, subsection ~~(a-2)~~ 2, request a background check for each permanency
40 guardian. The background check must include criminal history record information

1 obtained from the Maine Criminal Justice Information System and the Federal
2 Bureau of Investigation.

3 (1) The criminal history record information obtained from the Maine Criminal
4 Justice Information System must include a record of public criminal history
5 record information as defined in Title 16, section 703, subsection 8.

6 (2) The criminal history record information obtained from the Federal Bureau of
7 Investigation must include other state and national criminal history record
8 information.

9 (3) Each permanency guardian of the child shall submit to having fingerprints
10 taken. The State Police, upon receipt of the fingerprint card, may charge the
11 department for the expenses incurred in processing state and national criminal
12 history record checks. The State Police shall take or cause to be taken the
13 applicant's fingerprints and shall forward the fingerprints to the State Bureau of
14 Identification so that the bureau can conduct state and national criminal history
15 record checks. Except for the portion of the payment, if any, that constitutes the
16 processing fee charged by the Federal Bureau of Investigation, all money
17 received by the State Police for purposes of this paragraph must be paid over to
18 the Treasurer of State. The money must be applied to the expenses of
19 administration incurred by the Department of Public Safety.

20 (4) The subject of a Federal Bureau of Investigation criminal history record
21 check may obtain a copy of the criminal history record check by following the
22 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.
23 The subject of a state criminal history record check may inspect and review the
24 criminal history record information pursuant to Title 16, section 709.

25 (5) State and federal criminal history record information may be used by the
26 department for the purpose of screening each permanency guardian in
27 determining whether the adoption is in the best interests of the child.

28 (6) Information obtained pursuant to this paragraph is confidential. The results
29 of background checks received by the department are for official use only and
30 may not be disseminated outside the department except to a court considering an
31 adoption petition under this section.

32 **Sec. C-67. 22 MRSA §4051**, as corrected by RR 1997, c. 2, §48, is amended to
33 read:

34 **§4051. Venue**

35 A petition for termination of parental rights must be brought in the court that issued
36 the final protection order. The court, for the convenience of the parties or other good
37 cause, may transfer the petition to another district or division. A petition for termination
38 of parental rights may also be brought in a Probate Court as part of an adoption
39 proceeding as provided in Title 18-A ~~18-C, article IX~~ Article 9, when a child protective
40 proceeding has not been initiated.

41 **Sec. C-68. 22 MRSA §4055, sub-§1, ¶A**, as amended by PL 2001, c. 696, §35,
42 is further amended to read:

- 1 A. One of the following conditions has been met:
2 (1) Custody has been removed from the parent under:
3 (a) Section 4035 or 4038;
4 (b) Title 19-A, section 1502 or 1653;
5 (c) Section 3792 prior to the effective date of this chapter; or
6 (d) Title 15, section 3314, subsection 1, paragraph C-1; or
7 (2) The petition has been filed as part of an adoption proceeding in Title ~~18-A~~
8 18-C, ~~article IX~~ Article 9; and

9 **Sec. C-69. 22 MRSA §4065**, as amended by PL 1981, c. 470, Pt. A, §102, is
10 further amended to read:

11 **§4065. Department's responsibility after death of committed child**

12 If a child in the custody of the department dies, the department shall arrange and pay
13 for a decent burial for the child. If administration of the deceased child's estate is not
14 commenced, within 60 days after the date of death, by an heir or a creditor, then the
15 department may petition the Probate Court to appoint an administrator and settle the
16 estate of the deceased child pursuant to Title ~~18-A~~ 18-C.

17 **Sec. C-70. 22 MRSA §4171, sub-§1, ¶A**, as amended by PL 1995, c. 694, Pt. D,
18 §49 and affected by Pt. E, §2, is further amended to read:

19 A. Finding adoptive families for children for whom state assistance is desirable,
20 pursuant to the Adoption Assistance Program established in Title ~~18-A~~ 18-C, ~~article~~
21 ~~IX~~ Article 9, Part 4, and assuring the protection of the interests of the children
22 affected during the entire assistance period, require special measures when the
23 adoptive parents move to other states or are residents of another state; and

24 **Sec. C-71. 22 MRSA §5106, sub-§2, ¶E**, as amended by PL 2011, c. 657, Pt.
25 BB, §9, is further amended to read:

26 E. Conducting a continuous evaluation of the impact, quality and value of facilities,
27 programs and services, including their administrative adequacy and capacity.
28 Activities operated by or with the assistance of the State and the Federal Government
29 must be evaluated. Activities to be included, but to which the department is not
30 limited, are those relating to education, employment and vocational services, income,
31 health, housing, transportation, community, social, rehabilitation, protective services
32 and public guardianship or conservatorship for older people and incapacitated and
33 dependent adults and programs such as the supplemental security income program,
34 Medicare, Medicaid, property tax refunds and the setting of standards for the
35 licensing of nursing, intermediate care and boarding homes. Included are activities as
36 authorized by this and so much of the several Acts and amendments to them enacted
37 by the people of the State and those authorized by United States Acts and
38 amendments to them such as the:

- 39 (1) Elderly Householders Tax and Rent Refund Act of 1971;

- 1 (2) Priority Social Services Act of 1973;
- 2 (3) Chapter 470 of the public laws of 1969 creating the State Housing Authority;
- 3 (4) United States Social Security Act of 1935;
- 4 (5) United States Housing Act of 1937;
- 5 (6) United States Older Americans Act of 1965;
- 6 (7) United States Age Discrimination Act of 1967;
- 7 (8) Home Based Care Act of 1981;
- 8 (9) Congregate Housing Act of 1979;
- 9 (10) Adult Day Care Services Act of 1983;
- 10 (11) Adult Day Care Licensing Act of 1987;
- 11 (12) Adult Protective Services Act of 1981;
- 12 (13) The Maine Uniform Probate Code, Title ~~18-A~~ 18-C;
- 13 (14) The Americans with Disabilities Act of 1990;
- 14 (15) The Developmental Disabilities Assistance and Bill of Rights Act of 2000;
- 15 and
- 16 (16) The ADA Amendments Act of 2008;

17 **Sec. C-72. 22 MRSA §8621, sub-§6**, as amended by PL 2009, c. 292, §4 and
18 affected by §6, is further amended to read:

19 **6. Durable health care power of attorney.** "Durable health care power of attorney"
20 has the same meaning as "power of attorney for health care" contained in Title ~~18-A~~
21 18-C, section ~~5-804~~ 5-702.

22 **Sec. C-73. 23 MRSA §3655**, as amended by PL 1979, c. 663, §138, is further
23 amended to read:

24 **§3655. Personal injury actions; limitations; damages; notice**

25 ~~Whoever~~ A person who receives any bodily injury or suffers damage in ~~his~~ the
26 person's property through any defect or want of repair or sufficient railing in any
27 highway, town way, causeway or bridge may recover for the same in a civil action, to be
28 commenced within one year from the date of receiving such injury or suffering damage,
29 of the county or town obliged by law to repair the same, if the commissioners of such
30 county or the municipal officers or road commissioners of such town or any person
31 authorized by any commissioner of such county or any municipal officer or road
32 commissioner of such town to act as a substitute for either of them had 24 hours' actual
33 notice of the defect or want of repair, but not exceeding \$6,000 in case of a town. If the
34 sufferer had notice of the condition of such way previous to the time of the injury, ~~he~~ the
35 sufferer cannot recover of a town unless ~~he~~ the sufferer has previously notified one of the
36 municipal officers of the defective condition of such way. Any person who sustains
37 injury or damage or some person in ~~his~~ the person's behalf shall, within 180 days

1 thereafter, notify one of the county commissioners of such county or of the municipal
2 officers of such town by letter or otherwise, in writing, setting forth ~~his~~ the person's claim
3 for damages and specifying the nature of ~~his~~ the person's injuries and the nature and
4 location of the defect ~~which~~ that caused such injury. If the life of any person is lost
5 through such deficiency, ~~his~~ the person's executors or administrators may recover of such
6 county or town liable to keep the same in repair, in a civil action, brought for the benefit
7 of the estate of the deceased, such sum as the jury may ~~deem~~ determine reasonable as
8 damages, if the parties liable had said notice of the deficiency ~~which~~ that caused the loss
9 of life. In any action against a town for damages for loss of life permitted under this
10 section, the claim for and award of damages, including costs, against a town and its
11 employees ~~shall~~ must be disposed of as provided under Title ~~18-A~~ 18-C, section ~~2-804~~
12 2-807, but ~~shall~~ may not exceed \$25,000 for each claim and \$300,000 for any and all
13 claims arising out of a single occurrence. No damages for the loss of comfort, society
14 and companionship of the deceased ~~shall~~ may be allowed in an action under this section.
15 At the trial of any such action the court may, on motion of either party, order a view of
16 the premises where the defect or want of repair is alleged when it would materially aid in
17 a clear understanding of the case.

18 **Sec. C-74. 24-A MRSA §2208, sub-§1, ¶A**, as enacted by PL 1997, c. 677, §3
19 and affected by §5, is amended to read:

20 A. A consumer's spouse, family member or other authorized individual may sign the
21 disclosure authorization form if:

22 (1) The individual is acting under a valid written power of attorney or acting
23 pursuant to the Uniform ~~Health-care~~ Health Care Decisions Act; or

24 (2) The individual is the consumer's parent or legal guardian, in which case the
25 authorization is valid only insofar as that parent or legal guardian has the
26 exclusive authority to consent for the health care services received by a minor for
27 which the authorization for payment is sought and only as to those disclosures
28 when the holder of the information can reasonably infer that the parent's or legal
29 guardian's interest in disclosure is not adverse to the consumer's; or

30 **Sec. C-75. 24-A MRSA §4313, sub-§14**, as enacted by PL 1999, c. 742, §19, is
31 amended to read:

32 **14. Wrongful death action.** Notwithstanding subsection 13, an enrollee or an
33 enrollee's authorized representative may bring a cause of action against a carrier for its
34 health care treatment decisions to seek a remedy under either this section or under Title
35 ~~18-A~~ 18-C, section ~~2-804~~ 2-807, but may not seek remedies under both this section and
36 Title ~~18-A~~ 18-C, section ~~2-804~~ 2-807.

37 **Sec. C-76. 25 MRSA §1542-A, sub-§1, ¶I**, as amended by PL 2015, c. 300, Pt.
38 B, §1, is further amended to read:

39 I. Who is a prospective adoptive parent not the biological parent as required under
40 Title ~~18-A~~ 18-C, section 9-304, subsection ~~(a-1)~~ 1;

1 **Sec. C-77. 25 MRSA §1542-A, sub-§3, ¶H**, as enacted by PL 2001, c. 52, §7, is
2 amended to read:

3 H. The State Police shall take or cause to be taken the fingerprints of the person
4 named in subsection 1, paragraph I, at the request of that person and upon payment of
5 the expenses specified under Title ~~18-A~~ 18-C, section 9-304, subsection ~~(a-1)~~ 1,
6 paragraph ~~(2)~~ B, subparagraph ~~(iii)~~ (3).

7 **Sec. C-78. 25 MRSA §2003, sub-§1, ¶D**, as amended by PL 2011, c. 298, §7, is
8 further amended to read:

9 D. Submits an application that contains the following:

10 (1) Full name;

11 (2) Full current address and addresses for the prior 5 years;

12 (3) The date and place of birth, height, weight, color of eyes, color of hair, sex
13 and race;

14 (4) A record of previous issuances of, refusals to issue and revocations of a
15 permit to carry concealed firearms, handguns or other concealed weapons by any
16 issuing authority in the State or any other jurisdiction. The record of previous
17 refusals alone does not constitute cause for refusal and the record of previous
18 revocations alone constitutes cause for refusal only as provided in section 2005;
19 and

20 (5) Answers to the following questions:

21 (a) Are you less than 18 years of age?

22 (b) Is there a formal charging instrument now pending against you in this
23 State for a crime under the laws of this State that is punishable by
24 imprisonment for a term of one year or more?

25 (c) Is there a formal charging instrument now pending against you in any
26 federal court for a crime under the laws of the United States that is
27 punishable by imprisonment for a term exceeding one year?

28 (d) Is there a formal charging instrument now pending against you in another
29 state for a crime that, under the laws of that state, is punishable by a term of
30 imprisonment exceeding one year?

31 (e) If your answer to the question in division (d) is "yes," is that charged
32 crime classified under the laws of that state as a misdemeanor punishable by
33 a term of imprisonment of 2 years or less?

34 (f) Is there a formal charging instrument pending against you in another state
35 for a crime punishable in that state by a term of imprisonment of 2 years or
36 less and classified by that state as a misdemeanor, but that is substantially
37 similar to a crime that under the laws of this State is punishable by
38 imprisonment for a term of one year or more?

39 (g) Is there a formal charging instrument now pending against you under the
40 laws of the United States, this State or any other state or the Passamaquoddy

- 1 Tribe or Penobscot Nation in a proceeding in which the prosecuting authority
2 has pleaded that you committed the crime with the use of a firearm against a
3 person or with the use of a dangerous weapon as defined in Title 17-A,
4 section 2, subsection 9, paragraph A?
- 5 (h) Is there a formal charging instrument now pending against you in this or
6 any other jurisdiction for a juvenile offense that, if committed by an adult,
7 would be a crime described in division (b), (c), (d) or (f) and involves bodily
8 injury or threatened bodily injury against another person?
- 9 (i) Is there a formal charging instrument now pending against you in this or
10 any other jurisdiction for a juvenile offense that, if committed by an adult,
11 would be a crime described in division (g)?
- 12 (j) Is there a formal charging instrument now pending against you in this or
13 any other jurisdiction for a juvenile offense that, if committed by an adult,
14 would be a crime described in division (b), (c), (d) or (f), but does not
15 involve bodily injury or threatened bodily injury against another person?
- 16 (k) Have you ever been convicted of committing or found not criminally
17 responsible by reason of mental disease or defect of committing a crime
18 described in division (b), (c), (f) or (g)?
- 19 (l) Have you ever been convicted of committing or found not criminally
20 responsible by reason of mental disease or defect of committing a crime
21 described in division (d)?
- 22 (m) If your answer to the question in division (l) is "yes," was that crime
23 classified under the laws of that state as a misdemeanor punishable by a term
24 of imprisonment of 2 years or less?
- 25 (n) Have you ever been adjudicated as having committed a juvenile offense
26 described in division (h) or (i)?
- 27 (o) Have you ever been adjudicated as having committed a juvenile offense
28 described in division (j)?
- 29 (p) Are you currently subject to an order of a Maine court or an order of a
30 court of the United States or another state, territory, commonwealth or tribe
31 that restrains you from harassing, stalking or threatening your intimate
32 partner, as defined in 18 United States Code, Section 921(a), or a child of
33 your intimate partner, or from engaging in other conduct that would place
34 your intimate partner in reasonable fear of bodily injury to that intimate
35 partner or the child?
- 36 (q) Are you a fugitive from justice?
- 37 (r) Are you a drug abuser, drug addict or drug dependent person?
- 38 (s) Do you have a mental disorder that causes you to be potentially
39 dangerous to yourself or others?

- 1 (t) Have you been adjudicated to be an incapacitated person pursuant to Title
2 ~~18-A 18-C~~, Article 5, Parts 3 and 4 and not had that designation removed by
3 an order under Title ~~18-A 18-C~~, section ~~5-307 5-318~~, subsection ~~(b) 2~~?
- 4 (u) Have you been dishonorably discharged from the military forces within
5 the past 5 years?
- 6 (v) Are you an illegal alien?
- 7 (w) Have you been convicted in a Maine court of a violation of Title 17-A,
8 section 1057 within the past 5 years?
- 9 (x) Have you been adjudicated in a Maine court within the past 5 years as
10 having committed a juvenile offense involving conduct that, if committed by
11 an adult, would be a violation of Title 17-A, section 1057?
- 12 (y) To your knowledge, have you been the subject of an investigation by any
13 law enforcement agency within the past 5 years regarding the alleged abuse
14 by you of family or household members?
- 15 (z) Have you been convicted in any jurisdiction within the past 5 years of 3
16 or more crimes punishable by a term of imprisonment of less than one year or
17 of crimes classified under the laws of a state as a misdemeanor and
18 punishable by a term of imprisonment of 2 years or less?
- 19 (aa) Have you been adjudicated in any jurisdiction within the past 5 years to
20 have committed 3 or more juvenile offenses described in division (o)?
- 21 (bb) To your knowledge, have you engaged within the past 5 years in
22 reckless or negligent conduct that has been the subject of an investigation by
23 a governmental entity?
- 24 (cc) Have you been convicted in a Maine court within the past 5 years of any
25 Title 17-A, chapter 45 drug crime?
- 26 (dd) Have you been adjudicated in a Maine court within the past 5 years as
27 having committed a juvenile offense involving conduct that, if committed by
28 an adult, would have been a violation of Title 17-A, chapter 45?
- 29 (ee) Have you been adjudged in a Maine court to have committed the civil
30 violation of possession of a useable amount of marijuana, butyl nitrite or
31 isobutyl nitrite in violation of Title 22, section 2383 within the past 5 years?
- 32 (ff) Have you been adjudicated in a Maine court within the past 5 years as
33 having committed the juvenile crime defined in Title 15, section 3103,
34 subsection 1, paragraph B of possession of a useable amount of marijuana, as
35 provided in Title 22, section 2383?; and

36 **Sec. C-79. 26 MRSA §875, sub-§1, ¶E**, as enacted by PL 2005, c. 383, §23, is
37 amended to read:

38 E. The employee is unable to work because the employee is needed to provide care
39 or assistance to one or more of the following individuals: the employee's spouse or
40 domestic partner as defined under Title ~~18-A 18-C~~, section 1-201, subsection ~~(10-A)~~

1 14; the employee's parent; or the employee's child or child for whom the employee is
2 the legal guardian.

3 **Sec. C-80. 28-A MRSA §2508, sub-§2**, as enacted by PL 1987, c. 45, Pt. A, §4,
4 is amended to read:

5 **2. Damages under wrongful death and survival laws.** Except as otherwise
6 provided in this Act, damages may be recovered under Title ~~18-A~~ 18-C, sections ~~2-804~~
7 ~~2-807~~ and 3-817, as in other tort actions, subject to the damage limit of section 2509.

8 **Sec. C-81. 29-A MRSA §1402-A, sub-§4, ¶E**, as amended by PL 2007, c. 601,
9 §7 and affected by §9, is further amended to read:

10 E. Notwithstanding Title 22, section 1711-C and any other provision of law to the
11 contrary, a health care provider licensed in this State to provide primary health care
12 shall provide information to a federally designated organ procurement organization
13 regarding a patient who has indicated a willingness to become an organ donor under
14 this section, Title ~~18-A~~ 18-C, Article 5, Part § 7 or Title 22, chapter 710-B if such
15 information is provided in accordance with professional standards applicable to organ
16 donation.

17 **Sec. C-82. 29-A MRSA §1402-A, sub-§5**, as amended by PL 2007, c. 601, §8
18 and affected by §9, is further amended to read:

19 **5. Effect.** An expression of willingness to make an anatomical gift under this section
20 has the same effect as a designation under Title ~~18-A~~ 18-C, Article 5, Part § 7 or Title 22,
21 chapter 710-B. Revocation or suspension of the right to drive under this chapter does not
22 affect the expressed willingness of a person to make an anatomical gift under this section.

23 **Sec. C-83. 29-A MRSA §1403**, as amended by PL 1995, c. 378, Pt. B, §5, is
24 further amended to read:

25 **§1403. Advance health care directive**

26 Subject to available funding, the Secretary of State shall make advance ~~health care~~
27 health care directive forms available in offices of the Bureau of Motor Vehicles. The
28 form must be in substantially the form provided in Title ~~18-A~~ 18-C, section ~~5-804~~ 5-705
29 and with the addition of the following information at the end: "Completion of this form
30 is optional."

31 **Sec. C-84. 30-A MRSA §183, sub-§1**, as enacted by PL 1987, c. 737, Pt. A, §2
32 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is
33 further amended to read:

34 **1. Unclaimed inheritances.** All sums received under Title ~~18-A~~ 18-C, section
35 3-914;

36 **Sec. C-85. 32 MRSA §9405, sub-§1-A, ¶F**, as enacted by PL 1987, c. 170, §8,
37 is amended to read:

- 1 F. Submits an application ~~which~~ that contains the following, to be answered by the
2 applicant:
- 3 (1) Full name;
- 4 (2) Full current address and addresses for the prior 5 years;
- 5 (3) The date and place of birth, height, weight and color of eyes;
- 6 (4) A record of previous issuances of, refusals to issue and renew, suspensions
7 and revocations of a license to be a contract security company. The record of
8 previous refusals to issue alone does not constitute cause for refusal and the
9 record of previous refusals to renew and revocations alone constitutes cause for
10 refusal only as provided in section 9411-A;
- 11 (5) The following questions.
- 12 (a) Is there a formal charging instrument now pending against you in this or
13 any other jurisdiction for a crime ~~which~~ that is punishable by one year or
14 more imprisonment or for any other crime alleged to have been committed by
15 you with the use of a dangerous weapon, as defined in Title 17-A, section 2,
16 subsection 9, or of a firearm against another person?
- 17 (b) Is there a formal charging instrument now pending against you in this or
18 any other jurisdiction for a juvenile offense ~~which~~ that involves conduct
19 ~~which~~ that, if committed by an adult, would be punishable by one year or
20 more of imprisonment or for any other juvenile offense alleged to have been
21 committed by you with the use of a dangerous weapon, as defined in Title
22 17-A, section 2, subsection 9, or of a firearm against another person?
- 23 (c) Have you ever been convicted of a crime described in division (a) or
24 adjudicated as having committed a juvenile offense as described in division
25 (b)?
- 26 (d) Is there a formal charging instrument now pending against you in this
27 jurisdiction for any crime enumerated in section 9412?
- 28 (e) Is there a formal charging instrument now pending against you in this
29 jurisdiction for a juvenile offense ~~which~~ that involves conduct ~~which~~ that, if
30 committed by an adult, would be a crime enumerated in section 9412?
- 31 (f) Have you within the past 5 years been convicted of a crime described in
32 division (d) or adjudicated as having committed a juvenile offense as
33 described in division (e)?
- 34 (g) Are you a fugitive from justice?
- 35 (h) Are you a drug abuser, drug addict or drug-dependent person?
- 36 (i) Do you have a mental disorder ~~which~~ that causes you to be potentially
37 dangerous to yourself or others?
- 38 (j) Have you been adjudicated to be an incapacitated person pursuant to Title
39 ~~18-A 18-C, article V~~ Article 5, Parts 3 and 4, and not had that designation

1 removed by an order under Title ~~18-A~~ 18-C, section ~~5-307~~ 5-318, subsection
2 ~~(b)~~ 2?

3 (k) Have you been dishonorably discharged from the military forces within
4 the past 5 years?

5 (l) Are you an illegal alien?

6 (6) A list of employees as of the date the applicant signs the application who will
7 perform security guard functions within the State. This list ~~shall~~ must identify
8 each employee by ~~his~~ the employee's full name, full current address and
9 addresses for the prior 5 years and ~~his~~ the employee's date and place of birth,
10 height, weight and color of eyes. For each employee on this list who will
11 perform security guard functions at the site of a labor dispute or strike, the
12 applicant shall have previously investigated the background of the employee to
13 ensure that the employee meets all of the requirements to be a security guard as
14 contained in section 9410-A, subsection 1. If the employee meets all of the
15 requirements to be a security guard, the applicant shall also submit a statement,
16 signed by the applicant, stating that the applicant has conducted this background
17 investigation and that the employee meets the requirements contained in section
18 9410-A, subsection 1; and

19 (7) A photograph of the applicant taken within 6 months of the date the applicant
20 affixes ~~his~~ the applicant's signature to the application; and

21 **Sec. C-86. 32 MRSA §9410-A, sub-§1, ¶J**, as enacted by PL 1987, c. 170, §12,
22 is amended to read:

23 J. Has not been adjudicated to be an incapacitated person pursuant to Title ~~18-A~~
24 18-C, ~~article 5~~ Article 5, Parts 3 and 4, or if so adjudicated, has had that designation
25 removed by an order under Title ~~18-A~~ 18-C, section ~~5-307~~ 5-318, subsection ~~(b)~~ 2;
26 and

27 **Sec. C-87. 32 MRSA §16202, sub-§12**, as enacted by PL 2005, c. 65, Pt. A, §2,
28 is amended to read:

29 **12. Personal representative and guardian transactions.** A transaction by a
30 personal representative, as defined in Title ~~18-A~~ 18-C, section 1-201, subsection ~~30~~ 40,
31 executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy,
32 guardian or conservator acting in their official capacities;

33 **Sec. C-88. 33 MRSA §480, sub-§1**, as enacted by PL 1983, c. 748, §2, is
34 amended to read:

35 **1. Non-bona fide purchaser.** The transfer requires signature pursuant to ~~the~~ Title
36 ~~18-A~~ 18-C, section ~~2-202~~, subsections ~~(1) and (3)~~ section 2-208, subsection 1; or

37 **Sec. C-89. 33 MRSA §1603-116, sub-§(b)**, as repealed and replaced by PL
38 1983, c. 816, Pt. A, §40, is amended to read:

1 (b) A lien under this section is prior to all other liens and encumbrances on a unit
2 except: (1) Liens and encumbrances recorded before the recordation of the declaration;
3 (2) A first mortgage recorded before or after the date on which the assessment sought to
4 be enforced becomes delinquent; and (3) Liens for real estate taxes and other
5 governmental assessments or charges against the unit. This subsection does not affect the
6 priority of mechanics' or materialmen's liens, or the priority of liens for other assessments
7 made by the association. The lien under this section is not subject to the provisions of
8 Title 14, section 4651 and Title ~~18-A~~ 18-C, ~~Part~~ Article 2, as they or their equivalents
9 may be amended or modified from time to time.

10 **Sec. C-90. 33 MRSA §1669, sub-§1**, as enacted by PL 1987, c. 734, §2, is
11 amended to read:

12 **1. Disclaimer; nomination of substitute custodian.** A person nominated under
13 section 1654 or designated under section 1660 as custodian may decline to serve by
14 delivering a valid disclaimer, under Title ~~18-A~~ 18-C, ~~section 2-801~~ Article 2, Part 9, to
15 the person who made the nomination to or the transferor or the transferor's legal
16 representative. If the event giving rise to a transfer has not occurred and no substitute
17 custodian able, willing and eligible to serve was nominated under section 1654, the
18 person who made the nomination may nominate a substitute custodian under section
19 1654; otherwise the transferor or the transferor's legal representative shall designate a
20 substitute custodian at the time of the transfer, in either case from among the persons
21 eligible to serve as custodian for that kind of property under section 1660, subsection 1.
22 The custodian so designated has the rights of a successor custodian.

23 **Sec. C-91. 34-A MRSA §1214-A, sub-§3**, as enacted by PL 2011, c. 241, §3, is
24 amended to read:

25 **3. Funding.** Money collected pursuant to Title ~~18-A~~ 18-C, section 2-105 must be
26 deposited into the fund.

27 **Sec. C-92. 34-A MRSA §3040-A, sub-§1**, as amended by PL 2013, c. 80, §8, is
28 further amended to read:

29 **1. Payment.** Except as provided in subsection 4, if any client in the custody of the
30 department dies, and no personal representative of the client's estate is appointed, the
31 chief administrative officer may pay the balance of the deposits in the client's general
32 client account and telephone call account, up to a maximum of \$1,000, to the surviving
33 spouse or next of kin in accordance with Title ~~18-A~~ 18-C, sections 2-101 to ~~2-114~~ 2-113,
34 to the funeral director having any bill outstanding for the burial of the decedent or to any
35 other preferred creditor or creditors who may appear to be entitled thereto, and shall
36 deliver personal property in the chief administrative officer's custody to the surviving
37 spouse or next of kin in accordance with Title ~~18-A~~ 18-C, sections 2-101 to ~~2-114~~ 2-113.

38 **Sec. C-93. 34-A MRSA §3040-A, sub-§4**, as amended by PL 2005, c. 506, §9,
39 is further amended to read:

40 **4. Alternative payment.** Notwithstanding subsection 1, upon presentation of an
41 affidavit under Title ~~18-A~~ 18-C, section 3-1201, the chief administrative officer shall pay

1 the balance of any deposit left by a decedent in the department's general client account or
2 telephone call account and deliver the decedent's personal property to the decedent's
3 successor under Title ~~18-A~~ 18-C, sections 3-1201 and 3-1202. The payments under this
4 subsection take precedence over payments under subsection 1 to the extent of the balance
5 of the deposits in the accounts and the personal property remaining in the custody of the
6 chief administrative officer at the time the affidavit is presented.

7 **Sec. C-94. 34-B MRSA §3831, sub-§6**, as amended by PL 2009, c. 651, §10, is
8 further amended to read:

9 **6. Adults with advance health care directives.** An adult with an advance health
10 care directive authorizing psychiatric hospital treatment may be admitted on an informal
11 voluntary basis if the conditions specified in the advance health care directive for the
12 directive to be effective are met in accordance with the method stated in the advance
13 health care directive or, if no such method is stated, as determined by a physician or a
14 psychologist. If no conditions are specified in the advance health care directive as to how
15 the directive becomes effective, the person may be admitted on an informal voluntary
16 basis if the person has been determined to be incapacitated pursuant to Title ~~18-A~~ 18-C,
17 Article 5, Part § 7. A person may be admitted only if the person does not at the time
18 object to the admission or, if the person does object, if the person has directed in the
19 advance health care directive that admission to the psychiatric hospital may occur despite
20 that person's objections. The duration of the stay in the psychiatric hospital of a person
21 under this subsection may not exceed 5 working days. If at the end of that time the chief
22 administrative officer of the psychiatric hospital recommends further hospitalization of
23 the person, the chief administrative officer shall proceed in accordance with section 3863,
24 subsection 5-A.

25 This subsection does not create an affirmative obligation of a psychiatric hospital to
26 admit a person consistent with the person's advance health care directive. This subsection
27 does not create an affirmative obligation on the part of the psychiatric hospital or
28 treatment provider to provide the treatment consented to in the person's advance health
29 care directive if the physician or psychologist evaluating or treating the person or the
30 chief administrative officer of the psychiatric hospital determines that the treatment is not
31 in the best interest of the person.

32 **Sec. C-95. 34-B MRSA §3861, sub-§3, ¶A**, as enacted by PL 2007, c. 580, §2,
33 is amended to read:

34 A. If the patient's primary treating physician proposes a treatment that the physician,
35 in the exercise of professional judgment, believes is in the best interest of the patient
36 and if the patient lacks clinical capacity to give informed consent to the proposed
37 treatment and the patient is unwilling or unable to comply with the proposed
38 treatment, the patient's primary treating physician shall request in writing a clinical
39 review of the proposed treatment by a clinical review panel. For a patient at a state
40 mental health institute, the request must be made to the superintendent of the institute
41 or the designee of the superintendent. For a patient at a designated nonstate mental
42 health institution, the request must be made to the chief administrative officer or the
43 designee of the chief administrative officer. The request must include the following
44 information:

- 1 (1) The name of the patient, the patient's diagnosis and the unit on which the
2 patient is hospitalized;
- 3 (2) The date that the patient was committed to the institution or institute and the
4 period of the court-ordered commitment;
- 5 (3) A statement by the primary treating physician that the patient lacks capacity
6 to give informed consent to the proposed treatment. The statement must include
7 documentation of a 2nd opinion that the patient lacks that capacity, given by a
8 professional qualified to issue such an opinion who does not provide direct care
9 to the patient but who may work for the institute or institution;
- 10 (4) A description of the proposed course of treatment, including specific
11 medications, routes of administration and dose ranges, proposed alternative
12 medications or routes of administration, if any, and the circumstances under
13 which any proposed alternative would be used;
- 14 (5) A description of how the proposed treatment will benefit the patient and
15 ameliorate identified signs and symptoms of the patient's psychiatric illness;
- 16 (6) A listing of the known or anticipated risks and side effects of the proposed
17 treatment and how the prescribing physician will monitor, manage and minimize
18 the risks and side effects;
- 19 (7) Documentation of consideration of any underlying medical condition of the
20 patient that contraindicates the proposed treatment; and
- 21 (8) Documentation of consideration of any advance ~~health care~~ health care
22 directive given in accordance with Title ~~18-A~~ 18-C, section ~~5-802~~ 5-703 and any
23 declaration regarding medical treatment of psychotic disorders executed in
24 accordance with section 11001.

25 **Sec. C-96. 34-B MRSA §3862, sub-§1, ¶B**, as amended by PL 2009, c. 651,
26 §11, is further amended to read:

27 B. If the law enforcement officer does take the person into protective custody, shall
28 deliver the person immediately for examination by a medical practitioner as provided
29 in section 3863 or, for a person taken into protective custody who has an advance
30 health care directive authorizing mental health treatment, for examination as provided
31 in Title ~~18-A~~ 18-C, section ~~5-802~~ 5-703, subsection ~~(d)~~ 4 to determine the
32 individual's capacity and the existence of conditions specified in the advance health
33 care directive for the directive to be effective.

34 **Sec. C-97. 34-B MRSA §5001, sub-§4, ¶B**, as enacted by PL 1983, c. 459, §7,
35 is amended to read:

36 B. Seeking guardianship or a protective order under Title ~~18-A~~ 18-C, Article 5.

37 **Sec. C-98. 34-B MRSA §5001, sub-§7**, as amended by PL 1995, c. 560, Pt. K,
38 §40, is further amended to read:

39 **7. Ward.** "Ward" means a person for whom the department has been duly appointed
40 guardian under Title ~~18-A~~ 18-C, ~~article V~~ Article 5, Part 6.

1 **Sec. C-99. 35-A MRSA §4355, sub-§1**, as enacted by PL 1987, c. 141, Pt. A, §6,
2 is amended to read:

3 **1. Trustee.** The decommissioning fund committee shall select a trustee or trustees to
4 execute the policies set by the decommissioning fund committee and manage the money
5 within a decommissioning trust fund in order to ensure that it will be available when
6 needed and, insofar as possible, consistent with protection of the principal, so that it may
7 grow to keep pace with inflation or faster. Preference may be given to financial
8 institutions incorporated in the State if consistent with their fiduciary responsibility, but
9 only if they meet the criteria for trustees established by the decommissioning fund
10 committee. That committee may, by a majority vote of its entire membership, change
11 trustees at any time. Any trustee ~~shall be~~ is subject to the same duties and may exercise
12 the same powers as trustees under Title ~~18-A 18-C, article VII~~ Article 7, and the
13 provisions of the decommissioning trust to the extent that they are not inconsistent with
14 this subchapter. The trustee may appoint subsidiary financial managers, subject to
15 approval by the decommissioning fund committee. Any fees charged by the trustee ~~shall~~
16 be are subject to review by the commission.

17 **Sec. C-100. 35-A MRSA §4391, sub-§5**, as enacted by PL 1987, c. 141, Pt. A,
18 §6, is amended to read:

19 **5. Trustee.** "Trustee" means a fiduciary as defined under Title ~~18-A 18-C~~, section
20 1-201, which fiduciary shall administer the spent fuel disposal trust funds subject to
21 sections 4392 and 4393 and in accordance with Title ~~18-A 18-C, article VII~~ Article 7.

22 **Sec. C-101. 35-A MRSA §4392, sub-§3**, as enacted by PL 1987, c. 141, Pt. A,
23 §6, is amended to read:

24 **3. Trustee.** The licensee shall select a trustee or trustees to manage the money
25 within the fund to ensure that it will be available when needed. Preference may be given
26 to financial institutions incorporated in the State if such a determination can be made
27 consistent with the fiduciary responsibility of the trustees. The licensee may change
28 trustees at any time upon appropriate notice. Trustees ~~shall be~~ are subject to the same
29 duties and may exercise the same powers as trustees under Title ~~18-A 18-C, article VII~~
30 Article 7, to the extent that they are not inconsistent with this subchapter. The trustee
31 may appoint subsidiary financial managers, subject to the approval of the licensee.

32 **Sec. C-102. 36 MRSA §606**, as amended by PL 1979, c. 540, §44, is further
33 amended to read:

34 **§606. Tax priority; deceased's personal property**

35 If a personal property tax has been assessed upon the estate of a deceased person, or
36 if a person assessed for a personal property tax has died, the personal representative, after
37 ~~he~~ the personal representative has satisfied the first 4 priorities set forth in Title ~~18-A~~
38 18-C, section 3-805, shall, from any estate ~~which that~~ that has come to ~~his~~ the personal
39 representative's hands in such capacity, if such estate is sufficient therefor, pay the
40 personal property tax so assessed to ~~him~~ the personal representative under Title ~~18-A~~
41 18-C, section 3-709. In default of such payment the personal representative ~~shall be~~ is

1 personally liable for the tax to the extent of the estate that passed through ~~his~~ the personal
2 representative's hands ~~which that~~ was not used to satisfy claims or expenses with a higher
3 priority. To the extent that the personal representative is not assessed, the successors to
4 the decedent's taxed property shall pay the tax assessed.

5 **Sec. C-103. 36 MRSA §4079**, as amended by PL 2007, c. 154, §1, is further
6 amended to read:

7 **§4079. Civil action by State; bond**

8 Personal representatives are liable to the State on their administration bonds for all
9 taxes assessable under this chapter and interest on those taxes. Whenever no
10 administration bond is otherwise required, and except as otherwise provided in this
11 section, the ~~Judge of Probate Court~~, notwithstanding any provision of Title ~~18-A~~ 18-C,
12 shall require a bond payable to the ~~judge or the judge's successor~~ court sufficient to
13 secure the payment of all estate taxes and interest conditioned in substance to pay all
14 estate taxes due to the State from the estate of the deceased with interest thereon. A bond
15 to secure the payment of estate taxes is not required when the ~~Judge of Probate Court~~
16 finds that any estate tax due and to become due the State is reasonably secured by the lien
17 upon real estate as provided in this chapter or by any other adequate security. An action
18 for the recovery of estate taxes and interest lies on either of the bonds.

19 **Sec. C-104. 36 MRSA §4118**, as enacted by PL 2011, c. 380, Pt. M, §9, is
20 amended to read:

21 **§4118. Civil action by State; bond**

22 Personal representatives are liable to the State on their administration bonds for all
23 taxes assessable under this chapter and interest on those taxes. If no administration bond
24 is otherwise required and except as otherwise provided in this section, the ~~judge of~~
25 ~~probate~~ Probate Court, notwithstanding any provision of Title ~~18-A~~ 18-C, shall require a
26 bond payable to the ~~judge or the judge's successor~~ court sufficient to secure the payment
27 of all estate taxes and interest conditioned in substance to pay all estate taxes due to the
28 State from the estate of the deceased with interest thereon. A bond to secure the payment
29 of estate taxes is not required when the ~~judge of probate~~ Probate Court finds that any
30 estate tax due and to become due the State is reasonably secured by the lien upon real
31 estate as provided in this chapter or by any other adequate security. An action for the
32 recovery of estate taxes and interest lies on either of the bonds.

33 **Sec. C-105. 36 MRSA §4641-C, sub-§11**, as amended by PL 2005, c. 397, Pt.
34 C, §21 and affected by §22, is further amended to read:

35 **11. Deeds of distribution.** Deeds of distribution made pursuant to Title ~~18-A or~~
36 Title 18-B or Title 18-C;

37 **Sec. C-106. 36 MRSA §4641-D, sub-§6**, as enacted by PL 1987, c. 568, §2, is
38 amended to read:

1 December 6, 2014 and included revisions to the recommendations in a subsequent report
2 submitted November 20, 2015. The purpose of this bill is to adopt the Uniform Probate
3 Code as the Maine Uniform Probate Code, incorporating the changes recommended by
4 the Probate and Trust Law Advisory Commission, and to reorganize the Probate Code to
5 be more logical, while bringing the language into conformity with current drafting
6 standards, clarifying current law and eliminating inconsistencies within Title 18-A.