MAINE PROBATE AND TRUST LAW ADVISORY COMMISSION
Report to Maine Legislature
Joint Standing Committee on Judiciary
Re: LD 123
"An Act To Recodify and Revise the Maine Probate Code"

Introduction

The Probate and Trust Law Advisory Commission ("PATLAC") hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 123 (P.L. 2017, ch. 402), "An Act to Recodify and Revise the Maine Probate Code."

LD 123 was enacted in the previous legislative session with an effective date of July 1, 2019. Part G, Sec. G-2 of LD 123 provides as follows:

> **Sec. G-2. Legislation.** The joint standing committee of the 129th Legislature having jurisdiction over judiciary matters may report out legislation to the First Regular Session of the 129th Legislature to correct errors and inconsistencies created by recent legislation and this Act and address any additional issues raised in the recodification and revision of the Maine Probate Code.

As contemplated by Part G-2, Sec. G-2, PATLAC has identified the following errors or issues in the recodification and revision of the Maine Probate Code. PATLAC respectfully requests that the 129th Legislature make the following changes in LD 123 prior to the July 1, 2019 scheduled effective date.

Recommended Amendments

1. **Amend § 1-108** to include a cross reference to § 3-1201 (Collection of personal property by affidavit). § 3-1201 permits the collection of personal property by affidavit, without the appointment of a personal representative when the "value of the entire estate, wherever located, less liens and encumbrances, does not exceed $40,000." The $40,000 threshold value in § 3-1201 is an increase from the $20,000 threshold that has existed under the current Title 18-A since 2007. In order to avoid having the statutory threshold value for use of an affidavit to collect personal property become an outdated value, and to keep the threshold economically relevant, it makes sense to link the value to the cost of living adjustments in the same manner as done for the intestate share of a surviving spouse (§ 2-102), the homestead allowance (§ 2-402), exempt property (§ 2-403), and family allowance (§ 2-404). The suggested change to § 1-108(2) is as follows:

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

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

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

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

2. Automatic adjustment of amounts for inflation. The dollar amounts stated in sections 2-102, 2-402, 2-403, ~~and~~ 2-405 and 3-1201 apply to the estate of a decedent who died in or after 2017, but for the estate of a decedent who died after 2018, these dollar amounts must be increased or decreased if the Consumer Price Index for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the Consumer Price Index for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of $100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of $100, but for the purpose of section 2-405, the periodic installment amount is the lump-sum amount divided by 12. If the Consumer Price Index for 2018 is changed by the United States Department of Labor, Bureau of Labor Statistics, the reference base index must be revised using the rebasing factor reported by the Bureau of Labor Statistics or other comparable data if a rebasing factor is not reported.

2. **Amend § 2-807(2)** – Actions for wrongful death, to correct an incorrect cross-reference. As enacted, § 2-807(2) cross-references sections 2-102 and 2-103 of the Maine intestacy statutes. The correct cross-reference should be to the entirely of the Maine intestacy statutes, sections 2-102 through 2-113.

§ 2-807. Actions for wrongful death

1. Liability notwithstanding death. Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued is liable for damages as provided in this section, notwithstanding the death of the person injured and although the death was caused under circumstances that amount to a felony.

2. Wrongful death action; damages; limitations. Every wrongful death action must be brought by and in the name of the personal representative or special administrator of the

deceased person, and is distributable, after payment for funeral expenses and the costs of recovery including attorney's fees, directly to the decedent's heirs without becoming part of the probate estate, except as may be specifically provided in this subsection. The amount recovered in every wrongful death action, except as specifically provided in this subsection, is for the exclusive benefit of the deceased's heirs to be distributed to the individuals and in the proportions as provided under the Maine laws of intestacy, ~~in~~ sections 2-102 through 2-113~~and 2-103~~. The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death. Damages are payable to the estate of the deceased person only if the jury specifically makes an award payable to the estate for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses or, in the case of a settlement, the settlement documents specifically provide for such an allocation to the estate for the same. In addition, the jury may give damages not exceeding $500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding $250,000. An action under this section must be commenced within 2 years after the decedent's death, except that if the decedent's death is caused by a homicide, the action may be commenced within 6 years of the date the personal representative or special administrator of the decedent discovers that there is a just cause of action against the person who caused the homicide. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.

3. Damages for conscious suffering. Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death is, in addition to the action at common law and damages recoverable therein, liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection 2, separately found, but in such cases there is only one recovery for the same injury.

4. Maine Tort Claims Act. Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118 is limited as provided in those sections.

3. **Amend § 3-108** – time limits for probate, testacy, and appointment proceedings, by adding former Title 18-A, § 3-108(4) as a new paragraph D, and re-lettering the existing paragraphs D and E, as E and F respectfully. § 3-108(4) of Title 18-A is not a provision of the Uniform Probate Code but was added to the Maine Probate Code to address the situation where the defendant in a personal injury case dies after the accident (from unrelated causes), but the plaintiff does not learn of the death until after the 3 year "ultimate time limit" for commencing proceedings to appoint a personal representative. The provision was added to the Maine Probate Code to preserve the plaintiff's right to recover from the deceased's insurer. The omission of paragraph 4 of Title 18-A's § 3-108 was inadvertent - - the intent was to have it carry forward as part of Title 18-C.

§ 3-108. Probate, testacy and appointment proceedings; ultimate time limit

1. Limitations period; exceptions. An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may not be commenced more than 3 years after the decedent's death, except:

A. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

B. Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

C. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

D. Appropriate probate, appointment or testacy proceedings may be commenced in relation to a claim for personal injury made against the decedent by a person without actual notice of the death of the decedent at any time within 6 years after the cause of action accrues. If the proceedings are commenced more than 3 years after the decedent's death, any recovery is limited to applicable insurance;

E~~D~~. An informal appointment or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

F~~E~~. A formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from a person other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

2. Limitations period inapplicable. The limitations under subsection 1 do not apply to proceedings to construe probated wills or determine heirs of an intestate.

3. Special provision regarding date of death. In cases under subsection 1, paragraph A or B, the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code that relate to the date of death.

Conclusion

The Probate and Trust Law Advisory Commission therefore recommends the amendment of Title 18-C as noted above, with the amendments to take effect contemporaneous with Title 18-C's scheduled July 1, 2019 effective date.

Dated: February 22, 2019

Respectfully submitted,

Probate and Trust Law Advisory Commission

Judge William Avantaggio, Lincoln County Probate Court
David J. Backer, Esq., Chair
Barbara Carlin, Esq.
Cody Hopkins, AAG
Jeffrey W. Jones, Esq.
Justin LeBlanc, Esq., Vice-Chair
Marianna Putnam Liddell, Esq.
Justice Robert Murray
Patricia A. Nelson-Reade, Esq.
Judge Robert Washburn, Somerset County Probate Court

TITLE 18-C

PROBATE CODE

ARTICLE 1

GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION

PART 1

SHORT TITLE, CONSTRUCTION AND GENERAL PROVISIONS

§ 1-101. Short title

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

Maine Comment: Section 1-101 of the now-repealed Title 18-A said "the Probate Code."

§ 1-102. Purposes; rule of construction

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

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

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

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

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

D. Facilitate use and enforcement of certain trusts; and

E. Make uniform the law among the various jurisdictions.

Maine Comment: Throughout Title 18-C, Maine has substituted gender-specific language with gender neutral language. For example, in section 102(2)(C) the word "his" in subsection (b)(3) of the previous Maine law has been changed to "the decedent's". No substantive change is intended by any of these gender-neutral substitutions.

§ 1-103. Supplementary general principles of law applicable

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

§ 1-104. Construction against implied repeal

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

Maine Comment: Section 1-104 of the now-repealed Title 18-A dealt with severability in the event a provision of the Code or application thereof was held to be invalid and does not appear in Article 1 of Title 18-C. Section 1-104 of Title 18-C is the same as section 1-105 of the now-repealed Title 18-A. No substantive change is intended.

§ 1-105. Effect of fraud and evasion

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

Maine Comment: This section is the same as section 1-106 of the now-repealed Title 18-A. No substantive change is intended.

§ 1-106. Evidence as to death or status

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

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

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

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

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

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

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

Maine Comment: This section replaces section 1-107 of the now-repealed Title 18-A, adding several provisions. Subsection 1 incorporates the Uniform Determination of Death Act by reference. Subsection 4 adds an additional method for proving death by clear and convincing evidence, including circumstantial evidence, when there is no prima facie evidence of death, without waiting five years as required to establish the presumption of death under subsection 5. Subsection 6 provides a method for establishing documentation that an individual survived another individual by 120 hours.

§ 1-107. Acts by holder of general power

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

Maine Comment: This section is the same as former section 1-108 of the now-repealed Title 18-A. No substantive change is intended.

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

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

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

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

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

Maine Comment: This section provides for an automatic cost-of-living increase in the share of a surviving spouse or registered domestic partner and in the amount of exempt property and allowances.

§ 1-109. Transfer for value

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

Maine Comment: Section 1-109 of the now-repealed Title 18-A (Married women's status) has been deleted. Section 1-109 of Title 18-C is the same as section 1-110 of the now-repealed Title 18-A.

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

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

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

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

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

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

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

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

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

3. Costs assessed to trust or estate. The fiduciary may charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property nor a failure by the fiduciary to inspect property creates an inference as to whether there is or may be any liability under any environmental law with respect to the property.

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

5. Application and effective date. This section applies to all trusts and estates in existence on and created after July 1, 2019.

Maine Comment: This section is the same as section 1-111 of the now-repealed Title 18-A. The subsections are re-ordered slightly and the subsection now applies to all trusts and estates in existence on and created after July 1, 2019. No substantive change is intended.

§ 1-111. Guardian ad litem

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

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

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

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

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

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

7. Notice of other proceedings. A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interest of the child in those hearings and proceedings, unless otherwise ordered by the court.

Maine Comment: This section is the same as section 1-112 of the now-repealed Title 18-A. No substantive change is intended.

PART 2

DEFINITIONS

§ 1-201. Definitions

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

1. Agent. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care and an

individual authorized to make decisions for another under the Uniform Health Care Decisions Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. Joint tenants with the right of survivorship. "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46. Protective proceeding. "Protective proceeding" means a proceeding under Article 5, Part 6.

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

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

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

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

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

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

A. To execute or adopt a tangible symbol; or

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

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

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

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

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

57. Successors. "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this Code.

58. Supervised administration. "Supervised administration" refers to the proceedings described in Article 3, Part 5.

59. Survive. "Survive," as it relates to an individual, means to neither predecease an event, including the death of another individual, nor be deemed to have predeceased an event under section 2-104 or 2-702. "Survive" includes its derivatives, such as "survives," "survived," "survivor" and "surviving."

60. Testacy proceeding. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

61. Testator. "Testator" means an individual of either sex who has executed a will.

62. TOD designation. "TOD designation" means the designation of a security registered in beneficiary form to provide that the security be transferred on the death of the owner.

63. Trust. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 6, custodial arrangements pursuant to the Maine Uniform Transfers to Minors Act, business trusts provided for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, and excludes any arrangement under which a person is nominee or escrowee for another person.

64. Trustee. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

65. Ward. "Ward" means an individual for whom a guardian has been appointed.

66. Will. "Will" includes a codicil and any testamentary instrument that only appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Maine Comment: This section increases the number of defined terms and provides that defined terms shall have the meanings stated in this section unless the context otherwise indicates.

PART 3

SCOPE, JURISDICTION AND COURTS

§ 1-301. Territorial application

Except as otherwise provided in this Code, this Code applies to the following:

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

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

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

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

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

§ 1-302. Subject matter jurisdiction

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

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

B. The protection of minors and incapacitated persons; and

C. Trusts.

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

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

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

Maine Comment: Section 1-302(a) of the now-repealed Title 18-A limited subject matter jurisdiction to matters described in former sections 3-105, 5-102 and 5-402 of Title 18-A; this section now confers jurisdiction to the full extent "permitted by the laws of the State." Subsections 3 and 4 specifically address jurisdiction over and consolidation of protective proceedings and guardianship proceedings, but do not constitute a change in Maine law.

§ 1-303. Venue; multiple proceedings; transfer

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

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

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

§ 1-304. Rule-making power

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

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

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

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

§ 1-306. No jury trial; removal

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

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

§ 1-307. Register; powers

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

Maine Comment: This section refers to the register's "other duties as set out in this Code" while section 1-307 of the now-repealed Title 18-A used the phrase "as set out in this Title generally." This is not a substantive change to Maine law.

§ 1-308. Appeals

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

§ 1-309. Judges

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

§ 1-310. Oath or affirmation on filed documents

Except as otherwise specifically provided in this Code or by rule, every document filed with the court under this Code, including applications, petitions and demands for notice, is deemed to include an oath, affirmation or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed. Deliberate falsification may subject the person executing or filing the document to penalties for perjury.

PART 4

NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

§ 1-401. Notice

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

§ 1-402. Notice; waiver

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

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

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

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

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

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

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

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

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

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

(4) An order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(5) An order binding a sole holder or all coholders of a general testamentary power of appointment binds other persons to the extent their interests, as objects or takers in default or otherwise, are subject to the power.

C. Unless otherwise represented, a minor, an incapacitated person or an unborn or unascertained person is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

3. Representation of minors. If a conservator or guardian has not been appointed, a parent may represent a minor.

4. Notice. Notice is required as follows:

A. Notice as prescribed by section 1-401 must be given to every interested person or to a person who may bind an interested person as described in subsection 2, paragraph A or B. Notice may be given both to a person and to another person who may bind the person; and

B. Notice must be given to unborn or unascertained persons who are not represented under subsection 2, paragraph A or B by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

5. Appointment of guardian ad litem. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated person or an unborn or unascertained person if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record or the proceeding.

Maine Comment: Subsection 2 of this section now includes a specific provision for orders binding holders of a general testamentary power of appointment.

Subsection 3 of this section continues to allow a parent to represent a minor child if no guardian or conservator has been appointed, but eliminates the stipulation that there must be no conflict of interest.

Subsection 4 of this section eliminates the phrase “or a person whose identity or residence is unknown” after "unascertained person."

PART 5

REGISTERS OF PROBATE

§ 1-501. Election; bond; vacancies; salaries; copies

1. Election. Registers of probate are elected or appointed as provided in the Constitution of Maine. A register's election is effected and determined as is provided for county commissioners

by Title 30-A, chapter 1, subchapter 2, and a register's term commences on the first day of January following the register's election, except that the term of a register appointed to fill a vacancy commences immediately.

2. Bond. A register, before acting, shall give bond to the treasurer of the register's county with sufficient sureties in the sum of $2,500, except that this sum must be $10,000 for Cumberland County. A register, having executed the bond, shall file the bond in the office of the county commissioners of the register's county, to be presented to the county commissioners at the next meeting for approval. After the bond is approved, the county commissioners shall retain a copy of the bond and deliver the original bond to the register, who shall deliver the original bond to the treasurer of the county within 10 days after the bond's approval. Surety and fidelity insurance coverage provided by a public sector self-funded risk pool organized pursuant to Title 30-A, section 2253 in the sum ordered by the commissioners is deemed to comply with the requirements of this section.

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

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

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

§ 1-502. Condition of bond

A register's bond is conditioned on the register's accounting, according to law, for all fees received by or payable to the register by virtue of the office and the register's paying the fees to the county treasurer by the 15th day of each month following the month in which the fees were collected, as provided by law; the register's keeping, seasonably and in good order, the records of the court; the register's making and keeping correct and convenient indices of the records; and the register's faithfully discharging all other duties of the office. If a register forfeits the register's bond, the register is disqualified from holding office. The register's failure to complete the

register's records for more than 6 months at any time, except in cases of sickness or extraordinary casualty, constitutes a forfeiture.

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

1. Duties. Registers are responsible for the care and custody of all files, papers and books belonging to the probate office and shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianships or conservatorships issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs.

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

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

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

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

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

A. A will has been proved or allowed;

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

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

2. Certification. When required by subsection 1, the register shall certify to the register of deeds in the county where any affected real estate is situated a true copy of the portion of the will

that devises the real estate, an abstract of the appointment of the personal representative or a true copy or abstract of the petition for an elective share. Each certification must also include:

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

B. The name of the decedent;

C. The name or names of the devisees or heirs; and

D. In the case of a will, the date of allowance of the will and an indication whether the will was probated formally or informally.

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

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

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

§ 1-506. Deputy register of probate

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

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

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

A judge shall constantly inspect the conduct of the register with respect to the register's records and duties and give information in writing of any breach of the register's bond to the treasurer of

the county, who shall bring a civil action. Any funds recovered in the civil action must be applied toward the expenses of completing the records of the register under the direction of the judge and the surplus, if any, must inure to the county. If the funds are insufficient, the treasurer may recover the deficiency from the register in a civil action.

§ 1-508. Register incapable or neglects duties

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

§ 1-509. Records in case of vacancy

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

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

1. Prohibited activities. A register may not:

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

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

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

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

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

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

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

§ 1-511. Fees for approved blanks and forms

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

Maine Comment: Part 5 has been organized into sections for ease of use, and changes in the text have been made for style and consistency. No substantive change to Maine law is intended.

PART 6

COSTS AND FEES

§ 1-601. Costs in contested cases

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

§ 1-602. Filing and certification fees

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

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

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

A. $10,000 and under, the fee is $20;

B. $10,001 to $20,000, the fee is $40;

C. $20,001 to $30,000, the fee is $60;

D. $30,001 to $40,000, the fee is $75;

E. $40,001 to $50,000, the fee is $95;

F. $50,001 to $75,000, the fee is $125;

G. $75,001 to $100,000, the fee is $190;

H. $100,001 to $150,000, the fee is $250;

I. $150,001 to $200,000, the fee is $325;

J. $200,001 to $250,000, the fee is $375;

K. $250,001 to $300,000, the fee is $450;

L. $300,001 to $400,000, the fee is $500;

M. $400,001 to $500,000, the fee is $575;

N. $500,001 to $750,000, the fee is $625;

O. $750,001 to $1,000,000, the fee is $700;

P. $1,000,001 to $1,500,000, the fee is $750;

Q. $1,500,001 to $2,000,000, the fee is $875; or

R. More than $2,000,000, the fee is $950, and continuing in steps of $100 for every increase in value of $500,000 or part thereof above $2,500,000.

For filing a will for no probate, there is no charge.

For filing a will to be probated and without an appointment, the fee is $15.

3. Copies of court records. For making copies from the records of the court, the fee is $1 for each page.

4. Certificate of appointment. For each certificate, under seal of the court, of the appointment and qualification of a personal representative, guardian, conservator or trustee, the fee is $5, and for each double certificate, the fee is $10.

5. Petition for appointment as guardian. For filing a petition for appointment as guardian, the fee is $50.

6. Application for involuntary hospitalization. For filing an application for involuntary hospitalization, the fee is $10.

7. Petition for guardian and conservator. For filing a joined petition for guardian and conservator, the fee is $75.

8. Petition for appointment of conservator. For filing a petition for appointment of conservator, the fee is $50.

9. Petition for elective share. For filing a petition for elective share, the fee is $120.

10. Subsequent informal appointments. For all other subsequent informal appointments, the fee is $25.

11. Other formal proceeding. For filing any other formal proceeding, the fee is $25.

12. Registration of guardianship order from another state. For registering a guardianship order from another state, the fee is $25.

§ 1-603. Registers to account monthly for fees

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

§ 1-604. Expenses of partition

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

§ 1-605. Compensation of court reporters

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

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

§ 1-606. Court reporters to furnish copies

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

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

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

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

3. Use of account funds. The money in the account established in subsection 2 must be used for the restoration, storage and preservation of the records filed in the office of the register and in the court. No withdrawals from this account may be made without the express written request or approval of the register.

4. Waiver of surcharge. The judge may waive the surcharge in subsection 1 if the judge believes that it will prove a hardship for the individual filing the petition, application or complaint.

§ 1-608. Fees not established in statute

Unless otherwise specifically stated in statute or in the Rules of Probate Procedure published by the Supreme Judicial Court, the Probate Court shall charge the same fee charged by the District Court or the Superior Court for similar procedures.

Maine Comment: Part 6 has been organized into sections for ease of use, and changes in the text have been made for style and consistency. No substantive change to Maine law is intended.

PART 7

CHANGE OF NAME

§ 1-701. Petition to change name

1. Petition; where filed. If a person desires to have that person's name changed, the person may petition the judge in the county where the person resides. If the person is a minor, the person's legal custodian may petition on the person's behalf. If there is a proceeding involving custody or other parental rights with respect to the minor pending in the District Court, the petition must be filed in the District Court.

2. Notice and name change. Upon receipt of a petition filed under subsection 1, the judge, after due notice, may change the name of the person. To protect the person's safety, the judge may limit the notice required if the person shows by a preponderance of the evidence that:

A. The person is a victim of abuse; and

B. The person is currently in reasonable fear of the person's safety.

3. Record. The judge shall make and preserve a record of a name change. If the judge limited the notice required under subsection 2, the judge may seal the record of the name change.

4. Filing fee. The fee for filing a name change petition is $40.

5. Background checks. The judge may require a person seeking a name change to undergo one or more of the following background checks: a criminal history record check; a motor vehicle record check; or a credit check. The judge may require the person to pay the cost of each background check required.

6. Denial of petition brought for improper purpose. The judge may not change the name of a person if the judge has reason to believe that the person is seeking the name change for purposes of defrauding another person or entity or for purposes otherwise contrary to the public interest.

Maine Comment: Part 7 has been organized into sections for ease of use, and changes in the text have been made for style and consistency. No substantive change to Maine law is intended.

PART 8

PROBATE AND TRUST LAW ADVISORY COMMISSION

§ 1-801. Commission established

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

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

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

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

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

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

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

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

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

§ 1-802. Consultants; experts

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

§ 1-803. Duties

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

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

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

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

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

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

§ 1-804. Organization

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

§ 1-805. Federal funds

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

Maine Comment: Part 8 has been organized into sections for ease of use, and changes in the text have been made for style and consistency. No substantive change to Maine law is intended.

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.

Maine Comment: Subsection 2 of this section is a new concept in Maine law in its recognition of a "negative will." For example, a document that satisfies the requirement of a holographic will under section 2-502(2) stating, "I don't want my father to get anything" will effectively disinherit the decedent's father from inheriting in intestacy.

§ 2-102. Share of spouse

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

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

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

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

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

3. Descendants of both decedent and spouse, just spouse. The first $100,000, plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving

descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent; and

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

Maine Comment: This section changes the intestate share of a surviving spouse from the share that was provided under prior Maine law.

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

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

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

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

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

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

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

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

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

F. If there is no surviving descendant, parent or descendant of a parent, grandparent or descendant of a grandparent, but the decedent is survived by one or more great-grandparents

or descendants of great-grandparents, half of the estate passes to the paternal great-grandparents who survive, or to the descendants of the paternal great-grandparents if all are deceased, to be distributed per capita at each generation as described in section 2-106; and the other half passes to the maternal relatives in the same manner, but if there is no surviving great-grandparent or descendant of a great-grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

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

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

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

Maine Comment: This section deviates from the Uniform Probate Code by the addition of subsection 1(F), which adds great-grandparents and descendants of great-grandparents as takers in intestacy. This is consistent with previous Maine law. Subsection 2 of this section is new and adds children of the decedent's deceased spouse or spouses (i.e., the decedent's step-children) as takers in intestacy before property escheats to the State.

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

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

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

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

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

Maine Comment: Subsection 1(B) includes, as heirs, unborn individuals in gestation at the decedent's death if the individual lives for 120 hours after birth. This rule was previously found in section 2-108 of the now-repealed Title 18-A.

§ 2-105. No taker

If there is no taker under the provisions of this Article, the intestate estate passes to the State, except that an amount of funds included in the estate up to the total amount of restitution paid to the decedent pursuant to a court order for a crime of which the decedent was the victim passes to the Elder Victims Restitution Fund established in Title 34-A, section 1214-A.

§ 2-106. Per capita at each generation

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

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

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

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

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

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

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

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

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

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

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

§ 2-107. Kindred of half blood

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

§ 2-108. Advancements

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

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

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

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

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

Maine Comment: The rule of this section was previously found in section 2-110 of the now-repealed Title 18-A.

§ 2-109. Debts to decedent

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

Maine Comment: The rule of this section was previously found in section 2-111 of the now-repealed Title 18-A.

§ 2-110. Alienage

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

Maine Comment: The rule of this section was previously found in section 2-112 of the now-repealed Title 18-A.

§ 2-111. Dower and curtesy abolished

The estates of dower and curtesy are abolished.

Maine Comment: The rule of this section was previously found in section 2-113 of the now-repealed Title 18-A.

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

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

Maine Comment: The first sentence of this section is consistent with the Uniform Probate Code. Maine has retained the last two sentences of the section as consistent with prior Maine law as previously found in section 2-114 of the now-repealed Title 18-A.

§ 2-113. Parent barred from inheriting

1. Parent barred from inheriting though child. A parent is barred from inheriting through intestate succession from or through a child of the parent if:

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

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

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

Maine Comment: This is a new section, with no counterpart under prior Maine law. A parent whose parental rights have been terminated is not eligible to inherit from the parent's child. A parent also may not inherit if the parent's child dies prior to age eighteen and there is clear and convincing evidence that parental rights could have been terminated on the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of the parent toward the child.

SUBPART 2

PARENT-CHILD RELATIONSHIP

§ 2-115. Determination of parentage for purposes of intestate succession

Unless otherwise provided in this subpart, "parent" for purposes of intestate succession means a person who has established a parent-child relationship with the child under Article 9 or Title 19-A, chapter 61 and whose parental rights have not been terminated.

§ 2-116. Effect of a pending petition

If a petition to establish parentage under Title 19-A, chapter 61 or a petition for adoption under Article 9 is pending and has not been finally adjudicated at the time of the petitioner's death, the subject of the petition is considered a child of the petitioner for intestate succession purposes and may inherit from and through the petitioner. If the subject of the petition dies before a final adjudication of parentage is issued, the petitioner may inherit from or through the subject of the petition only if there is a final adjudication of parentage.

§ 2-117. Effect of an order granting adoption on adoptee and adoptee's former parents

An order granting an adoption divests the adoptee's former parents of all legal rights, powers, privileges, immunities, duties and obligations concerning the adoptee, including the right to inherit from or through the adoptee. An adoptee, however, may inherit from the adoptee's former parents if so provided in the adoption decree.

§ 2-118. Child born after death of parent

An individual is a parent of a child who is born after the individual's death, if the child is:

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

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

PART 2

ELECTIVE SHARE OF SURVIVING SPOUSE

§ 2-201. Definitions

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

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

2. Fractional interest in property held in joint tenancy with the right of survivorship. "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means a fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent or, if the decedent was not a joint tenant, is the number of joint tenants.

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

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

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

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

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

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

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

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

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

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

§ 2-202. Elective share

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

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

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

Maine Comment: This section revises the Maine Elective Share statutes to bring Maine in line with the contemporary view of marriage as an economic partnership. Under this approach, the economic rights of each spouse are considered to be a half-interest of the fortunes of their marriage. The titling of assets between spouses at the time of death is no longer determinative in elective share calculations. Maine did not choose to enact the minimum elective share provisions that are part of the Uniform Probate Code. As with prior Maine law, the elective share is in addition to exemptions and allowances that the surviving spouse is entitled to receive under section 2-401 *et seq.*

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

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

A. The decedent's net probate estate;

B. The decedent's nonprobate transfers to others;

C. The decedent's nonprobate transfers to the surviving spouse; and

D. The surviving spouse's property and nonprobate transfers to others.

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

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

A. Less than one year, the percentage is 3%;

B. One year but less than 2 years, the percentage is 6%;

C. Two years but less than 3 years, the percentage is 12%;

D. Three years but less than 4 years, the percentage is 18%;

E. Four years but less than 5 years, the percentage is 24%;

F. Five years but less than 6 years, the percentage is 30%;

G. Six years but less than 7 years, the percentage is 36%;

H. Seven years but less than 8 years, the percentage is 42%;

I. Eight years but less than 9 years, the percentage is 48%;

J. Nine years but less than 10 years, the percentage is 54%;

K. Ten years but less than 11 years, the percentage is 60%;

L. Eleven years but less than 12 years, the percentage is 68%;

M. Twelve years but less than 13 years, the percentage is 76%;

N. Thirteen years but less than 14 years, the percentage is 84%;

O. Fourteen years but less than 15 years, the percentage is 92%; and

P. Fifteen years or more, the percentage is 100%.

Maine Comment: For simplicity and clarity, this section defines the marital property portion of the augmented estate using an approximation method based on the length of the marriage. The longer the marriage, the larger the elective share amount will be for the surviving spouse.

§ 2-204. Decedent's net probate estate

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

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

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

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

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

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

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

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

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

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

B. Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default or otherwise, to or for the benefit of any person other than the decedent's

estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount; and

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

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

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

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

Maine Comment: This section changes Maine law in several respects with regard to calculating the augmented estate. Section 1 expands the augmented estate to include 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. Subsection 2 expands the assets that would be included in the augmented estate under prior law by including powers that are exercisable only by a "non adverse party." Subsection 3, paragraph C increases the amount that is excluded from the augmented estate for assets that passed within two years preceding the death of the decedent to the excess over 50% of the amount excludable from taxable gifts pursuant to 26 U.S.C. § 2503(b). The exclusion amount had been $3,000 under prior law. By referencing the U.S. Code, the amount will adjust automatically with changes to the federal exclusion amounts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Maine Comment: The scope of the augmented estate is significantly expanded from prior Maine law, as the augmented estate now includes all of the surviving spouse's property, regardless of whether it was derived from the decedent.

§ 2-208. Exclusions, valuation and overlapping application

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

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

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

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

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

B. The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, except as provided in paragraph C, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan or any similar arrangement, exclusive of the federal Social Security system.

C. The value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, regardless of whether that discretion is expressed in the form of a standard of distribution, is presumed to be 1/2 of the total value of the trust estate unless a different value is established by proof; except that the value of a surviving spouse's beneficial interest in a trust from which distributions of both income and principal to the surviving spouse are subject to the trustee's discretion, without an ascertainable standard, is presumed to be the full value of the trust estate if the spouse is the sole trustee of the trust.

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

Maine Comment: 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 for valuing beneficial interests in fully discretionary trusts for which commuted values are not readily determinable. Maine has modified section 2-208to establish a presumption that the value of a surviving spouse's beneficial interest in a discretionary trust is one-half of the total value of the trust estate.

§ 2-209. Sources from which elective share payable

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

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

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

2. Marital-property portion. The marital-property portion under subsection 1, paragraph B is computed by multiplying the value of the amounts included in the augmented estate under section 2-207 by the percentage of the augmented estate set forth in the schedule in section 2-203, subsection 2 appropriate to the length of time the spouse and the decedent were married to each other.

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

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

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

Maine Comment: This section eliminates Maine's prior provision that the spouse is charged with amounts that would have passed to the spouse but were renounced.

§ 2-210. Personal liability of recipients

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

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

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

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

2. Extension. Within 9 months after the decedent's death, a petition for an extension of time for making an election may be filed by the surviving spouse or the surviving spouse's conservator or agent under authority of a power of attorney. If, within 9 months after the decedent's death, notice is given of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown may extend the time for election. If the court grants the petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share amount, if

the election is made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

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

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

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

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

The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under section 2-211, subsection 1. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator or agent under authority of a power of attorney.

Maine Comment: This section revises former section 2-203 of the now-repealed Title 18-A in three significant respects. First, it makes it clear that the right of election may be exercised only by or on behalf of a living surviving spouse. Second, the election can be pursued on behalf of the surviving spouse by the spouse's conservator or agent. In any case, the surviving spouse must be alive when the election is made and cannot be pursued on behalf of a decedent. Third, it treats incapacitated spouses the same as spouses with capacity. Previously, if a spouse was incapacitated, the court exercised the right on behalf of the incapacitated spouse only after a judicial proceeding to determine the necessity of the share for the incapacitated spouse's life expectancy; a spouse with capacity was able to elect regardless of need. Treating incapacitated spouses the same as spouses with capacity is a deviation from the Uniform Probate Code, which provides that the incapacitated spouse's share is to be distributed to a custodial trust for the surviving spouse's life, the remainder beneficiaries of which are the predeceased spouse's residuary devisees or heirs. Eliminating the disparate treatment between incapacitated spouses and spouses with capacity is consistent with the revised elective-share law, which attempts to more closely align the amounts that a spouse receives upon divorce to that which the spouse receives upon death. Under this partnership theory of marriage, which forms the basis of much of the revisions to the elective-share law, an incapacitated spouse in a divorce proceeding does not receive less of an equitable distribution solely due to the incapacity. This section therefore applies the partnership theory of marriage equitably to all surviving spouses.

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

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

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

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

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

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

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

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

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

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

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

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

or other 3rd party is liable for payments made or other actions taken after the payor or other 3rd party received written notice that a petition for the elective share has been filed.

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

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

PART 3

SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

§ 2-301. Entitlement of spouse; premarital will

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

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

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

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

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

§ 2-302. Omitted children

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

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

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

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

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

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

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

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

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

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

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

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

PART 4

EXEMPT PROPERTY AND ALLOWANCES

§ 2-401. Applicable law

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

§ 2-402. Homestead allowance

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

Maine Comment: 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 1-108.

§ 2-403. Exempt property

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding $15,000 in excess of any security interests in the estate of tangible personal property, including, but not limited to, in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value; however, the decedent, by will, may exclude one or more adult children from the receipt of exempt property. If encumbered chattels are selected

and the value in excess of security interests, plus that of other exempt property, is less than $15,000, or if there is not $15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided by intestate succession or by way of elective share.

Maine Comment: This section increases the exempt property amount to $15,000 from the previous $7,000. Exempt property is subject to cost-of-living adjustments as provided in section 1-108. The section now provides a list of the types of property available to satisfy the exempt property entitlement, in lieu of referencing 14 M.R.S. § 4421 (Attachments: Personal Property – Exemptions), *et seq*. The Maine statute deviates from the Uniform Probate Code to permit the decedent, by will, to exclude one or more adult children from the receipt of exempt property.

§ 2-404. Family allowance

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

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

§ 2-405. Source, determination and documentation

If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal

representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $27,000 or periodic installments not exceeding $2,250 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the court for appropriate relief, which relief may include a family allowance other than that which the personal representative determined or could have determined.

Maine Comment: This section deviates 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 section 2-212(b) of the Uniform Probate Code. Maine has chosen not to treat an incapacitated surviving spouse differently than 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 Comment to section 2-212. This same concept is applied in this section 2-405 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.

PART 5

§ 2-501. Who may make a will

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

Maine Comment: This section deviates from the Uniform Probate Code by adding language permitting a legally emancipated minor to make a will.

§ 2-502. Execution; holographic wills

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

A. In writing;

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

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

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

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

Maine Comment: This section does not adopt the Uniform Probate Code's alternative method of will execution of acknowledgement by a notary in lieu of execution by two witnesses. The section adopts the "conscious presence" test of the Uniform Probate Code. Under the "conscious presence" test, a signing is sufficient if it is done by another person on the testator's behalf within the range of the testator's senses such as hearing; the signing need not have occurred within the testator's line of sight.

The Maine Supreme Judicial Court held in *In Re Estate of Gonzalez*, 855 A.2d 1146, 2004 ME 109 (Me. 2004) that a pre-printed form filled in with the testator's handwriting can qualify as a holographic will.

This section deviates from the Uniform Probate Code by not referencing the harmless error standard of the Uniform Probate Code, which standard is not adopted in Maine.

§ 2-503. Self-proved will

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

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

.....

Testator

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

.....
Witness

.....
Witness

The State of .....
County of .....

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)

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

The State of .....
County of .....

We, ..., ... and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as (his) (her) last will and that (he) (she) had signed willingly (or willingly directed another to sign for (him) (her)), as (his) (her) free and voluntary act, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and

that to the best of (his) (her) knowledge the testator was at that time eighteen years of age or older or a legally emancipated minor, of sound mind and under no constraint or undue influence.

.....
Testator

.....
Witness

.....
Witness

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.

Maine Comment: This section modifies the previous Maine statute in three respects: it adds references where appropriate to a legally emancipated minor, adds male/female gender options where appropriate to update the single male pronoun, and deletes references to a notary seal, which is not required for valid notarization in Maine.

This section adopts a new subsection 3 from the Uniform Probate Code to make clear that it is not necessary for a testator, who is simultaneously self-proving his/her will, to sign the will twice - once on the will itself, and again on the self-proving provisions. A single signature by the testator, on the self-proving provisions, is sufficient.

§ 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.

Maine Comment: This section deviates from the Uniform Probate Code by omitting the cross reference to section 2-503. The omission is a result of Maine's former holographic will provision having been moved to section 2-502(2).

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

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

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

Maine Comment: This section expands the category of acts that constitute revocation to include any act performed by the testator with the intent and for the purpose of revoking the will in whole or in part.

§ 2-507. Revocation by change of circumstances

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

Maine Comment: The exceptions referenced in this section are 2-802 (Effect of homicide); 2-803 (Effect of criminal conviction), formerly section 2-806 of the now-repealed Title 18-A; and 2-804 (Revocation by divorce), formerly section 2-508 of the now-repealed Title 18-A.

§ 2-508. Revival of revoked will

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

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

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

§ 2-509. Incorporation by reference

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

§ 2-510. Uniform Testamentary Additions to Trusts Act

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

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

B. At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with or after the execution of the testator's will or in another

individual's will if that other individual has predeceased the testator, regardless of the existence, size or character of the corpus of the trust.

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

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

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

§ 2-511. Events of independent significance

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

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

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

Maine Comment: This section deviates from the Uniform Probate Code by not requiring the testator’s signature if the separate writing is in the testator’s handwriting.

§ 2-513. Contracts concerning succession

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after July 1, 2019, can be established only by:

1. Material provisions. Provisions of a will stating material provisions of the contract;

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

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

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

Maine Comment: This section does not constitute a substantive change to Maine law. The same provision previously existed as section 2-701 of the now-repealed Title 18-A.

§ 2-514. Disposition of will deposited with court

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

Maine Comment: This section does not constitute a substantive change to Maine law. The same provision previously existed as section 2-901 of the now-repealed Title 18-A.

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

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

Maine Comment: This section does not constitute a substantive change to Maine law. The same provision previously existed as section 2-902 of the now-repealed Title 18-A.

§ 2-516. Penalty clause for contest

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

Maine Comment: This section does not constitute a substantive change to Maine law. The same provision previously existed as section 3-905 of the now-repealed Title 18-A.

§ 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.

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.

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

MAINE STATUTORY WILL OF

. . . . . .

(Print your name)

Article 1. Declaration

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

Article 2. Disposition of my property

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

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

(name)	(description of item)	(signature)

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

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

(name)	(description of item)	(signature)

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.

(name)	(amount)	(signature)

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.

Property Disposition Clauses. (select one)

___ 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. _____ (signature).

___ 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. _____ (signature).

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

(name)	(amount)	(signature)

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

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)

Article 3. Nomination of guardian, conservator and personal representative

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.)

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.

FIRST GUARDIAN		(signature)
SECOND GUARDIAN		(signature)
THIRD GUARDIAN		(signature)

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.)

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

FIRST CONSERVATOR	_____	_____ (signature)
SECOND CONSERVATOR	_____	_____ (signature)
THIRD CONSERVATOR	_____	_____ (signature)

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

FIRST PERSONAL REPRESENTATIVE	_____	_____ (signature)
SECOND PERSONAL REPRESENTATIVE	_____	_____ (signature)
THIRD PERSONAL REPRESENTATIVE	_____	_____ (signature)

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

_____
Your Signature

STATEMENT OF WITNESSES (You must have two witnesses.)

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

Signature _____

Printed name _____

Address _____

Signature _____

Printed name _____

Address _____

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

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

.....

Testator

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

.....

Witness

.....

Witness

The State of .....

County of .....

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)

2. Forms provided. Forms for executing a statutory will must be provided at all probate courts for a cost equivalent to the reasonable cost of printing and storing the forms. The probate courts shall make the statutory will form available via the Internet for free printing by anyone choosing to use the form. A statutory will is deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete or mark through any section or part of a section in the statutory will does not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature invalidates only the part not signed, except as specifically provided in paragraph 2.4.

Maine Comment: The statutory will form is revised to add an optional self-proving provision. The statutory will provision previously existed as section 2-514 of the now-repealed Title 18-A.

PART 6

RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

§ 2-601. Scope

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

Maine Comment: This section reflects the broad theme of the new Uniform Probate Code to discern the intent of the testator and a willingness to look outside the four corners of the will itself to determine an intent that would rebut the statutory rules of construction. This represents a substantial change in Maine law. Under prior Maine law, as reflected in section 2-603 of the now-repealed Title 18-A, the rules of construction of Part 6 applied "unless a contrary intention is indicated by the will." The new section 2-601 permits a determination of the testator's intent from the consideration of evidence extrinsic to the will as well as the content of the will itself, as necessary to rebut the rules of construction of Part 6. The change is not a retreat from the well-established rule that the testator's intention controls the disposition. Rather, the change is a relaxation of the formalities governing the determination of testator's intent.

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

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

Maine Comment: The removal of the second sentence ("A devise of property conveys all the estate of a devisor unless it appears by his will that he intended to convey a lesser estate.") from section 2-604 of the now-repealed Title 18-A is not intended to create an inference that Maine is changing a long-standing presumption that a devise passes the testator's full interest in the property.

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

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

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

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

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

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

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

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

E. "Devisee" includes:

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

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

(3) An appointee under a power of appointment exercised by the testator's will.

F. "Stepchild" means a child of the surviving, deceased or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor.

G. "Surviving devisee" or "surviving descendant" means a devisee or descendant, respectively, who neither predeceased the testator nor is deemed to have predeceased the testator under section 2-702.

H. "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

2. Substitute gift. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply.

A. Except as provided in paragraph D, if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. The surviving descendants take per capita at each generation the property to which the devisee would have been entitled had the devisee survived the testator.

B. Except as provided in paragraph D, if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives" or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisee survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take per capita at each generation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

C. For the purposes of section 2-601, words of survivorship, such as in a devise to an individual "if he survives me," or in a devise to "my surviving children," are, in the absence

of additional evidence, a sufficient indication of an intent contrary to the application of this section.

D. If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph A or B, the substitute gift is superseded by the alternative devise if:

(1) The alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(2) The alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

E. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

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

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

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

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

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

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

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

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

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

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

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

Maine Comment: The phrase "by representation" in the Uniform Probate Code has been changed to "per capita at each generation" in Title 18-C. The phrase "by representation" is synonymous with "per stirpes". *See* section 2-709. Maine has long considered inheritance by right of representation to be synonymous with inheritance per stirpes. *See Fiduciary Trust Co. v. Hope Wheeler Brown*, 131 A.2d 191 (Me. 1957).

In subsection 2(C) Maine has reversed the presumption of the Uniform Probate Code, which created a rebuttable presumption that using words of survivorship, such as a devise to an individual "if he survives me," or in a devise to "my surviving children," are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the antilapse provisions. Under Title 18-C, words of survivorship will create a rebuttable presumption of the testator's intent to not have the antilapse provisions apply. For example, in a devise to "my surviving children," if the testator had three children, X, Y, and Z, and child X predeceased the testator leaving GC1 and GC2, the devise will be distributed in equal shares to Y and Z, with no distribution to GC1 and GC2.

§ 2-604. Failure of testamentary provision

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

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

§ 2-605. Increase in securities; accessions

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

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

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

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

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

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

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

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

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

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

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

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

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

2. General pecuniary devise from specifically devised property. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or a condemnation award, insurance proceeds or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds or the recovery.

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

4. Survival of testator; incapacity ceased. For the purposes of the references in subsection 2 to a conservator, subsection 2 does not apply if, after the sale, mortgage,

condemnation, casualty or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication for at least one year.

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

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

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

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

Maine Comment: Subsections 1(E) and 1(F) of this section reflect an adoption of the "intent" theory of ademption in certain circumstances.

§ 2-607. Nonexoneration

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

Maine Comment: This section does not constitute a substantive change to Maine law. The same provision previously existed as section 2-609 of the now-repealed Title 18-A. *See* section 3-814 (empowering the personal representative to pay an encumbrance under some circumstances). The last sentence of section 3-814 makes it clear that payment of the encumbrance does not increase the right of the specific devisee. This section 2-607 governs the substantive rights of the devisee. The common law rule of exoneration of the specific devise is abolished by the statutory rule of the Uniform Probate Code and Title 18-C, and the contrary rule is adopted.

§ 2-608. Exercise power of appointment

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

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

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

Maine Comment: If the document creating a power of appointment does not require a specific reference to the power in order for it to be exercised, the general rule remains unchanged in stating that a general residuary clause is not effective to exercise the power unless the testator's will manifests an intention to have the residuary clause include the property subject to the power. This section adds one circumstance where a residuary clause will be presumed to include the

property subject to the power of appointment – if "the power is a general power and the creating instrument does not contain a gift if the power is not exercised."

§ 2-609. Ademption by satisfaction

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

A. The will provides for deduction of the gift;

B. The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

C. The devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

2. Partial satisfaction; value. For purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

3. Devisee fails to survive testator. If the devisee fails to survive the testator, the gift described in subsection 1 is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2-603 and 2-604, unless the testator's contemporaneous writing provides otherwise.

PART 7

RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

§ 2-701. Scope

In the absence of a finding of a contrary intention, the rules of construction in this Part control the construction of a governing instrument. The rules of construction in this Part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

Maine Comment: The rules of construction in this Part apply to governing instruments of any type – not just wills.

§ 2-702. Requirement of survival by 120 hours

1. Requirement of survival by 120 hours under Code. For the purposes of this Code, except as provided in subsection 4, an individual who has not been established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

2. Requirement of survival by 120 hours under governing instrument. Except as provided in subsection 4, for purposes of a provision of a governing

instrument that relates to an individual surviving an event, including the death of another individual, an individual who has not been established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

3. Co-owners with right of survivorship; requirement of survival by 120 hours. Except as provided in subsection 4, if:

A. It is not established by clear and convincing evidence that one of 2 co-owners with right of survivorship survived the other co-owner by 120 hours, 1/2 of the property passes as if one had survived by 120 hours and 1/2 as if the other had survived by 120 hours; or

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

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

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

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

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

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

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

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

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument before the

payor or other 3rd party received written notice of a claimed lack of entitlement under this section. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed lack of entitlement under this section.

B. Written notice of a claimed lack of entitlement under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

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

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

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

Maine Comment: This section includes what was formerly the Uniform Simultaneous Death Act in section 2-805 of the now-repealed Title 18-A.

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

The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, the provisions relating to exempt

property and allowances described in Part 4 or any other public policy of this State otherwise applicable to the disposition.

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

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

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

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

Maine Comment: This section is new, with no previous counterpart in the now-repealed Title 18-A.

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

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

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

B. "Relative" means a grandparent or the descendant of a grandparent.

2. Terms of relationship. A class gift that uses a term of relationship to identify the class members includes in the class a child of parents regardless of their martial status, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships.

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

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

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

4. Relatives of shared parentage. Terms of relationship in a governing instrument that do not differentiate relationships by whether all parents are shared, such as brothers, sisters, nieces or nephews, are construed to include all types of relationships regardless of whether relatives share all parents.

5. Transferor not parent. In construing a dispositive provision of a transferor who is not the parent, the transferor or a relative of the transferor must have established a parent-child relationship with the child before the child reached 18 years of age.

6. Class-closing rules. The following provisions apply for purposes of the class-closing rules.

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

B. If the distribution date is the date of the deceased parent's death, a child in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death is treated as living at that time if the child lives 120 hours after birth.

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

Maine Comment: This section establishes a comprehensive reformulation of rules of construction for class gifts that identify the recipient by reference to a relationship to another individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. For the purposes of section 2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or "if she survives me," or in a beneficiary

designation to "my surviving children," are, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

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

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

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

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

Maine Comment: This section parallels section 2-603 and extends that comprehensive revision of the antilapse statute into the area of "beneficiary designations" as defined in section 1-201(4).

The phrase "by representation" in the Uniform Probate Code has been changed to "per capita at each generation" in Title 18-C. The phrase "by representation" is synonymous with "per stirpes". See section 2-709. Maine has long considered inheritance by right of representation to be synonymous with inheritance per stirpes. *See Fiduciary Trust Co. v. Hope Wheeler Brown*, 131 A.2d 191 (Me. 1957).

In paragraph (2)(C) Maine has reversed the presumption of the Uniform Probate Code, which created a rebuttable presumption that using words of survivorship, such as a beneficiary designation to an individual "if he survives me," or in a beneficiary designation to "my surviving children," are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the antilapse provisions. Under Title 18-C words of survivorship will create a rebuttable presumption of the testator's intent to not have the antilapse provisions apply. For example, in a devise to "my surviving children," if the testator had three children, X, Y, and Z, and child X predeceased the testator leaving GC1 and GC2, the devise will be distributed in equal shares to Y and Z, with no distribution to GC1 and GC2.

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

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

A. "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether the event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will.

For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust; and

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

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

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

A. The property passes under the donor's gift-in-default clause, if any. The donor's gift-in-default clause is treated as creating a future interest under the terms of a trust; and

B. If no taker is produced by the application of paragraph A, the property passes as provided in subsection 4.

Maine Comment: This section parallels section 2-603 and extends that comprehensive revision of the antilapse statute into the area of future interests under the terms of a trust.

The phrase "by representation" in the Uniform Probate Code has been changed to "per capita at each generation" in Title 18-C. The phrase "by representation" is synonymous with "per stirpes". *See* section 2-709.

In subsection 2(C) Maine has reversed the presumption of the Uniform Probate Code, which created a rebuttable presumption that using words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of the antilapse provisions. Under Title 18-C, words of survivorship will create a rebuttable presumption of the testator's intent to not have the antilapse provisions apply.

§ 2-708. Class gifts to "descendants," "issue" or "heirs of the body"; form of distribution if none specified

If a class gift in favor of "descendants," "issue" or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

Maine Comment: This section is new and had no previous counterpart in the now-repealed Title 18-A.

§ 2-709. Per capita at each generation; per stirpes or by representation

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

A. "Deceased child" or "deceased descendant" means a child or a descendant, respectively, who either predeceased the distribution date or is deemed to have predeceased the distribution date pursuant to section 2-702.

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

C. "Surviving ancestor," "surviving child" or "surviving descendant" means an ancestor, a child or a descendant, respectively, who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to section 2-702.

2. Per capita at each generation. If an applicable statute or a governing instrument calls for property to be distributed "per capita at each generation," the property is divided into as many equal shares as there are:

A. Surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

B. Deceased descendants in the same generation who left surviving descendants, if any.

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

3. Per stirpes or by representation. If a governing instrument calls for property to be distributed "per stirpes" or "by representation," the property is divided into as many equal shares as there are:

A. Surviving children of the designated ancestor; and

B. Deceased children who left surviving descendants.

Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

4. Deceased descendant with no surviving descendant disregarded. For the purposes of subsections 2 and 3, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

Maine Comment: The phrase “by representation” in Maine is synonymous with “per stirpes.”

§ 2-710. Worthier-title doctrine abolished

The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives" or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

Maine Comment: The doctrine of worthier title, as articulated in *Randall v. Marble*, 69 Me. 310, 313 (1879), is abolished.

§ 2-711. Interests in "heirs" and like

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives" or "family," or language of similar import, the property passes to those persons, including the State, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

Maine Comment: This section is new and had no previous counterpart in the now-repealed Title 18-A.

PART 8

GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

§ 2-801. Effect of divorce, annulment and decree of separation

1. Divorce; annulment; separation. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of spouses is not a divorce for purposes of this section.

2. Not a surviving spouse. For purposes of Parts 1, 2, 3 and 4 and of section 3-203, a surviving spouse does not include:

A. An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, if that decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as spouses;

B. An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd individual; or

C. An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Maine Comment: *See also* section 2-804 addressing the revocation of dispositions or appointments of property to a divorced spouse and the appointment of a divorced spouse in any fiduciary or representative capacity.

§ 2-802. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations

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

A. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

B. "Governing instrument" means a governing instrument executed by the decedent.

C. "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the killer and whether or not the decedent then had capacity to exercise the power.

2. Forfeiture of statutory benefits. An individual who feloniously and intentionally kills the decedent forfeits all benefits under this Article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

3. Revocation of benefits under governing instruments. The felonious and intentional killing of the decedent:

A. Revokes any revocable:

(1) Disposition or appointment of property made by the decedent to the killer in a governing instrument;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(3) Nomination of the killer in a governing instrument nominating or appointing the killer to serve in any fiduciary or representative capacity, including as a personal representative, executor, trustee or agent; and

B. Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into equal tenancies in common.

4. Effect of severance. A severance under subsection 3, paragraph B does not affect any 3rd-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

5. Effect of revocation. Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

6. Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer may not profit from the killer's wrong.

7. Felonious and intentional killing; how determined. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

8. Protection of payors and other 3rd parties. This subsection governs the liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other 3rd party received written notice of a claimed forfeiture or revocation under this section. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed forfeiture or revocation under this section.

B. Written notice of a claimed forfeiture or revocation under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other 3rd party may pay any amount owed or

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

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

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

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

Maine Comment: This section, adopted from the Uniform Probate Code, is a substantial revision and expansion of the former corresponding section 2-803 of the now-repealed Title 18-A. This section governs, among other things, dispositions or appointments of property under a "governing instrument" as defined in section 1-201(21) and revokes the appointment of the killer in any fiduciary or representative capacity, including as a personal representative, executor, trustee or agent. When all rights to appeal the conviction have been exhausted, the status as killer is conclusively established. If there has been no criminal conviction, a civil procedure is provided to determine an individual's status as the decedent's killer for purposes of this section.

§ 2-803. Effect of criminal conviction on intestate succession, wills, joint assets, beneficiary designations and other property acquisition when restitution is owed to the decedent

A person who has been convicted of a crime of which the decedent was a victim is not entitled to the following benefits to the extent that the benefits do not exceed the amount of restitution the person owes to the decedent as a result of the sentence for the crime:

1. Decedent's will or this Article. Any benefits under the decedent's will or under this Article;

2. Jointly owned property. Any property owned jointly with the decedent;

3. Bond, life insurance policy or other contractual arrangement. Any benefit as a beneficiary of a bond, life insurance policy or other contractual arrangement in which the principal obligee or the person upon whose life the policy is issued is the decedent; and

4. Acquisition of property. Any benefit from any acquisition of property in which the decedent had an interest.

Maine Comment: This section formerly existed as section 2-806 of the now-repealed Title 18-A. There is no equivalent section in the Uniform Probate Code.

§ 2-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances

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

A. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

B. "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2-801. A decree of separation that does not terminate the status of spouses is not a divorce for purposes of this section.

C. "Divorced individual" includes an individual whose marriage has been annulled.

D. "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

E. "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity.

F. "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual's former spouse or relative of the divorced individual's former spouse, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual's former spouse or in place of the

relative of the divorced individual's former spouse and whether or not the divorced individual then had the capacity to exercise the power.

2. Revocation upon divorce. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

A. Revokes any revocable:

(1) Disposition or appointment of property made by a divorced individual to the divorced individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(3) Nomination in a governing instrument nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent or guardian; and

B. Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

3. Effect of severance. A severance under subsection 2, paragraph B does not affect any 3rd-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

4. Effect of revocation. Provisions of a governing instrument are given effect as if the divorced individual's former spouse and relatives of the divorced individual's former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the divorced individual's former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.

5. Revival if divorce nullified. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

6. No revocation for other change of circumstances. A change of circumstances other than as described in this section or in section 2-802 does not effect a revocation pursuant to this section.

7. Protection of payors and other 3rd parties. This subsection governs the liability of payors and other 3rd parties.

A. A payor or other 3rd party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a remarriage, divorce or annulment or for having taken any other action if that payment, transfer or other action is made in good faith reliance on the validity of the governing instrument before the payor or other 3rd party received written notice of the remarriage, divorce or annulment. A payor or other 3rd party is liable for a payment or transfer made or other action taken after the payor or other 3rd party received written notice of a claimed remarriage, divorce or annulment under this section.

B. Written notice of the remarriage, divorce or annulment under paragraph A must be mailed to the payor's or other 3rd party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other 3rd party in the same manner as a summons in a civil action. Upon receipt of written notice of the remarriage, divorce or annulment, a payor or other 3rd party may pay any amount owed or transfer or deposit any item of property held by the payor or other 3rd party to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other 3rd party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

8. Protection of bona fide purchaser; personal liability of recipient. This subsection governs the liability of bona fide purchasers and other recipients.

A. A person who purchases property from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person for value and without notice, or who receives from a divorced individual's former spouse, relative of a divorced individual's former spouse or any other person a payment, an item of property or any other benefit in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. A divorced individual's former spouse, relative of a divorced individual's former spouse or other person who, not for value, receives a payment, item of property or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

B. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a divorced

individual's former spouse, relative of the divorced individual's former spouse or any other person who, not for value, receives the payment, item of property or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Maine Comment: This section, adopted from the Uniform Probate Code, is a substantial revision and expansion of the former corresponding section 2-508 of the now-repealed Title 18-A and revokes dispositions or appointments of property to a divorced spouse under a "governing instrument" as defined in section 1-201(21), and revokes the appointment of a divorced spouse in any fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian. In addition, the expanded scope of this section revokes the disposition or appointment of property to, and the appointment as fiduciary or representative of, a divorced spouse's relatives.

This section is consistent with section 2-801, which provides that an individual who is divorced from the decedent is not a surviving spouse.

§ 2-805. Reformation to correct mistakes

The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

Maine Comment: This section is new, with no previous counterpart in the now-repealed Title 18-A. This section constitutes a substantial change to Maine law, and provides consistency between section 415 of the Maine Trust Code (Title 18-B) governing reformation of a trust to correct mistakes, and Maine law governing reformation of other governing instruments (as defined in section 1-201(21)).

§ 2-806. Modification to achieve transferor's tax objectives

To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

Maine Comment: This section is new, with no previous counterpart in the now-repealed Title 18-A. This section constitutes a substantial change to Maine law, and provides consistency between section 416 of the Maine Trust Code (Title 18-B) governing modification of a trust to achieve the settlor's tax objectives, and Maine law governing modification of other governing instruments (as defined in section 1-201(21)).

§ 2-807. Actions for wrongful death

1. Liability notwithstanding death. Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had

not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued is liable for damages as provided in this section, notwithstanding the death of the person injured and although the death was caused under circumstances that amount to a felony.

2. Wrongful death action; damages; limitations. Every wrongful death action must be brought by and in the name of the personal representative or special administrator of the deceased person, and is distributable, after payment for funeral expenses and the costs of recovery including attorney's fees, directly to the decedent's heirs without becoming part of the probate estate, except as may be specifically provided in this subsection. The amount recovered in every wrongful death action, except as specifically provided in this subsection, is for the exclusive benefit of the deceased's heirs to be distributed to the individuals and in the proportions as provided under the Maine laws of intestacy, sections 2-101 through 2-113. The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death. Damages are payable to the estate of the deceased person only if the jury specifically makes an award payable to the estate for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses or, in the case of a settlement, the settlement documents specifically provide for such an allocation to the estate for the same. In addition, the jury may give damages not exceeding $500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding $250,000. An action under this section must be commenced within 2 years after the decedent's death, except that if the decedent's death is caused by a homicide, the action may be commenced within 6 years of the date the personal representative or special administrator of the decedent discovers that there is a just cause of action against the person who caused the homicide. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.

3. Damages for conscious suffering. Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death is, in addition to the action at common law and damages recoverable therein, liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection 2, separately found, but in such cases there is only one recovery for the same injury.

4. Maine Tort Claims Act. Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118 is limited as provided in those sections.

Maine Comment: This section formerly existed as section 2-804 of the now-repealed Title 18-A. There is no equivalent section in the Uniform Probate Code. The new section 2-807 does not constitute a substantive change to Maine law on wrongful death claims. It does, however, in subsection 2 permit a wrongful death action to be brought by a special administrator, whereas the

former statue permitted an action to be brought only by a personal representative. Subsection 2 also identifies the beneficiaries who are to receive payment of the proceeds recovered from wrongful death actions, with reference to the Maine intestacy statutes. An analysis of sections 2-101 through 2-113 is necessary to determine the beneficiaries who are to receive payment per the Maine intestacy statutes.

PART 9

UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

§ 2-901. Short title

This Part may be known and cited as "the Uniform Disclaimer of Property Interests Act."

§ 2-902. Definitions

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

1. Disclaimant. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

2. Disclaimed interest. "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

3. Disclaimer. "Disclaimer" means the refusal to accept an interest in or power over property.

4. Fiduciary. "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person.

5. Jointly held property. "Jointly held property" means property held in the name of 2 or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

6. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

7. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band or Alaskan native village recognized by federal law or formally acknowledged by a state.

8. Trust. "Trust" means:

A. An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

B. A trust created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

§ 2-903. Scope

This Part applies to disclaimers of any interest in or power over property, whenever created.

§ 2-904. Part supplemented by other law

1. Principles of law and equity. Unless displaced by a provision of this Part, the principles of law and equity supplement this Part.

2. Right to waive, release, disclaim or renounce property interest. This Part does not limit any right of a person to waive, release, disclaim or renounce an interest in or power over property under a law other than this Part.

§ 2-905. Power to disclaim; general requirements; when irrevocable

1. Power to disclaim. A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

2. Fiduciary authority to disclaim. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this State or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. General requirements. To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer and be delivered or filed in the manner provided in section 2-912. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

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

B. "Sign" means, with present intent to authenticate or adopt a record, to:

(1) Execute or adopt a tangible symbol; or

(2) Attach to or logically associate with the record an electronic sound, symbol or process.

4. Partial disclaimer. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

5. When irrevocable. A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 2-912 or when it becomes effective as provided in sections 2-906 to 2-911, whichever occurs later.

6. Disclaimer not a transfer, assignment or release. A disclaimer made under this Part is not a transfer, assignment or release.

§ 2-906. Disclaimer of interest in property

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

A. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

B. "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

2. General provisions governing disclaimers. Except for a disclaimer governed by section 2-907 or 2-908, the following provisions apply to a disclaimer of an interest in property.

A. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

B. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

C. If the instrument does not contain a provision described in paragraph B, the following provisions apply.

(1) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(2) If the disclaimant is an individual, except as otherwise provided in subparagraphs (3) and (4), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(3) If by law or under the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(4) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the State but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

D. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

§ 2-907. Disclaimer of rights of survivorship in jointly held property

1. Disclaimer by surviving holder of jointly held property. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

A. A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; and

B. All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

2. Effective date of disclaimer. A disclaimer under subsection 1 takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

3. Disposition of disclaimed property. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

§ 2-908. Disclaimer of interest by trustee

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

§ 2-909. Disclaimer of power of appointment or other power not held in fiduciary capacity

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following provisions apply.

1. Disclaimer of unexercised power. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. Disclaimer of exercised power. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

3. Construction of instrument creating the power. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

§ 2-910. Disclaimer by appointee, object or taker in default of exercise of power of appointment

1. Disclaimer by appointee. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

2. Disclaimer by object or taker in default. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

§ 2-911. Disclaimer of power held in fiduciary capacity

1. Disclaimer of unexercised power. If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. Disclaimer of exercised power. If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

3. Effect of disclaimer by fiduciary. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.

§ 2-912. Delivery or filing

1. Beneficiary designation. As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

A. An annuity or insurance policy;

B. An account with a designation for payment;

C. A security registered in beneficiary form;

D. A pension, profit-sharing, retirement or other employment-related benefit plan; or

E. Any other nonprobate transfer at death.

2. Delivery of disclaimer; generally. Subject to subsections 3 to 12, delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

3. Disclaimer of interest from intestate succession or will. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

A. A disclaimer must be delivered to the personal representative of the decedent's estate or the special administrator of the decedent's estate; or

B. If no personal representative is then serving, a disclaimer must be filed with the court having jurisdiction to appoint the personal representative.

4. Disclaimer of interest in a testamentary trust. In the case of an interest in a testamentary trust:

A. A disclaimer must be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent's estate; or

B. If no trustee or personal representative is then serving, the disclaimer must be filed with the court having jurisdiction to enforce the trust.

5. Disclaimer of interest in inter vivos trust. In the case of an interest in an inter vivos trust:

A. A disclaimer must be delivered to the trustee then serving;

B. If no trustee is then serving, the disclaimer must be filed with the court having jurisdiction to enforce the trust; or

C. If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

6. Disclaimer of interest created by beneficiary designation. In the case of an interest created by a beneficiary designation that is disclaimed before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

7. Disclaimer of interest created by irrevocable beneficiary designation. In the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

A. The disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

B. The disclaimer of an interest in real property must be recorded in the registry of deeds of the county where the real property that is the subject of the disclaimer is located.

8. Disclaimer by surviving holder of jointly held property. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

9. Disclaimer by object or taker in default. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

A. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

B. If no fiduciary is then serving, the disclaimer must be filed with the court having authority to appoint the fiduciary.

10. Disclaimer by appointee. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

A. The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

B. If no fiduciary is then serving, the disclaimer must be filed with the court having authority to appoint the fiduciary.

11. Disclaimer by fiduciary. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection 3, 4 or 5 as if the power disclaimed were an interest in property.

12. Disclaimer of a power by an agent. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

§ 2-913. When disclaimer barred or limited

1. Bar pursuant to written waiver. A disclaimer is barred by a written waiver of the right to disclaim.

2. Bar pursuant to events. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

A. The disclaimant accepts the interest sought to be disclaimed;

B. The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or

C. A judicial sale of the interest sought to be disclaimed occurs.

3. Previous exercise not a bar to disclaimer of power held in fiduciary capacity. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

4. Previous exercise not a bar to disclaimer of power not held in fiduciary capacity; exception. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

5. Bar pursuant to law. A disclaimer is barred or limited if so provided by law other than this Part.

6. Effect of bar. A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this Part had the disclaimer not been barred.

§ 2-914. Tax qualified disclaimer

Notwithstanding any other provision of this Part, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated, pursuant to the provisions of 26 United States Code, as amended, or any successor statute, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this Part.

§ 2-915. Recording of disclaimer

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. Except as otherwise provided in section 2-912, subsection 7, paragraph B, failure to file, record or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§ 2-916. Application to existing relationships

Except as otherwise provided in section 2-913, an interest in or power over property existing on July 1, 2019 as to which the time for delivering or filing a disclaimer under law superseded by this Part has not expired may be disclaimed after July 1, 2019.

§ 2-917. 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 Section 101(c) of that Act, 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

ARTICLE 3

PROBATE OF WILLS AND ADMINISTRATION

PART 1

GENERAL PROVISIONS

§ 3-101. Devolution of estate at death; restrictions

The power of a person to leave property by will and the rights of creditors, devisees and heirs to the person's property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates. Upon the death of a person, the person's real and personal property devolves to the persons to whom it is devised by the person's last will or to those indicated as substitutes for them in cases involving lapse, renunciation or other circumstances affecting the devolution of testate estate or, in the absence of testamentary disposition, to the person's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, to elective share of the surviving spouse and to administration.

§ 3-102. Necessity of order of probate for will

Except as provided in section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registers or an adjudication of probate by the court.

§ 3-103. Necessity of appointment for administration

Except as otherwise provided in Article 4, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registers, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

§ 3-104. Claims against decedent; necessity of administration

A proceeding to enforce a claim against the estate of a decedent or the decedent's successors may not be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 3-1004 or from a former personal representative individually liable as provided in section 3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the security except as to any deficiency judgment that might be sought.

§ 3-105. Proceedings affecting devolution and administration; jurisdiction of subject matter

Persons interested in decedents' estates may apply to the register for determination in the informal proceedings provided in this Article and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this Article. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this State are to be administered, expended and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property is distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

§ 3-106. Proceedings within the jurisdiction of court; service; jurisdiction over persons

In proceedings within the exclusive jurisdiction of the court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs that concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this State by notice in conformity with section 1-401. An order is binding on all who are given notice of the proceeding though fewer than all interested persons are notified.

§ 3-107. Scope of proceedings; proceedings independent; exception

Unless supervised administration as described in Part 5 is involved:

1. Proceedings independent. Each proceeding before the court or register is independent of any other proceeding involving the same estate;

2. Petitions for formal orders. Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings that are particularly described by other sections of this Article, a petition is not defective because it fails to embrace all matters that might then be the subject of a final order;

3. Petitions for appointment of personal representative. Proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

4. Order. A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

§ 3-108. Probate, testacy and appointment proceedings; ultimate time limit

1. Limitations period; exceptions. An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously

probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may not be commenced more than 3 years after the decedent's death, except:

A. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

B. Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

C. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

D. An informal appointment or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

E. A formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from a person other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

2. Limitations period inapplicable. The limitations under subsection 1 do not apply to proceedings to construe probated wills or determine heirs of an intestate.

3. Special provision regarding date of death. In cases under subsection 1, paragraph A or B, the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code that relate to the date of death.

§ 3-109. Statutes of limitation on decedent's cause of action

A statute of limitation running on a cause of action belonging to a decedent that had not been barred as of the date of death does not apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action that but for this section would have been barred less than 4 months after death is barred after 4 months unless tolled.

§ 3-110. Discovery of property

1. Examination by court. Upon petition by a county attorney, personal representative, heir, devisee, creditor or other person interested in the estate of a decedent, anyone suspected of having concealed, withheld or conveyed away any property of the decedent, of having fraudulently received any such property, or of aiding others in so doing, may be cited by the court to appear and be examined under oath. The court may require the person to produce for the inspection of the court and parties all documents within the person's control relating to the matter under examination. The time for filing such petitions is governed by section 1-105.

2. Penalties for refusal. If a person duly cited pursuant to subsection 1 refuses to appear and submit to the court's examination, to answer all lawful interrogatories or to produce the documents ordered, the person is subject to contempt of the court and is liable to any injured party in a civil action for all the damages, expenses and charges arising from such refusal.

PART 2

VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO ADMINISTER AND DEMAND FOR NOTICE

§ 3-201. Venue for first and subsequent estate proceedings; location of property

1. Venue for first estate proceedings. Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

A. In the county where the decedent was domiciled at the time of death; or

B. If the decedent was not domiciled in this State, in any county where property of the decedent was located at the time of the decedent's death.

2. Venue for subsequent proceedings. Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in subsection 3 or section 1-303.

3. Transfer after informal proceeding. If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

4. Location of property. For the purpose of aiding determinations concerning location of property that may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

§ 3-202. Appointment or testacy proceedings; conflicting claim of domicile in another state

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this State, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this State must stay, dismiss or permit suitable amendment in the proceeding in this State unless it is determined that the proceeding in this State was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this State.

§ 3-203. Priority among persons seeking appointment as personal representative

1. Priority. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

A. The person with priority as determined by a probated will including a person nominated by a power conferred in a will;

B. The surviving spouse of the decedent who is a devisee of the decedent;

C. Other devisees of the decedent;

D. The surviving spouse of the decedent;

E. The surviving domestic partner of the decedent;

F. Other heirs of the decedent;

G. Forty-five days after the death of the decedent, any creditor; and

H. Six months after the death of the decedent if no testacy proceeding have been held or no personal representative has been appointed, the State Tax Assessor upon application by the State Tax Assessor.

2. Objection. An objection to an appointment may be made only in formal proceedings. In case of objection the priorities stated in subsection 1 apply except that:

A. If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; or

B. In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than 1/2 of the probable distributable value or, in default of this accord, any suitable person.

3. Nomination and renunciation. A person entitled to letters under subsection 1, paragraphs B to F may nominate a qualified person to act as personal representative. Any person

may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court. When 2 or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment.

4. Authority of conservators and guardians. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, or an agent under a power of attorney that expressly grants the agent the authority to do so, may exercise the same right to nominate, to object to another's appointment or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

5. Appointment without priority. Appointment of a person who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing a person without priority, the court must determine that those persons having priority, although given notice of the proceedings, have failed to request appointment or to nominate another person for appointment and that administration is necessary.

6. Qualifications. A person is qualified to serve as a personal representative who:

A. Is 18 years of age or older; and

B. Has not been found unsuitable by the court in formal proceedings.

7. Priority of personal representative appointed by domiciliary court. A personal representative appointed by a court of the decedent's domicile has priority over all other persons except when the decedent's will nominates different persons to be personal representative in this State and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

8. Applicability. This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

§ 3-204. Demand for notice of order or filing concerning decedent's estate

A person desiring notice of an order or filing pertaining to a decedent's estate in which the person has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent, stating the name of the decedent, the nature of the demandant's interest in the estate and the demandant's address or that of the demandant's attorney. The register shall mail a copy of the demand to the personal representative, if one has been appointed. After filing of a demand, an order or filing to which the demand relates may not be made or accepted without notice as prescribed in section 1-401 to the demandant or the demandant's attorney. The validity of an order that is issued or filing that is accepted without compliance with this requirement is not affected by the error, but the petitioner receiving the order or the person making the filing is liable for any damage caused by the absence of notice. The requirement of notice arising from demand under this provision may be waived in writing by the demandant and ceases upon the termination of the demandant's interest in the estate.

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

§ 3-301. Informal probate or appointment proceedings; application; contents

1. Applications for informal probate or appointment proceedings. Applications for informal probate or informal appointment must be directed to the register and be verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information and such other information and in such form as the Supreme Judicial Court may by rule provide:

A. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, must contain the following:

(1) A statement of the interest of the applicant;

(2) The name and date of death of the decedent, the decedent's age and the county and state of the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) If the decedent was not domiciled in the State at the time of death, a statement showing venue;

(4) A statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated;

(5) A statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; and

(6) A statement that the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, circumstances as described by section 3-108 have occurred authorizing tardy probate or appointment;

B. An application for informal probate of a will must state the following in addition to the statements required by paragraph A:

(1) That the original of the decedent's last will is in the possession of the court or accompanies the application or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(2) That the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed; and

(3) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will;

C. An application for informal appointment of a personal representative to administer an estate under a will must describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment must adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought;

D. An application for informal appointment of an administrator in intestacy must state in addition to the statements required by paragraph A:

(1) That after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 1-301 or a statement why any such instrument of which the applicant may be aware is not being probated; and

(2) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 3-203;

E. An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status must refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted and describe the priority of the applicant; and

F. An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610, subsection 3 or whose appointment has been terminated by death or removal must adopt the statements in the application or petition that led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor and describe the priority of the applicant.

2. Personal jurisdiction over applicant. By verifying an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant.

§ 3-302. Informal probate; duty of register; effect of informal probate

Upon receipt of an application requesting informal probate of a will, the register upon making the findings required by section 3-303 shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure that leads to informal probate of a will renders the probate void.

§ 3-303. Informal probate; proof and findings required

1. Informal probate; proof and findings required. In an informal proceeding for original probate of a will, the register shall determine whether:

A. The application is complete;

B. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

C. The applicant appears from the application to be an interested person as defined in section 1-201, subsection 26;

D. On the basis of the statements in the application, venue is proper;

E. An original, duly executed and apparently unrevoked will is in the register's possession;

F. Any notice required by section 3-204 has been given and the application is not required to be declined under section 3-304; and

G. It appears from the application that the time limit for original probate has not expired.

2. Denial. The application must be denied if it indicates that a personal representative has been appointed in another county of this State or, except as provided in subsection 4, if it appears that this or another will of the decedent has been the subject of a previous probate order.

3. Executed will. A will that appears to have the required signatures and that contains an attestation clause showing that requirements of execution under section 2-502 or 2-505 have been met must be probated without further proof. In other cases, the register may assume execution if the will appears to have been properly executed or the register may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

4. Will previously probated elsewhere. Informal probate of a will that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office of court where it was first probated.

5. Will from another jurisdiction. A will from a place that does not require probate of a will after death and that is not eligible for probate under subsection 1 may be probated in this State upon receipt by the register of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of that place.

§ 3-304. Informal probate; unavailable in certain cases

Applications for informal probate that relate to one or more of a known series of testamentary instruments, the latest of which does not expressly revoke the earlier, other than a will and one or more codicils thereto, must be declined.

§ 3-305. Informal probate; register not satisfied

If the register is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 3-303 and 3-304 or any other reason, the register may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

§ 3-306. Informal probate; notice requirements

The moving party shall give notice as described by section 1-401 of the moving party's application for informal probate to any person demanding notice pursuant to section 3-204 and to any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. Except as provided in section 3-705, no other notice of informal probate is required.

Maine Comment: This section deviates from the Uniform Probate Code in that it retains Maine's requirement that the moving party provide notice to the Department of Health and Human Services for purposes of MaineCare Estate Recovery.

§ 3-307. Informal appointment proceedings; delay in order; duty of register; effect of appointment

1. Duty to appoint; delay in order. Upon receipt of an application for informal appointment of a personal representative, other than a special administrator as provided in section 3-614, if at least 120 hours have elapsed since the decedent's death, the register, after making the findings required by section 3-308, shall appoint the applicant subject to qualification and acceptance. If the decedent was a nonresident, the register shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that the decedent's estate be subject to the laws of this State.

2. Effect of appointment. The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative it creates, is subject to termination as provided in sections 3-608 to 3-612 but is not subject to retroactive vacation.

§ 3-308. Informal appointment proceedings; proof and findings required

1. Informal appointment proceedings; proof and findings required. In informal appointment proceedings, the register shall determine whether:

A. The application for informal appointment of a personal representative is complete;

B. The applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

C. The applicant appears from the application to be an interested person as defined in section 1-201, subsection 26;

D. On the basis of the statements in the application, venue is proper;

E. Any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

F. Any notice required by section 3-204 has been given; and

G. From the statements in the application, the person whose appointment is sought has priority entitling the applicant to the appointment.

2. Denial. Unless section 3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 3-610, subsection 3 has been appointed in this or another county of this State; that, unless the applicant is the domiciliary personal representative or the nominee, the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or that other requirements of this section have not been met.

§ 3-309. Informal appointment proceedings; register not satisfied

If the register is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 3-307 and 3-308, or for any other reason, the register may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

§ 3-310. Informal appointment proceedings; notice requirements

The moving party shall give notice as described by section 1-401 of the moving party's intention to seek an appointment informally to any person demanding notice pursuant to section 3-204 and to any person having a prior or equal right to appointment not waived in writing and filed with the court. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. No other notice of an informal appointment proceeding is required.

Maine Comment: This section deviates from the Uniform Probate Code in that it retains Maine's requirement that the moving party provide notice to the Department of Health and Human Services for purposes of MaineCare Estate Recovery.

§ 3-311. Informal appointment unavailable in certain cases

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument that may relate to property subject to the laws of this State and that is not filed for probate in the court, the register must decline the application.

PART 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

§ 3-401. Formal testacy proceedings; nature; when commenced

A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 3-402, subsection 1 in which the petitioner requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will that is the subject of a pending application, or a petition in accordance with section 3-402, subsection 2 for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the register may not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from making any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of the office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

§ 3-402. Formal testacy or appointment proceedings; petition; contents

1. Petition for formal probate of a will; contents. Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, contain further statements as indicated in this section and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition for formal probate of a will must:

A. Request an order as to the testacy of the decedent in relation to a particular instrument that may or may not have been informally probated and determining the heirs;

B. Contain the statements required for informal applications as stated in section 3-301, subsection 1, paragraph A, subparagraphs (1) to (4) and the statements required by section 3-301, subsection 1, paragraph B, subparagraphs (2) and (3); and

C. State whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable.

2. Relief requested. A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 3-301, subsection 1, paragraphs A and D, indicate whether supervised administration is sought and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by section 3-301, subsection 1, paragraph D, subparagraph (2) may be omitted.

§ 3-403. Formal testacy proceeding; notice of hearing on petition

1. Notice of hearing on petition for formal probate of a will. Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by section 1-401 by the petitioner to the persons enumerated in this subsection and to any additional person who has filed a demand for notice under section 3-204.

Notice must be given to the following persons: the surviving spouse, children and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere and any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the petitioner shall give notice as described in section 1-401 to the Department of Health and Human Services. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

2. Additional notice when death in doubt. If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition must be sent by registered mail to the alleged decedent at the alleged decedent's last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any of the following methods:

A. By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

B. By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; and

C. By engaging the services of an investigator. The costs of any search directed by the court must be paid by the petitioner if there is no administration or by the estate of the decedent if there is administration.

§ 3-404. Formal testacy proceedings; written objections to probate

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in that party's pleadings that party's objections to probate of the will.

§ 3-405. Formal testacy proceedings; uncontested cases; hearings and proof

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

§ 3-406. Formal testacy proceedings; contested cases

In a contested case in which the proper execution of a will is at issue:

1. Self-proved will; witness not required. If the will is self-proved pursuant to section 2-503, the will satisfies the requirements for execution without the testimony of any attesting witness upon the filing of the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit; or

2. Will not notarized; attesting witness required. If the will is witnessed pursuant to section 2-502, subsection 1, paragraph C but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

§ 3-407. Formal testacy proceedings; burdens in contested cases

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate.

§ 3-408. Formal testacy proceedings; will construction; effect of final order in another jurisdiction

A final order of a court of another state determining testacy or the validity or construction of a will made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this State if it includes or is based upon a finding that the decedent at death was domiciled in the state where the order was made.

§ 3-409. Formal testacy proceedings; order; foreign will

After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 3-108, the court shall determine the decedent's domicile at death, heirs and state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3-612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a foreign jurisdiction, including a place that does not provide for probate of a will after death, may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

§ 3-410. Formal testacy proceedings; probate of more than one instrument

If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions that work a total revocation by implication. If more than one instrument is probated, the order must indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 3-412.

§ 3-411. Formal testacy proceedings; partial intestacy

If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

§ 3-412. Formal testacy proceedings; effect of order; vacation

Subject to appeal and subject to vacation as provided in this section and in section 3-413, a formal testacy order under sections 3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

1. Petition to modify or vacate formal testacy order. The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:

A. Were unaware of its existence at the time of the earlier proceeding; or

B. Were unaware of the earlier proceeding and were given no notice thereof, except by publication;

2. Reconsideration of order determining heirs. If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of the decedent's death or were given no notice of any proceeding concerning the decedent's estate, except by publication;

3. Time limits. A petition for vacation under either subsection 1 or 2 must be filed prior to the earlier of the following time limits:

A. If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement;

B. Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or

C. Twelve months after the entry of the order sought to be vacated;

4. Modification or vacation order. The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs; and

5. Effect of finding of fact of death. The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at the decedent's last known address and the court finds that a search under section 3-403, subsection 2 was made.

If the alleged decedent is not dead, even if notice was sent and search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

§ 3-413. Formal testacy proceedings; vacation of order for other cause

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

§ 3-414. Formal proceedings concerning appointment of personal representative

1. Formal proceeding for appointment of personal representative. A formal proceeding for adjudication regarding the priority or qualification of a person who is an applicant for appointment as personal representative, or of a person who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 3-402 as well as by this section. In other cases, the petition must contain or adopt the statements required by section 3-301, subsection 1, paragraph A and describe the question relating to priority or qualification of the personal representative that is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

2. Notice and decision. After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 3-611.

PART 5

SUPERVISED ADMINISTRATION

§ 3-501. Supervised administration; nature of proceeding

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court that extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this Part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

§ 3-502. Supervised administration; petition; order

A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration must include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and

questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons:

1. Will directing supervised administration. If the decedent's will directs supervised administration, the court must order supervised administration of the decedent's estate unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

2. Will directing unsupervised administration. If the decedent's will directs unsupervised administration, the court may order supervised administration of the decedent's estate only upon a finding that it is necessary for protection of persons interested in the estate; or

3. Other cases. In other cases when the court finds that supervised administration is necessary under the circumstances, the court must order supervised administration of the decedent's estate.

§ 3-503. Supervised administration; effect on other proceedings

1. Effect on application for informal proceedings. The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

2. Effect on will probated in informal proceedings. If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 3-401.

3. Effect on personal representative. After receiving notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously may not exercise the power to distribute any estate. The filing of the petition does not affect the personal representative's other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

§ 3-504. Supervised administration; powers of personal representative

Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but the personal representative may not exercise the power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative that is ordered by the court must be endorsed on the personal representative's letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

§ 3-505. Supervised administration; interim orders; distribution and closing orders

Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings

under section 3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

PART 6

PERSONAL REPRESENTATIVE: APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

§ 3-601. Qualification

Prior to receiving letters, a personal representative must qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

§ 3-602. Acceptance of appointment; consent to jurisdiction

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding must be delivered to the personal representative, or mailed to the personal representative by ordinary first class mail at the address listed in the application or petition for appointment or as thereafter reported to the court and to the personal representative's address as then known to the petitioner.

§ 3-603. Bond not required without court order; exceptions

Bond is not required of a personal representative appointed in informal proceedings, except upon the appointment of a special administrator, when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or when bond is required under section 3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable, or as provided in section 3-619, subsection 7. Bond required by any will or under this section may be dispensed with in formal proceedings upon determination by the court that it is not necessary. Bond is not required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this State to secure performance of the personal representative's duties.

§ 3-604. Bond amount; security; procedure; reduction

If bond is required and the provisions of the will or order do not specify the amount, unless stated in the application or petition, the person qualifying shall file a statement under oath with the register indicating that person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and that person shall execute and file a bond with the register, or give other suitable security, in an amount not less than the estimate. The register shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The register may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a

domestic financial institution, as defined in section 6-201, subsection 4, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties or permit the substitution of another bond with the same or different sureties.

§ 3-605. Demand for bond by interested person

Any person apparently having an interest in the estate worth in excess of $5,000, or any creditor having a claim in excess of $5,000, may make a written demand that a personal representative give bond. The demand must be filed with the register and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in section 3-603 or 3-604. After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the personal representative's office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for the personal representative's removal and appointment of a successor personal representative.

Maine Comment: The threshold interest for a person requesting a bond has been increased from $1,000 to $5,000.

§ 3-606. Terms and conditions of bonds

1. Required terms and conditions. The following requirements and provisions apply to any bond required by this Part.

A. Bonds must name the State of Maine as obligee for the benefit of the persons interested in the estate and must be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

B. Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties must be stated in the bond.

C. By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court that issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding must be delivered to the surety or mailed to the surety by registered or certified mail at the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.

D. On petition of a successor personal representative, any other personal representative of the same decedent or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

E. The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

2. Limitation on action against surety. An action or proceeding may not be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

§ 3-607. Order restraining personal representative

1. Order. On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of the personal representative's office, or make any other order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

2. Hearing. The matter under subsection 1 must be set for hearing as soon as practicable unless the parties otherwise agree. Notice as the court directs must be given to the personal representative and the personal representative's attorney of record, if any, and to any other parties named as defendants in the petition.

Maine Comment: Subsection 2 of this section is new, but not a substantive change to Maine law, because the Uniform Probate Code requirement that the court schedule a hearing within ten days was not adopted.

§ 3-608. Termination of appointment; general

Termination of appointment of a personal representative occurs as indicated in sections 3-609 to 3-612. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the personal representative of the duty to preserve assets subject to the personal representative's control and to account for and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates the personal representative's authority to represent the estate in any pending or future proceeding.

§ 3-609. Termination of appointment; death or disability

The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates the personal representative's appointment. Until appointment and qualification of a successor or special personal representative to replace the deceased or protected personal representative, the personal representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by the personal representative's decedent or ward at the time the personal representative's appointment terminates, has the power to perform acts necessary for protection

and shall account for and deliver the estate assets to a successor or special personal representative upon the successor personal representative's appointment and qualification.

§ 3-610. Termination of appointment; voluntary

1. One year after closing of estate by sworn statement. An appointment of a personal representative terminates as provided in section 3-1003, one year after the filing of a closing statement.

2. Upon court order closing an estate. An order closing an estate as provided in section 3-1001 or 3-1002 terminates an appointment of a personal representative.

3. Resignation; effect. A personal representative may resign by filing a written statement of resignation with the register after the personal representative has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to the successor representative.

§ 3-611. Termination of appointment by removal; cause; procedure

1. Petition for removal of personal representative. A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice must be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in section 3-607, after receipt of notice of removal proceedings, the personal representative may not act except to account, to correct maladministration or to preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

2. Grounds for removal. Cause for removal exists when removal would be in the best interests of the estate or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, has mismanaged the estate or has failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment as ancillary personal representative or the appointment of a nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this State to administer local assets.

§ 3-612. Termination of appointment; change of testacy status

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will that is superseded by formal

probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative under the will, does not terminate the appointment of the personal representative although the personal representative's powers may be reduced as provided in section 3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

§ 3-613. Successor personal representative

Parts 3 and 4 of this Article govern proceedings for appointment of a personal representative to succeed a personal representative whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim that was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had if the appointment had not been terminated.

§ 3-614. Special administrator; appointment

A special administrator may be appointed:

1. Informal proceedings. Informally by the register on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 3-609; and

2. Formal proceedings. In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

§ 3-615. Special administrator; who may be appointed

1. Named executor, if available. If a special administrator is to be appointed pending the probate of a will that is the subject of a pending application or petition for probate, the person named executor in the will must be appointed if available and qualified.

2. Any proper person. In cases other than those set out in subsection 1, any proper person may be appointed special administrator.

§ 3-616. Special administrator; appointed informally; powers and duties

A special administrator appointed by the register in informal proceedings pursuant to section 3-614, subsection 1 has the duty to collect and manage the assets of the estate, to preserve them, to account for them and to deliver them to the general personal representative upon the general personal representative's qualification. The special administrator has the power of a personal representative under the Code necessary to perform the special administrator's duties.

§ 3-617. Special administrator; formal proceedings; power and duties

A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

§ 3-618. Termination of appointment; special administrator

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 3-608 to 3-611.

§ 3-619. Public administrators

1. Public administrators; appointment; powers and duties. The Governor shall appoint in each county for a term of 4 years, unless sooner removed, a public administrator who shall, upon petition to the court and after notice and hearing, be appointed to administer the estates of persons who die intestate within the county, or who die intestate elsewhere leaving property within the county, and who are not known to have within the state any heirs who can lawfully inherit the estate, and for whom no other administration has been commenced. The public administrator has the same powers and duties of a personal representative under supervised administration as provided in section 3-504 and, except as provided in subsection 7, shall give bond as provided for other personal representatives in cases of ordinary administration under sections 3-603 to 3-606. If any person entitled to appointment as personal representative under section 3-203, prior to the appointment of the public administrator, files a petition for informal or formal appointment as personal representative, the court shall withhold any appointment of the public administrator pending denial of the petition for the appointment of the private personal representative.

2. Compensation. The public administrator may be allowed fees and compensation for the public administrator's services as in the case of ordinary administration as provided in sections 3-719 to 3-721, except that no fee for the public administrator's own services may be paid without prior approval by the court.

3. Authority pending appointment. Pending the appointment of the public administrator, and in the absence of any local administration or any administration by a domiciliary foreign personal representative under sections 4-204 and 4-205, the public

administrator may proceed to conserve the property of the estate when it appears necessary or expedient.

4. Termination. If before the estate of a decedent in the hands of the public administrator is fully settled any last will and testament of the decedent is granted informal or formal probate, or if any person entitled under section 3-203 to appointment as personal representative is informally or formally appointed, the appointment of the public administrator is terminated as provided in section 3-608, and the public administrator shall account for and deliver the assets of the estate to the private personal representative or to the successors under the will as provided by law if no private personal representative has been appointed.

5. Decedent's assets disposed of as unclaimed property. When there are assets other than real property remaining in the hands of the public administrator after the payment of the decedent's debts and all costs of administration and no heirs have been discovered, the public administrator must be ordered by the court to deposit the assets with the Treasurer of State, who shall receive the assets and dispose of them according to Title 33, chapter 41. These assets must, for the purposes of Title 33, chapter 41, be presumed unclaimed when the court orders the public administrator to deposit them with the Treasurer of State.

6. Notice to treasurer; annual audit. In all cases where a public administrator is appointed, the register shall immediately send to the Treasurer of State a copy of the petition and the decree, and in all cases in which the public administrator is ordered to pay the balance of the estate as provided in subsection 5 the court shall give notice to the county treasurer of the amount and from what estate it is receivable. If the public administrator neglects for 3 months after the order of the court to deposit the money, the county treasurer shall petition the court for enforcement of the order or bring a civil action upon any bond of the public administrator for the recovery of the money. The records and accounts of the public administrator must be audited annually by the Office of the State Auditor.

7. Exemption from notice and bond requirements. Estates administered under this section having a value at the decedent's death not exceeding $5,000 are exempt from all notice and filing costs and from giving bond. The cost of notice must be paid by the court.

Maine Comment: This section does not constitute a substantive change to Maine law. The Uniform Probate Code has no corresponding section concerning public administration.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

§ 3-701. Time of accrual of duties and powers

The duties and powers of a personal representative commence upon appointment. The powers of a personal representative relate back in time to give acts by the person appointed that are beneficial to the estate occurring prior to appointment the same effect as those occurring after appointment. Subject to the priorities of Title 22, section 2843-A, prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements. A personal representative may ratify and

accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

§ 3-702. Priority among different letters

A person to whom general letters are first issued has exclusive authority under the letters until that person's appointment is terminated or modified. If through error general letters are later issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

§ 3-703. General duties; relation and liability to persons interested in estate; standing to sue

1. General duties. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described in Title 18-B, sections 802, 803, 805, 806 and 807 and Title 18-B, chapter 9, except as follows.

A. A personal representative, in developing an investment strategy, shall take into account the expected duration of the period reasonably required to effect distribution of the estate's assets.

B. Except as provided in section 3-906, subsection 1, paragraphs A and B, a personal representative may make distribution of an estate's assets in cash or in kind, in accordance with the devisees' best interests, and is not required either to liquidate the estate's assets or to preserve them for distribution.

C. If all devisees whose devises are to be funded from the residue of an estate agree, in a written instrument signed by each of them and presented to the personal representative, on an investment manager to direct the investment of the estate's residuary assets, the personal representative may, but need not, rely on the investment advice of the investment manager so identified or delegate the investment management of the estate's residuary assets to the investment manager and, in either case, may pay reasonable compensation to the investment manager from the residue of the estate. A personal representative who relies on the advice of, or delegates management discretion to, an investment manager in accordance with the terms of this section is not liable for the investment performance of the assets invested in the discretion of, or in accordance with the advice of, the investment manager.

2. Authority. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs

of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this Code.

3. Standing to sue. Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent's death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as the decedent had immediately prior to death.

§ 3-704. Personal representative to proceed without court order; exception

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order or direction of the court, but the personal representative may invoke the jurisdiction of the court in proceedings authorized by this Code to resolve questions concerning the estate or its administration.

§ 3-705. Duty of personal representative; information to heirs and devisees

Not later than 30 days after appointment every personal representative, except any special administrator, shall give information of the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information must include a statement that the estate is being administered by the personal representative under the Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration. The information must include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of duty to the persons concerned but does not affect the validity of the personal representative's appointment, powers or other duties. A personal representative may inform other persons of the personal representative's appointment by delivery or ordinary first class mail.

Maine Comment: This section expands the notice requirement to include a statement that the estate is being administered without supervision by the court, that recipients are entitled to information regarding the administration from the personal representative, and may petition the court in any matter relating to the estate, including distribution of assets and expenses of

administration. The section removes the requirement of section 3-705 of the now-repealed Title 18-A that the personal representative must provide information to devisees in any purported will whose existence and devisees are known to the personal representative.

§ 3-706. Duty of personal representative; inventory and appraisal

1. Duty to file or mail inventory. Within 3 months after appointment, a personal representative who is not a special administrator or a successor to another personal representative who has previously discharged this duty shall prepare and file with the court or mail to all interested persons an inventory of property owned by the decedent at the time of death, listing it with reasonable detail and indicating as to each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to any item. The inventory must also include a schedule of credits of the decedent, with the names of the obligors, the amounts due, a description of the nature of the obligation and the amount of all such credits, exclusive of expenses and risk of settlement or collection.

2. Inventory furnished on request. If the personal representative filed the inventory with the court pursuant to subsection 1, the personal representative shall furnish the inventory to interested persons who request it. If the personal representative mailed the inventory to all interested persons who requested it pursuant to subsection 1, the personal representative may also file the inventory with the court.

3. Failure to file, mail or furnish inventory; missing property. When an inventory has not been filed, mailed or furnished as required under subsection 1 or 2 and an interested party makes a prima facie case that property that should have been inventoried is now missing, the personal representative has the burden of proving by a preponderance of the evidence that the specific property would properly be excluded from the inventory.

§ 3-707. Employment of appraisers

The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser must be indicated on the inventory with the item or items appraised.

Maine Comment: This section conforms Maine law to the Uniform Probate Code. The former requirement of an appraisal of real estate or securities not traded on recognized exchanges is eliminated and the personal representative's discretion to obtain appraisals is limited to any asset the value of which may be subject to reasonable doubt.

§ 3-708. Duty of personal representative; supplementary inventory

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers

or other data relied upon, if any, and file the supplementary inventory or appraisement with the court or mail or furnish copies of the supplementary inventory or appraisement or information about the supplementary inventory or appraisement to persons interested in the new information.

§ 3-709. Duty of personal representative; possession of estate

Except as otherwise provided by a decedent's will, every personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence in any action against the heir or devisee for possession of the property that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on and take all steps reasonably necessary for the management, protection and preservation of the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title of the property.

§ 3-710. Power to avoid transfers

The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means that is in law void or voidable as against the decedent's creditors, and, subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. The personal representative is not required to institute such an action unless requested by creditors, who must pay or secure the cost and expenses of litigation.

§ 3-711. Powers of personal representatives; in general

Until termination of the personal representative's appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing or order of court, except as limited by this section. The personal representative may not sell or transfer any interest in real property of the estate without giving notice at least 10 days prior to that sale or transfer to any person succeeding to an interest in that property, unless the personal representative is authorized under the will to sell or transfer real estate without this notice.

§ 3-712. Improper exercise of power; breach of fiduciary duty

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of the personal representative's fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative must be determined as provided in sections 3-713 and 3-714.

§ 3-713. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions

Any sale or encumbrance to the personal representative, the personal representative's spouse, agent or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest, or any transaction that is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except a person who has consented after fair disclosure, unless:

1. Express authorization by decedent. The will or a contract entered into by the decedent expressly authorized the transaction; or

2. Court approval. The transaction is approved by the court after notice to interested persons.

§ 3-714. Persons dealing with personal representative; protection

A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative's power was properly exercised. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives that are endorsed on letters as provided in section 3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection in this section extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection in this section is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

§ 3-715. Transactions authorized for personal representatives; exceptions

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

1. Retain assets pending distribution. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or that are otherwise improper for trust investment;

2. Receive assets. Receive assets from fiduciaries, or other sources;

3. Perform decedent's contracts. Perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

A. Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

B. Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

4. Satisfy charitable pledges. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

5. Invest liquid assets. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments that would be reasonable for use by trustees generally;

6. Acquire, sell, manage or abandon assets. Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of or abandon an estate asset;

7. Make repairs or alterations. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements and raze existing or erect new party walls or buildings;

8. Manage real estate. Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

9. Enter leases. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

10. Enter mineral leases. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

11. Abandon property. Abandon property when, in the opinion of the personal representative, it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

12. Vote securities. Vote stocks or other securities in person or by general or limited proxy;

13. Pay sums chargeable against securities. Pay calls, assessments and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

14. Hold security through nominee. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security;

15. Obtain insurance. Insure the assets of the estate against damage, loss and liability and the personal representative against liability as to 3rd persons;

16. Borrow or advance money. Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

17. Compromise claims. Effect a fair and reasonable compromise with any debtor or obligor or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner in satisfaction of the indebtedness secured by lien;

18. Pay expenses. Pay taxes, assessments, compensation of the personal representative and other expenses incident to the administration of the estate;

19. Exercise stock rights. Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

20. Allocate income and expenses. Allocate items of income or expense to either estate income or principal, as permitted or provided by law;

21. Employ and act through agents. Employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

22. Prosecute or defend claims. Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

23. Alienate property. Sell, mortgage or lease any real or personal property of the estate or any interest in the property for cash or credit or for part cash and part credit, with or without security for unpaid balances;

24. Continue any business. Continue any unincorporated business or venture in which the decedent was engaged at the time of death:

A. In the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

B. In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

C. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

25. Incorporate any business. Incorporate any business or venture in which the decedent was engaged at the time of death;

26. Contract without personal liability. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

27. Distribute the estate. Satisfy and settle claims and distribute the estate as provided in this Code; and

28. Environmental compliance. Exercise any power described in section 1-110 relating to compliance with environmental laws.

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

§ 3-716. Powers and duties of successor personal representative

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but the successor personal representative may not exercise any power expressly made personal to the executor named in the will.

§ 3-717. Corepresentatives; when joint action required

If 2 or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with that corepresentative or if advised by the personal representative with whom they deal that the personal representative has authority to act alone for any of the reasons mentioned in this section are as fully protected as if the person with whom they dealt had been the sole personal representative.

§ 3-718. Powers of surviving personal representative

Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of 2 or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

§ 3-719. Compensation of personal representative

A personal representative is entitled to reasonable compensation for the personal representative's services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce the personal representative's right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

§ 3-720. Expenses in estate litigation

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative or nominee is entitled to receive from the estate necessary expenses and disbursements including reasonable attorney's fees incurred.

§ 3-721. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate

1. Procedure. After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed or the reasonableness of the compensation determined by the personal representative for the personal representative's own services may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

2. Reasonable fee factors. Factors to be considered as guides in determining the reasonableness of a fee include the following:

A. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the service properly;

B. The likelihood, if apparent to the personal representative, that the acceptance of the particular employment will preclude the person employed from other employment;

C. The fee customarily charged in the locality for similar services;

D. The amount involved and the results obtained;

E. The time limitations imposed by the personal representative or by the circumstances; and

F. The experience, reputation and ability of the person performing the services.

PART 8

CREDITORS' CLAIMS

§ 3-801. Notice to creditors

1. Notice by publication. Unless notice has already been given under this section, a personal representative upon appointment shall publish a notice to creditors announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred. The notice to creditors must be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the court that appointed the personal representative is located.

2. Notice by mail. A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present the creditor's claim within 4 months after the published notice, if given as provided in subsection 1, or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection 1 or a similar notice.

3. No liability for failure to give notice. The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

§ 3-802. Statutes of limitations

1. Applicability of statutes of limitations; waiver. Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.

2. Suspension for 4 months after death. The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended for 4 months after the decedent's death, but resumes thereafter as to claims not barred by other laws.

3. Commencement of action by presentation of claim. For purposes of any statute of limitations, the presentation of a claim pursuant to section 3-804 is equivalent to commencement of a proceeding on the claim.

§ 3-803. Limitations on presentation of claims

1. Claims arising before death. All claims against a decedent's estate that arose before the death of the decedent, including claims of the State and any subdivision of the State, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute, are barred against the estate, the personal representative and the heirs and devisees and nonprobate transferees of the decedent, unless presented within the earlier of the following:

A. Nine months after the decedent's death; or

B. The time provided by section 3-801, subsection 2 for creditors who are given actual notice, and the time provided in section 3-801, subsection 1 for all creditors barred by publication.

2. Claim barred by nonclaim statute. A claim described in subsection 1 that is barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in this State is barred in this State.

3. Claims arising after death. All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the State and any subdivision of the State, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract,

tort or other legal basis, are barred against the estate, the personal representative and the heirs and devisees of the decedent, unless presented as follows:

A. A claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due; or

B. Any other claim, within the later of 4 months after it arises or the time specified in subsection 1, paragraph A.

4. Exceptions. Nothing in this section affects or prevents:

A. Any proceeding to enforce any mortgage, pledge or other lien upon property of the estate;

B. To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance;

C. Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate; or

D. The State from filing and enforcing a claim for Medicaid reimbursement under Title 22, section 14. Notwithstanding subsection 1, paragraph A, if this claim is filed within 4 months of published or actual notice of creditors, the claim is considered timely filed.

§ 3-804. Manner of presentation of claims

Claims against a decedent's estate may be presented as described in this section.

1. Written statement of claim. The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the register. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe correctly the security, the nature of any uncertainty and the due date of a claim not yet due does not invalidate the presentation made.

2. Proceeding on claim. The claimant may commence a proceeding against the personal represensative in any court where the personal representative may be subjected to jurisdiction to obtain payment of the claimant's claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent that were pending at the time of death.

3. Time limit for proceeding after disallowance. If a claim is presented under subsection 1, no proceeding on the claim may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim that is not

presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or, to avoid injustice, the court on petition may order an extension of the 60-day period, but in no event may the extension run beyond the applicable statute of limitations.

4. Presenting claims before administration. When a decedent's estate has not been commenced at the time a claimant wishes to present a claim, a claim is deemed presented when the claimant files with the register a written statement of claim meeting the requirements of subsection 1 and a demand for notice pursuant to section 3-204. The provisions of subsection 3 apply upon the appointment of a personal representative.

§ 3-805. Classification of claims

1. Priority of claims. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

A. Costs and expenses of administration;

B. Reasonable funeral expenses;

C. Debts and taxes with preference under federal law;

D. Medicaid benefits recoverable under Title 22, section 14, subsection 2-I and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

E. Debts and taxes with preference under other laws of this State; and

F. All other claims.

2. No priority within class or for claims not due. Preference may not be given in the payment of any claim over any other claim of the same class, and a claim due and payable is not entitled to a preference over claims not due.

§ 3-806. Allowance of claims

1. Allowance or disallowance by personal representative. As to claims presented in the manner described in section 3-804 within the time limit prescribed in section 3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim that is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on the claim for 60

days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

2. Change of claim status by personal representative. After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this subsection. The personal representative may prior to payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection 1. The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection 1; after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

3. Allowance by court. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the register in due time and not barred by subsection 1. Notice in this proceeding must be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

4. Judgment of another court; effect. A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

5. Interest. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear prejudgment interest at the rate specified in Title 14, section 1602-B for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

A. Interest may not accrue on any allowed claims, however allowed, against an insolvent estate, except to the extent that insurance coverage or other nonprobate assets are available to pay the claim in full.

B. To the extent that an allowed claim against an insolvent estate is secured by property, the value of which, as determined under section 3-809, is greater than the amount of the claim, the holder of the claim may receive interest on the principal amount of the claim and any reasonable fees, costs or charges provided for under an agreement under which the claim arose.

Maine Comment: In subsection 1, the language from the now-repealed Title 18-A requiring the personal representative to "furnish" a notice of disallowance has been changed to "mail" a notice. Subsection 2 is new, and former subsections 2(b), 2(c), and 2(d) of section 806 of the now-repealed Title 18-A are now subsections 3, 4, and 5 of this section. The new subsection 2 adds a detailed description of the power of the personal representative to change the allowance or disallowance of a claim.

§ 3-807. Payment of claims

1. Payment upon expiration of limitations period. Upon the expiration of the earlier of the time limitations provided in section 3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available to pay it.

2. Earlier payment; liability of personal representative. The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but the personal representative is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

A. Payment was made before the expiration of the time limit stated in subsection 1 and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

B. Payment was made, due to the negligence or willful fault of the personal representative, in a manner that deprives the injured claimant of priority.

§ 3-808. Individual liability of personal representative

1. Contractual liability. Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal the representative capacity and identify the estate in the contract.

2. Liability for ownership or control of property; torts. A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if the personal representative is personally at fault.

3. Proceedings against personal representative in fiduciary capacity. Claims based on contracts entered into by a personal representative in a fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in a fiduciary capacity, whether or not the personal representative is individually liable.

4. Allocating liability between estate and personal representative. Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

§ 3-809. Secured claims

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders the creditor's security; otherwise payment is upon the basis of one of the following:

1. Security exhausted. If the creditor exhausts the creditor's security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

2. Security not exhausted. If the creditor does not have the right to exhaust the creditor's security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

§ 3-810. Claims not due and contingent or unliquidated claims

1. Claim due or certain before distribution. If a claim that will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

2. Other cases. In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

A. If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account; or

B. Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee or otherwise.

§ 3-811. Counterclaims

In allowing a claim the personal representative may deduct any counterclaim that the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

§ 3-812. Execution and levies prohibited

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section may not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

§ 3-813. Compromise of claims

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

§ 3-814. Encumbered assets

If any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part of the encumbrance, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

§ 3-815. Administration in more than one state; duty of personal representative

1. Estate assets subject to all claims, allowances and charges. All assets of estates being administered in this State are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

2. Estate insufficient; claimants to receive equal proportion of claims. If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this State or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of the claimant's claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefited is to receive dividends from local assets only upon the balance of the creditor's claim after deducting the amount of the benefit.

3. Local assets apply first to claims allowed in this State. In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this State is not the state of the decedent's last domicile, the claims allowed in this State must be paid their proportion if local assets are adequate for the purpose, and the balance of local assets must be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets must be marshalled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

§ 3-816. Final distribution to domiciliary representative

The estate of a nonresident decedent being administered by a personal representative appointed in this State must, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

1. Maine law governs. By virtue of the decedent's will, if any, and applicable choice of law provisions, the successors are identified pursuant to the law of this State without reference to the law of the decedent's domicile;

2. No domiciliary personal representative exists. The personal representative of this State, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

3. Court order. The court orders otherwise in a proceeding for a closing order under section 3-1001 or incident to the closing of a supervised administration.

In other cases, distribution of the estate of a decedent must be made in accordance with the other Parts of this Article.

§ 3-817. Survival of actions

1. Survival of actions. No personal action or cause of action is lost by the death of either party, but the same survives for and against the personal representative of the deceased, except that actions or causes of action for the recovery of penalties and fines under criminal statutes do not survive the death of the defendant. A personal representative may seek relief from a judgment in an action to which the deceased was a party to the same extent that the deceased might have done so.

2. Death of plaintiff or defendant. When the only plaintiff or defendant dies while an action that survives is pending, or after its commencement and before entry of judgment, the decedent's personal representative may appear and enter the action or any appeal that has been made, and suggest on the record the death of the party. If the personal representative does not appear within 90 days after the appointment, the personal representative may be cited to appear, and after due notice judgment may be entered against the personal representative by dismissal or default if no such appearance is made.

3. Death of one of several plaintiffs or one of several defendants. When either of several plaintiffs or defendants in an action that survives dies, the death may be suggested on the record, and the personal representative of the deceased may appear or be cited to appear as provided in subsection 2. The action may be further prosecuted or defended by the survivors and the personal representative jointly or by either of them. The survivors, if any, on both sides of the action may testify as witnesses.

4. Death of judgment creditor. When a judgment creditor dies before the first execution issues or before an execution issued in the judgment creditor's lifetime is fully satisfied, the execution may be issued or be effective in favor of the deceased judgment creditor's personal representative, but an execution may not be issued or be effective beyond the time within which it would have been effective or issued if the party had not died.

5. Execution in favor of deceased judgment creditor. An execution issued under subsection 4 must set forth the fact that the judgment creditor has died since the rendition of the judgment and that the substituted party is the personal representative of the decedent's estate.

6. Liability of personal representative. The personal representative proceeding under this section is liable, and shall hold any recovered property or award, in a representative capacity, except as otherwise provided in section 3-808.

Maine Comment: This section does not constitute a substantive change to Maine law. The Uniform Probate Code has no provisions regarding survival of actions.

§ 3-818. Damages limited to actual damages

In any tort action against the personal representative of a decedent's estate, in the personal representative's representative capacity, the plaintiff may recover only the value of the goods taken or damage actually sustained.

Maine Comment: This section does not constitute a substantive change to Maine law. The Uniform Probate Code has no provisions limiting damages in tort actions against the personal representative to actual damages.

PART 9

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

§ 3-901. Successors' rights if no administration

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title by proof of the decedent's ownership and death and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement and ademption.

§ 3-902. Distribution; order in which assets appropriated; abatement

1. Order in which assets appropriated; abatement. Except as provided in subsection 2 and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: property not disposed of by the will, residuary devises, general devises and specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

2. Intention of the testator controls. If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by the

order of abatement stated in subsection 1, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

3. Adjustments. If the subject of a preferred devise is sold or used incident to administration, abatement must be achieved by appropriate adjustments in or contribution from other interests in the remaining assets.

§ 3-903. Right of retainer

The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, must be offset against the successor's interest, but the successor has the benefit of any defense that would be available to the debtor in a direct proceeding for recovery of the debt. The debt constitutes a lien on the successor's interest in favor of the estate, having priority over any attachment or transfer of the interest by the successor.

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

§ 3-904. Interest on general pecuniary devise

General pecuniary devises bear interest at the legal rate of 5% per year beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated in the will.

Maine Comment: This section has been modified from former section 3-904 of the now-repealed Title 18-A to remove a reference to contrary intent being implicit in light of devised property's unproductive nature or decline in value.

§ 3-905. Penalty clause for contest

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

§ 3-906. Distribution in kind; valuation; method

1. Distribution in kind; valuation; distribution of residuary estate. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions.

A. A specific devisee is entitled to distribution of the thing devised to that devisee, and a spouse or child who has selected particular assets of an estate as provided in section 2-403 must receive the items selected.

B. Any homestead or family allowance or devise of a stated sum of money may be satisfied by value in kind, in the personal representative's discretion, as long as:

(1) The person entitled to the payment has not demanded payment in cash;

(2) The property distributed in kind is valued at fair market value as of the date of its distribution; and

(3) No residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate or, if a residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate, there are insufficient other assets to which no residuary devisee has made such a request to permit satisfaction of the estate's obligations and funding of all pecuniary devises made under the decedent's will.

C. For the purpose of valuation under paragraph B, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets that do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

D. The residuary estate may be distributed by the personal representative in cash or in kind, in accordance with the best interests of the residuary devisees. Residuary assets may be distributed, at the personal representative's discretion, in pro rata or non pro rata shares, except that residuary assets not distributed pro rata must be valued as of the date on which they are distributed.

2. Right of distributee to object. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

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

§ 3-907. Distribution in kind; evidence

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

§ 3-908. Distribution; right or title of distributee

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

§ 3-909. Improper distribution; liability of distributee

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if the distributee or claimant has the property. If the distributee or claimant does not have the property, then the distributee or claimant is liable to return the value as of the date of disposition of the property improperly received and income and gain received by the distributee or claimant.

§ 3-910. Purchasers from distributees protected

If property distributed in kind or a security interest in the property is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is acquired by a purchaser from or lender to a transferee from a distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to the personal representative, as well as a purchaser from or lender to any other distributee or transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which the register of deeds notes by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer was made for value.

§ 3-911. Partition for purpose of distribution

When 2 or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property that cannot be partitioned without prejudice to the owners and that cannot conveniently be allotted to any one party.

§ 3-912. Private agreements among successors to decedent binding on personal representative

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to the personal representative's obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration and to carry out the responsibilities of the office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee of such a trust is another person who is willing to accept the trust. Accordingly,

trustees of a testamentary trust are successors for the purposes of this section. Nothing in this section relieves trustees of any duties owed to beneficiaries of trusts.

§ 3-913. Distributions to trustee

1. Personal representative authority to require bond. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.

2. Personal representative not negligent for failing to require bond. An inference of negligence on the part of the personal representative may not be drawn from the personal representative's failure to exercise the authority conferred by subsection 1.

§ 3-914. Disposition of unclaimed assets

If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to the person's conservator, if any; otherwise it must be disposed of according to Title 33, chapter 41.

§ 3-915. Distribution to person under disability

1. Discharge according to will. A personal representative may discharge the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

2. Discharge under section 5-103 or to conservator. Unless contrary to an express provision in the will, a personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by section 5-103 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

3. Discharge to attorney in fact or close relative. If the heir or devisee is under disability other than minority, a personal representative is authorized to distribute to:

A. An attorney in fact who has authority under a power of attorney to receive property for that person; or

B. The spouse, parent or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

Persons receiving money or property for the person with a disability are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the person with a disability. Excess sums must be preserved for future support of the person with

a disability. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection.

Maine Comment: In addition to validating distributions in a manner expressly provided by the will, this section adds options and guidance for the personal representative in making distributions to a person under a disability.

§ 3-916. Uniform Estate Tax Apportionment Act

1. Short title. This section may be known and cited as the Uniform Estate Tax Apportionment Act.

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

A. "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(1) Any claim or expense allowable as a deduction for purposes of the tax;

(2) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(3) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

B. "Estate tax" means a federal, state or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

C. "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

D. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

E. "Ratable" or "ratably" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied.

F. "Time-limited interest" means an interest in property that terminates on a lapse of time or on the occurrence or nonoccurrence of an event or that is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest.

G. "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

3. Apportionment by will or other dispositive instrument. This subsection applies when estate tax is apportioned expressly and unambiguously by a will, revocable trust or other dispositive instrument.

A. Except as otherwise provided in paragraph C:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly;

(2) Any portion of an estate tax not apportioned pursuant to subparagraph (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor that expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in 2 or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this subparagraph:

(a) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(b) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision; and

(3) If any portion of an estate tax is not apportioned pursuant to subparagraph (1) or (2), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

B. Subject to paragraph C, and unless the decedent expressly and unambiguously directs the contrary:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:

(a) The tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument; or

(b) If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax;

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must

first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient;

(3) Except as otherwise provided in subparagraph (4), if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under subsection 7, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property; and

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests.

C. A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

4. Statutory apportionment of estate taxes. To the extent that apportionment of an estate tax is not controlled by an instrument described in subsection 3 and except as otherwise provided in subsections 6 and 7:

A. Subject to paragraphs B, C and D, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate;

B. A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to whom the interest in property is transferred;

C. If property is included in the decedent's gross estate pursuant to Section 2044 of the United States Internal Revenue Code of 1986, as amended, or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate; and

D. Except as otherwise provided in subsection 3, paragraph B, subparagraph (4) and except as to property to which subsection 7 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

5. Credits and deferrals. Except as otherwise provided in subsections 6 and 7, this subsection applies to credits and deferrals of estate taxes.

A. A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to whom the estate tax is apportioned.

B. A credit for state or foreign estate taxes inures ratably to the benefit of all persons to whom the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

C. If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to whom the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge are allocated ratably among the persons receiving an interest in the property.

6. Insulated property; advancement of tax. This subsection applies when the estate includes property that is unavailable for payment of estate tax due to impossibility or impracticability.

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

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property that is required to be advanced by uninsulated holders under paragraph C.

(3) "Insulated property" means property subject to a time-limited interest that is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

B. If an estate tax is to be advanced pursuant to paragraph C by persons holding interests in uninsulated property subject to a time-limited interest other than property to which subsection 7 applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

C. Subject to subsection 9, paragraphs B and D, an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding

interests in properties that are excluded from the apportionable estate under subsection 2, paragraph A, subparagraph (2) as if those interests were in uninsulated property.

D. A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantively more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

E. When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

F. Upon a distribution of insulated property for which, pursuant to paragraph D, the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder.

7. Apportionment and recapture of special elective benefits. The reduction in estate tax due to election of a special elective benefit must be apportioned in accordance with this subsection.

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

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(a) A reduced valuation of specified property that is included in the gross estate;

(b) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(c) An exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

B. If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in

specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

C. An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

8. Securing payment of estate tax from property in possession of fiduciary. A fiduciary may ensure that a distributee will pay the distributee's share of the estate tax through one of the following methods.

A. A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

B. A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

C. As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

9. Collection of estate tax by fiduciary. A fiduciary responsible for payment of an estate tax may collect the tax due using the following methods.

A. A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

B. Except as otherwise provided in subsection 6, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) Any person having an interest in the apportionable estate that is not exonerated from the tax;

(2) Any other person having an interest in the apportionable estate; and

(3) Any person having an interest in the gross estate.

C. A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

D. The total tax collected from a person pursuant to this section may not exceed the value of the person's interest.

10. Right of reimbursement. A person may obtain reimbursement of estate tax as provided in this subsection.

A. A person required under subsection 9 to pay an estate tax greater than the amount due from the person under subsection 3 or 4 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by subsection 3 or 4 and a right to

reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under subsection 9, paragraph B.

B. A fiduciary may enforce the right of reimbursement under paragraph A on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

11. Action to determine or enforce section. A fiduciary, transferee or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce this section.

12. Delayed application. The applicability of subsections 3 to 7 is governed by this subsection.

A. Subsections 3 to 7 do not apply to the estate of a decedent who dies on or within 3 years after July 1, 2019 nor to the estate of a decedent who dies more than 3 years after July 1, 2019 if the decedent continuously lacked testamentary capacity from the expiration of the 3-year period until the date of death.

B. For the estate of a decedent who dies on or after July 1, 2019 to which subsections 3 to 7 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before July 1, 2019.

Maine Comment: This section replaces the former section 3-916 of the now-repealed Title 18-A, conforming to the Uniform Probate Code which includes the provisions of the revised Uniform Estate Tax Apportionment Act (2003)

PART 10

CLOSING ESTATES

§ 3-1001. Formal proceedings terminating administration; testate or intestate; order of general protection

1. Formal proceedings terminating administration. A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims that arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and to adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing, the court may enter an order or orders on appropriate conditions, determining the persons entitled to distribution of the estate and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

2. Omitted parties. If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of any will previously admitted to probate or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

§ 3-1002. Formal proceedings terminating testate administration; order construing will without adjudicating testacy

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate that will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims that arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and to adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those the devisee represents. If it appears that a part of the estate is intestate, the proceedings must be dismissed or amendments made to meet the provisions of section 3-1001.

§ 3-1003. Closing estates; by sworn statement of personal representative

1. Closing estate by sworn statement of personal representative. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate a verified statement stating that the personal representative, or a previous personal representative, has:

A. Determined that the time limited for presentation of creditors' claims has expired;

B. Fully administered the estate of the decedent by making payment, settlement or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability

with the agreement of the distributees or it shall state in detail other arrangements that have been made to accommodate outstanding liabilities; and

C. Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

2. Termination of personal representative appointment. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

Maine Comment: This section removes the requirement that the personal representative, when closing the estate by sworn statement, provide a closing statement to persons who, for various reasons, such as ademption, abatement, mistake or fraud, were not distributees of the estate.

§ 3-1004. Liability of distributees to claimants

After assets of an estate have been distributed and subject to section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. A distributee is not liable to claimants for amounts received as exempt property or homestead or family allowances or for amounts in excess of the value of the distribution as of the time of distribution. As between distributees, each bears the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the demand made by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted loses the right of contribution against other distributees.

§ 3-1005. Limitations on proceedings against personal representative

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert those rights is commenced within 6 months after the filing of the closing statement. The rights barred by this section do not include rights to recover from a personal representative for fraud, misrepresentation or inadequate disclosure related to the settlement of the decedent's estate.

§ 3-1006. Limitations on actions and proceedings against distributees

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in the heir's or devisee's behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of 3 years after the decedent's death or one year after the time of its distribution, but all claims of creditors of the decedent are barred 9 months after the decedent's death. This section does not bar an action to recover property or value received as the result of fraud.

§ 3-1007. Certificate discharging liens securing fiduciary performance

After the personal representative's appointment has terminated, the personal representative, the personal representative's sureties or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the register that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

§ 3-1008. Subsequent administration

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate, but no claim previously barred may be asserted in the subsequent administration.

PART 11

COMPROMISE OF CONTROVERSIES

§ 3-1101. Effect of approval of agreements involving trusts, inalienable interests or interests of 3rd persons

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

Maine Comment: This section changes the reference to “any probated will” in prior Maine law to "any governing instrument."

§ 3-1102. Procedure for securing court approval of compromise

The procedure for securing court approval of a compromise is as follows.

1. Written, signed agreement. The terms of the compromise must be set forth in an agreement in writing that must be executed by all competent persons and parents or legal guardians who have both actual custody and legal responsibility for a minor child acting for any minor child who has beneficial interests or claims that will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts are unknown and cannot reasonably be ascertained.

2. Submission to court for approval. Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust and other fiduciaries and representatives.

3. Hearing and order. After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents are bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate must be in accordance with the terms of the agreement.

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURES FOR SMALL ESTATES

§ 3-1201. Collection of personal property by affidavit

1. Affidavit; duty to deliver property. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

A. The value of the entire estate, wherever located, less liens and encumbrances, does not exceed $40,000;

B. Thirty days have elapsed since the death of the decedent;

C. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

D. The claiming successor is entitled to payment or delivery of the property.

2. Securities. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection 1.

Maine Comment: This section increases, from $20,000 to $40,000, the value of the net estate from which personal property held by a third party must be distributed upon receipt of an affidavit from a claimed successor.

§ 3-1202. Effect of affidavit

The person paying, delivering, transferring or issuing personal property or the evidence of personal property pursuant to affidavit is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. The person is not required to see to the application of the personal property or evidence of personal property or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence of personal property, it may be recovered or its payment, delivery, transfer or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable to any personal representative of the estate or to any other person having a superior right.

§ 3-1203. Small estates; summary administrative procedure

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and file a closing statement as provided in section 3-1204.

§ 3-1204. Small estates; closing by sworn statement of personal representative

1. Verified statement; contents. Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

A. To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

B. The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

C. The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the administration to the distributees whose interests are affected.

2. Termination of personal representative appointment. If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

3. Effect of verified statement. A closing statement filed under this section has the same effect as one filed under section 3-1003.

§ 3-1205. Social security payments

If not less than 30 days after the death of a Maine resident entitled at the time of the resident's death to a monthly benefit or benefits under Title II of the Social Security Act, all or part of the amount of such benefit or benefits not in excess of $1,000 is paid by the United States to the surviving spouse, one or more of the decedent's children or descendants of the deceased children, the decedent's father or mother or the decedent's brother or sister, preference being given in the order named if more than one request for payment has been made by or for such individuals, upon an affidavit made and filed with the federal Department of Health and Human Services by the surviving spouse or other relative by whom or on whose behalf request for payment is made; and if the affidavit shows the date of death of the decedent, the relationship of the affiant to the decedent, that no personal representative for the decedent has been appointed and qualified and that, to the affiant's knowledge, there exists at the time of filing of the affidavit no relative of a closer degree of kindred to the decedent than the affiant, then such payment pursuant to the affidavit is deemed to be a payment to the legal representative of the decedent and, regardless of the truth or falsity of the statements made in the affidavit, constitutes a full discharge and release of the United States from any further claim for such payment to the same extent as if such payment had been made to the personal representative of the decedent's estate.

Maine: This section does not constitute a substantive change to Maine law. The Uniform Probate Code has no corresponding section.

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

§ 4-201. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration

At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt or deliver the personal property or the instrument evidencing the debt, obligation, stock or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of the domiciliary foreign personal representative's appointment and an affidavit made by or on behalf of the representative stating:

1. Date of death. The date of the death of the nonresident decedent;

2. No local administration. That no local administration, or application or petition for local administration, is pending in this State; and

3. Personal representative authority. That the domiciliary foreign personal representative is entitled to payment or delivery.

§ 4-202. Payment or delivery discharges

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

§ 4-203. Resident creditor notice

Payment or delivery under section 4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

§ 4-204. Proof of authority; bond

If no local administration or application or petition for local administration is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a county in which property belonging to the decedent is located authenticated copies of the foreign personal representative's appointment, of any official bond the foreign personal representative has given and a certificate, dated within 60 days, proving the foreign personal representative's current authority.

Maine Comment: This section requires submission of a certificate, dated within sixty days, proving the foreign personal representative’s current authority which is consistent with section 4-204 of the now-repealed Title 18-A but is not in section 4-204 of the Uniform Probate Code.

§ 4-205. Powers

A domiciliary foreign personal representative who has complied with section 4-204 may exercise as to assets in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.

§ 4-206. Power of representatives in transition

The power of a domiciliary foreign personal representative under section 4-201 or 4-205 may be exercised only if there is no administration or application for administration pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. A person who, before receiving actual notice of a pending local administration, has changed position in reliance upon the powers of a foreign personal representative may not be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations that have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for the foreign personal representative in any action or proceedings in this State.

§ 4-207. Ancillary and other local administrations; provisions governing

In respect to a nonresident decedent, the provisions of Article 3 govern:

1. Court proceedings in this State. Proceedings, if any, in a court of this State for probate of the will, appointment, removal, supervision and discharge of the local personal representative and any other order concerning the estate; and

2. Rights of local personal representative and parties. The status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

PART 3

JURISDICTION OVER FOREIGN REPRESENTATIVES

§ 4-301. Jurisdiction by act of foreign personal representative

A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by:

1. Filing appointment with court. Filing authenticated copies of the foreign personal representative's appointment as provided in section 4-204;

2. Receiving estate assets. Receiving payment of money or taking delivery of personal property under section 4-201.

Jurisdiction under this subsection is limited to the money or value of personal property collected; or

3. Acting as personal representative within State. Doing any act as a personal representative in this State that would have given the State jurisdiction over the foreign personal representative as an individual.

§ 4-302. Jurisdiction by act of decedent

In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that the decedent was subject to jurisdiction immediately prior to death.

§ 4-303. Service on foreign personal representative

Service of process may be made upon the foreign personal representative in such manner as the Supreme Judicial Court shall by rule provide.

Maine Comment: This section defers the service of process requirements to the rules promulgated by the Maine Supreme Judicial Court as compared to the Uniform Probate Code's requirements for the service of process under its section 4-303.

PART 4

JUDGMENTS AND PERSONAL REPRESENTATIVE

§ 4-401. Effect of adjudication for or against personal representative

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

ARTICLE 5

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

PART 1

GENERAL PROVISIONS

§ 5-101. Short title

Parts 1, 2, 3, 4 and 5 of this Article may be known and cited as "the Uniform Guardianship and Protective Proceedings Act."

§ 5-102. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Adult. "Adult" means an individual at least 18 years of age or an emancipated individual under 18 years of age.

2. Adult subject to conservatorship. "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under this Act.

3. Adult subject to guardianship. "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this Act.

4. Best interest of the minor. "Best interest of the minor" means the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

5. Claim. "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort or otherwise.

6. Conservator. "Conservator" means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. "Conservator" includes a coconservator.

7. Conservatorship estate. "Conservatorship estate" means the property subject to conservatorship under this Act.

8. Full conservatorship. "Full conservatorship" means a conservatorship that grants the conservator all powers available under this Act.

9. Full guardianship. "Full guardianship" means a guardianship that grants the guardian all powers available under this Act.

10. Guardian. "Guardian" means a person appointed by a court to make decisions with respect to the personal affairs of an individual. "Guardian" includes a coguardian but does not include a guardian ad litem.

11. Guardian ad litem. "Guardian ad litem" means a person appointed to inform the court about, and to represent, the needs and best interest of an individual.

12. Individual subject to conservatorship. "Individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed.

13. Individual subject to guardianship. "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed.

14. Less restrictive alternative. "Less restrictive alternative" means an approach to meeting an individual's needs that restricts fewer rights than would the appointment of a guardian or conservator. "Less restrictive alternative" includes supported decision making, appropriate technological assistance, appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances, or appointment of a representative payee.

15. Letters of office. "Letters of office" means judicial certification of guardianship or conservatorship.

16. Limited conservatorship. "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this Act, grants powers over only certain property or otherwise restricts the powers of the conservator.

17. Limited guardianship. "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this Act or otherwise restricts the powers of the guardian.

18. Minor. "Minor" means an unemancipated individual who is under 18 years of age.

19. Minor subject to conservatorship. "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under this Act.

20. Minor subject to guardianship. "Minor subject to guardianship" means a minor for whom a guardian has been appointed under this Act.

21. Parent. "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61 and whose parental rights have not been terminated.

22. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

23. Property. "Property" means anything that may be the subject of ownership and includes both real and personal property, tangible and intangible, or any interest therein.

24. Protective arrangement instead of conservatorship. "Protective arrangement instead of conservatorship" means a court order entered under section 5-503.

25. Protective arrangement instead of guardianship. "Protective arrangement instead of guardianship" means a court order entered under section 5-502.

26. Protective arrangement instead of guardianship or conservatorship. "Protective arrangement instead of guardianship or conservatorship" means a court order entered under Part 5, including an order authorizing a single transaction or more than one related transaction.

27. Record. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

28. Respondent. "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

29. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or

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

30. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

31. Suitable. "Suitable," with respect to a guardian for a minor, means that the guardian can provide a safe and appropriate residence for the minor, understands and is prepared to follow the terms of the appointment and understands and can address the minor's needs and protect the minor from harm.

32. Supported decision making. "Supported decision making" means assistance from one or more persons of an individual's choosing:

A. In understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and

B. When consistent with the individual's wishes, in communicating a decision once it is made.

§ 5-103. Facility of transfer

1. Transfer of money or personal property to minor. Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding $10,000 a year, by transferring it to:

A. A person who has the care and custody of the minor and with whom the minor resides;

B. A guardian of the minor;

C. A custodian under the Maine Uniform Transfers to Minors Act;

D. A financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor; or

E. The minor, if married or emancipated.

2. Responsibility for proper application. A person who transfers money or property in compliance with this section is not responsible for its proper application.

3. For benefit of minor; no personal financial benefit. A guardian or other person who receives money or property for a minor under subsection 1, paragraph A or B may apply it only to the support, care, education, health and welfare of the minor and may not derive a personal financial benefit, but may be reimbursed for necessary expenses for the benefit of the minor. Any excess must be preserved for the future support, care, education, health and welfare of the minor, and any balance must be transferred to the minor when the minor becomes an adult or is otherwise emancipated.

§ 5-104. Subject matter jurisdiction

1. Jurisdiction; minors. Except to the extent that jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and Title 4, section 152, subsection 5-A, the court has jurisdiction over a guardianship for a minor domiciled or present in this State. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled in or having property located in this State.

2. Jurisdiction; adults. The court has jurisdiction over a guardianship, a conservatorship and an order for a protective arrangement instead of guardianship or conservatorship for an adult as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Part 6.

3. Exclusive or concurrent jurisdiction. After service of notice in a proceeding seeking a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

A. Exclusive jurisdiction to determine the need for a guardianship, conservatorship or protective arrangement;

B. Exclusive jurisdiction to determine how property of the respondent that is subject to the law of this State must be managed, expended or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent or other claimant;

C. Concurrent jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

D. If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

4. Exclusive and continuing jurisdiction. A court that appoints a guardian or conservator, or authorizes a protective arrangement instead of guardianship or conservatorship, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

§ 5-105. Transfer of proceeding

1. Guardianship or conservatorship subject to transfer provisions. This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of Part 6, subpart 3.

2. Transfer if serves best interest of individual. After the appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in this State or to another state if transfer will serve the best interest of the individual subject to the guardianship or conservatorship.

3. Proceeding pending in another state or foreign country. If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship is filed in a court in this State, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

4. Petition for appointment in this State. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this State if jurisdiction in this State is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this State.

5. Notice; appointment unless not in best interest of respondent. Notice of hearing on a petition under subsection 4, together with a copy of the petition, must be given to the respondent, if the respondent is 14 years of age or older at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under this Act were applicable. The court shall make the appointment in this State unless it determines that the appointment would not be in the best interest of the respondent.

6. Copy of order of appointment. Not later than 14 days after appointment under subsection 5, the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is 14 years of age or older, and to all persons given notice of the hearing on the petition.

§ 5-106. Venue

1. Guardianship proceeding for minor. Venue for a guardianship proceeding for a minor is in:

A. The county or division of this State in which the minor, the petitioner or a parent or guardian of the child resides or is present at the time the proceeding commences; or

B. The county or division of this State where another proceeding concerning the custody and parental rights of the minor is pending.

2. Guardianship proceeding or protective arrangement for adult. Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:

A. The county of this State in which the respondent resides;

B. If the respondent has been admitted to an institution by order of a court of competent jurisdiction, the county in which the court is located; or

C. In a proceeding for appointment of an emergency guardian of an adult, the county in which the respondent is present.

3. Conservatorship proceeding or protective arrangement. Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

A. The county of this State in which the respondent resides, whether or not a guardian has been appointed in another county or another jurisdiction; or

B. If the respondent does not reside in this State, any county of this State in which property of the respondent is located.

4. Proceedings in more than one county. If proceedings under this Act are brought in more than one county in this State, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

§ 5-107. Practice in court

1. Rules. Except as otherwise provided in this Act, the Maine Rules of Probate Procedure, the Maine Rules of Civil Procedure and the Maine Rules of Evidence, including rules concerning appellate review, govern a proceeding under this Act.

2. Consolidation. If proceedings under this Act for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

§ 5-108. Letters of office

1. Guardian; letters of office. On a guardian's filing of an acceptance of appointment, the court shall issue appropriate letters of office.

2. Conservator; letters of office. On a conservator's filing of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court, the court shall issue appropriate letters of office.

3. Limitations stated. Limitations on the powers of the guardian or conservator or on the property subject to conservatorship must be stated in the letters of office.

4. Limitations at any time; new letters of office; notice. Upon request or sua sponte, the court at any time may limit the powers conferred on the guardian or conservator. The court shall issue new letters of office to reflect the limitation. The court shall give notice of the limitation to the guardian or conservator, the individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship or conservatorship and any other person as the court determines.

§ 5-109. Effect of acceptance of appointment

A guardian or conservator that accepts appointment submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

§ 5-110. Coguardian; coconservator

1. Appointment at any time. The court at any time may appoint a coguardian or coconservator to serve immediately or when a designated future event occurs.

2. Acceptance of appointment. A coguardian or coconservator appointed to serve immediately may act when the coguardian or coconservator files an acceptance of appointment.

3. Service upon designated future event. A coguardian or coconservator appointed to serve when a designated future event occurs may act when:

A. The designated event occurs; and

B. The coguardian or coconservator files an acceptance of appointment.

4. Joint decisions. Unless an order of appointment under subsection 1 or subsequent order states otherwise, coguardians or coconservators shall make decisions jointly.

§ 5-111. Judicial appointment of successor guardian or successor conservator

1. Appointment of successor by court. The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated future event occurs.

2. Petition to appoint successor. A person entitled under section 5-202 or 5-302 to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under section 5-402 to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

3. Service upon designated future event. A successor guardian or successor conservator appointed to serve when a designated future event occurs may act as guardian or conservator if:

A. The designated event occurs; and

B. The successor guardian or successor conservator files an acceptance of appointment.

4. Succeeds to powers. A successor guardian or successor conservator succeeds to the predecessor's powers unless otherwise provided by the court.

§ 5-112. Effect of death, removal or resignation of guardian or conservator

1. Termination. Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator or when the court approves a resignation of the guardian or conservator under subsection 2.

2. Petition to resign; approval. A guardian or conservator must petition the court to resign. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

3. Liability. Death, removal or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for an action taken on behalf of the individual subject to guardianship or conservatorship or to account for the individual's money or other property.

§ 5-113. Notice of hearing

1. Notice by movant. If notice of a hearing under this Act is required, the movant shall give notice of the date, time and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in this Act, notice must be given in compliance with the Maine Rules of Probate Procedure, Rule 4 or the Maine Rules of Civil Procedure, Rule 4 at least 14 days before the hearing.

2. Proof of notice. Proof of notice of a hearing under this Act must be made before or at the hearing and filed in the proceeding.

3. Type size; plain language. Notice of a hearing under this Act must be in at least 16-point type, in plain language and, to the extent feasible, in a language in which the recipient is proficient.

§ 5-114. Waiver of notice

1. Waiver by person. Except as otherwise provided in subsection 2, a person may waive notice under this Act in a record signed by the person or the person's attorney and filed in the proceeding.

2. Waiver prohibited. A respondent, an individual subject to guardianship, an individual subject to conservatorship, an individual subject to a protective arrangement instead of guardianship or conservatorship, an appointed guardian or an appointed conservator may not waive notice under this Act.

§ 5-115. Guardian ad litem

At any stage of a proceeding under this Act, the court may appoint a guardian ad litem for an individual to identify and represent the individual's best interest or perform other duties if the court determines the individual's interest otherwise would not be adequately represented. If a conflict of interest or potential conflict of interest does not exist, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state on the record the duties of the guardian ad litem and the reasons for the appointment, as well as responsibility for payment of the guardian ad litem fees.

§ 5-116. Request for notice

A person that is interested in the welfare of a respondent, individual subject to guardianship or conservatorship or individual subject to a protective arrangement instead of guardianship or conservatorship and that is not otherwise entitled to notice under this Act may file a request with the court for notice. The court shall send or deliver a copy of the request to the guardian, to the custodian if one has been appointed and to the individual who is subject to the guardianship, conservatorship or protective arrangement. The recipient of the notice may file an objection within 60 days. If an objection is filed, the court shall hold a hearing on the request. If the court approves the request, the court shall give notice of the approval to the guardian or conservator if one has been appointed or to the respondent if no guardian or conservator has been appointed. The request must include a statement showing the interest of the person making it and the address of the person or an attorney for the person to whom notice is to be given.

§ 5-117. Disclosure of bankruptcy or criminal history

1. Disclosure; petition. As part of the petition to be appointed a guardian or conservator, a person shall disclose to the court whether the person:

A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or

B. Has been convicted of:

(1) A felony;

(2) A crime involving dishonesty, neglect, violence or use of physical force; or

(3) Any other crime relevant to the functions the individual would assume as guardian or conservator.

2. Agent; convictions; approval. A guardian or conservator may not engage an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence or use of physical force or any other crime relevant to the functions the agent is being engaged to perform promptly without prior approval of the court.

3. Finances manager agent; debtor; disclosure. If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

§ 5-118. Multiple appointments or nominations

If a respondent or other person makes more than one appointment or nomination of a guardian or a conservator, the latest in time governs.

§ 5-119. Compensation and expenses; in general

1. Attorney for respondent. Unless otherwise compensated for services rendered, an attorney for a respondent in a proceeding under this Act is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the respondent.

2. Attorney or other person. Unless otherwise compensated for services rendered, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or beneficial to an individual for whom a protective arrangement instead of guardianship or conservatorship was ordered is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the individual.

3. Court review. After notice to all interested persons, on petition of an interested person, the propriety of employment of any person by a conservator or guardian, including any attorney, accountant, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed may be reviewed by the court. Any person who has received excessive compensation or reimbursement of inappropriate expenses for services rendered may be ordered to make appropriate refunds. The factors set forth in section 3-721, subsection 2 must be considered as guides in determining the reasonableness of compensation under this section.

4. Costs assessed against petitioner. If the court dismisses a petition under this Act and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the petitioner.

§ 5-120. Liability of guardian or conservator for act of individual subject to guardianship or conservatorship

A guardian or conservator is not personally liable to a 3rd person for the act of an individual subject to guardianship or conservatorship solely by reason of the guardianship or conservatorship.

§ 5-121. Petition after appointment for instructions or ratification

1. Petition. A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act.

2. Instruction or order. On notice and hearing on a petition under subsection 1, the court may give an appropriate instruction and enter any appropriate order.

§ 5-122. Third-party acceptance of authority of guardian or conservator

1. Refusal to recognize authority required. A person must refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The person has actual knowledge or a reasonable belief that the guardian's or conservator's letters of office are invalid or that the guardian or conservator is exceeding or improperly exercising authority granted by the court; or

B. The person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

2. Refusal to recognize authority discretionary. A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The guardian's or conservator's proposed action would be inconsistent with this Act; or

B. The person makes, or has actual knowledge that another person has made, a report to adult protective services or child protective services stating a good faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

3. Report refusal to court. A person that refuses to accept the authority of a guardian or conservator in accordance with subsection 2 shall report the refusal and the reason for refusal to the court. The court on receiving a report shall consider whether removal of the guardian or conservator or other action is appropriate.

4. Petition to require acceptance. A guardian or conservator may petition the court to require a 3rd party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

§ 5-123. Use of agent by guardian or conservator

1. Delegation consistent with plan and fiduciary duty. Except as otherwise provided in subsection 3, a guardian or conservator may delegate a power to an agent that a

prudent guardian or conservator of comparable skills could prudently delegate under the circumstances if the delegation is consistent with the guardian's or conservator's plan and fiduciary duty.

2. Delegating a power. In delegating a power under subsection 1, the guardian or conservator shall exercise reasonable care, skill and caution in:

A. Selecting the agent;

B. Establishing the scope and terms of the agent's work in accordance with the guardian's or conservator's plan;

C. Monitoring the agent's performance and compliance with the delegation; and

D. Redressing action or inaction of the agent that would constitute a breach of the guardian's or conservator's duties if performed by the guardian or conservator.

3. Delegation limitation. A guardian or conservator may not delegate all powers to an agent.

4. Agent performing a delegated power. In performing a power delegated under this section, an agent shall:

A. Exercise reasonable care to comply with the terms of the delegation and use reasonable care in the performance of the delegated power; and

B. If the agent has been delegated the power to make a decision on behalf of the individual subject to guardianship or conservatorship, in making the decision use the same decision-making standard the guardian or conservator would be required to use in making the decision.

5. Jurisdiction of court. By accepting a delegation of a power from a guardian or conservator under this section, an agent submits to the jurisdiction of the courts of this State in an action involving the agent's performance as agent.

6. Liability. A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decisions or actions of the agent.

§ 5-124. Temporary substitute guardian or conservator

1. Temporary substitute guardian. The court may appoint a temporary substitute guardian for a period not longer than 6 months for an individual subject to guardianship if:

A. A proceeding to remove an existing guardian is pending; or

B. The court finds an existing guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.

2. Temporary substitute conservator. The court may appoint a temporary substitute conservator for a period not longer than 6 months for an individual subject to conservatorship if:

A. A proceeding to remove an existing conservator is pending; or

B. The court finds that an existing conservator is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.

3. Powers. Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order

of appointment of the guardian or conservator. The authority of an existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.

4. Notice. The court shall give notice of appointment of a temporary substitute guardian or temporary substitute conservator under this section not later than 5 days after the appointment to:

A. The individual subject to guardianship or conservatorship;

B. The affected guardian or conservator; and

C. In the case of a minor, each parent of the minor and any person currently having custody or care of the minor.

5. Removal. The court may remove a temporary substitute guardian or temporary substitute conservator appointed under this section at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.

6. Application. Except as otherwise provided in this section, the provisions of this Act:

A. Concerning a guardian for a minor apply to a temporary substitute guardian for a minor;

B. Concerning a guardian for an adult apply to a temporary substitute guardian for an adult; and

C. Concerning a conservator apply to a temporary substitute conservator.

§ 5-125. Registration of order; effect

1. Registration of guardianship order. If a guardian has been appointed for an individual in another state and a petition for guardianship of the individual is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this State by filing as a foreign judgment, in a court of an appropriate county of this State, certified copies of the order and letters of office.

2. Registration of conservatorship order. If a conservator is appointed in another state and a petition for conservatorship is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court, may register the conservatorship in this State by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.

3. Exercise of powers. On registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this State all powers authorized in the order except as prohibited by the law of this State other than this Act. If the guardian or conservator is not a resident of this State, the guardian or conservator may maintain an action or proceeding in this State subject to any condition imposed by this State on a nonresident party.

4. Enforcement of registered order. The court may grant any relief available under this Act and law of this State other than this Act to enforce a registered order.

§ 5-126. Grievance against guardian or conservator

1. File a grievance with the court. An individual who is subject to guardianship or conservatorship, or a person interested in the welfare of an individual subject to guardianship or

conservatorship, who reasonably believes a guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this Act may file a grievance with the court. The grievance must be in writing or another record.

2. Procedure upon receiving grievance. Subject to subsection 3, after receiving a grievance under subsection 1, the court:

A. Shall review the grievance and, if necessary to determine the appropriate response to the grievance, court records related to the guardianship or conservatorship;

B. Shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(1) Removal of the guardian and appointment of a successor may be appropriate in accordance with section 5-318;

(2) Termination or modification of the guardianship may be appropriate under section 5-319;

(3) Removal of the conservator and appointment of a successor may be appropriate under section 5-430;

(4) Termination or modification of the conservatorship may be appropriate under section 5-431; and

C. May take any action supported by the grievance and record, including:

(1) Ordering the guardian or conservator to provide to the court a report, accounting, inventory, updated plan or other information;

(2) Appointing a guardian ad litem;

(3) Appointing an attorney for the individual subject to guardianship or conservatorship; or

(4) Scheduling a hearing.

3. Similar grievance filed within 6 months. The court may decline to proceed under subsection 2 if a similar grievance was made within the preceding 6 months and the court followed the procedures of subsection 2 in considering the grievance.

§ 5-127. Delegation by parent or guardian

1. Delegation; power of attorney. A parent or a guardian of a minor or individual subject to guardianship, by a power of attorney, may delegate to another person, for a period not exceeding 12 months, any power regarding care, custody or property of the minor or individual subject to guardianship, except the power to consent to marriage, adoption or termination of parental rights to the minor. A delegation of powers by a court-appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or individual subject to guardianship. A delegation of powers under this section is subject to the same court supervision that applies to temporary substitute guardians as described in section 5-124, subsection 5. Any delegation under this section may be revoked or amended by the appointing parent or guardian in writing and delivered to the person to whom the powers were delegated and to other interested persons.

2. National Guard or Reserves; extension. Notwithstanding subsection 1, unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period

of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under that active duty order or until an order of the court so provides.

This subsection applies only if the parent's or guardian's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress.

3. Temporary care of minor. This subsection applies when a parent or guardian executes a power of attorney under subsection 1 for the purpose of providing for the temporary care of a minor.

A. The execution of a power of attorney under subsection 1, without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court.

B. Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection 1. Nothing in this subsection disqualifies the agent from applying for and receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent.

C. A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1. The agent named in the power of attorney may not be considered a family foster home by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1 and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody.

4. Background check. An organization, other than an organization whose primary purpose is to provide free legal services or to provide hospital services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

A. A screening for child and adult abuse, neglect or exploitation cases in the records of the Department of Health and Human Services; and

B. A criminal history record check that includes information obtained from the Federal Bureau of Investigation.

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this section and to the ombudsman under Title 22, section 4087-A and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor.

Without regard to whether an organization is included or excluded by the terms of this subsection, nothing in this section changes the restrictions on the unauthorized practice of law as provided in Title 4, section 807 with regard to the preparation of powers of attorney.

5. Disqualification of agent. An employee or volunteer for an organization described in subsection 4 may not further assist with a process that results in the completion of a power of attorney for the temporary care of a minor if the background checks conducted pursuant to subsection 4, paragraphs A and B disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home in the State.

6. Penalties. The following penalties apply to violations of this section.

A. An organization that knowingly fails to perform or verify the background checks or fails to share the background check information as required by subsection 4 is subject to a civil penalty not to exceed $5,000, payable to the State and recoverable in a civil action.

B. An organization or an employee or volunteer of an organization that continues to assist a parent, guardian or agent in completing a power of attorney under subsection 4 if the background checks conducted pursuant to subsection 4 disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home is subject to a civil penalty not to exceed $5,000, payable to the State and recoverable in a civil action.

C. An organization or an employee or volunteer of an organization that knowingly fails to maintain records or to disclose information as required by subsection 4 is subject to a civil penalty not to exceed $5,000, payable to the State and recoverable in a civil action.

PART 2

GUARDIANSHIP OF MINOR

Prefatory Comment: Article 5, Part 2 of Title 18-C adopts the minor guardianship provisions of the 2010 version of the Uniform Probate Code, with several modifications.

§ 5-201. Appointment and status of guardian

A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location of

the guardian or the minor. This section does not apply to permanency guardians appointed in District Court child protective proceedings under Title 22, section 4038-C. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.

Maine Comment: This section deviates from the 2010 version of the Uniform Probate Code to recognize the authority of the District Court to appoint a permanency guardian in child protective proceedings. *See* 22 M.R.S. § 4038-C (Child and Family Services and Protection Act: Protection Orders; Permanency Guardianship – Permanency Guardian) and to ensure that a court does not appoint a guardian without leave of the District Court if the District Court has appointed a permanency guardian.

§ 5-202. Parental appointment of guardian

1. Appointment by parent. A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

2. Petition to confirm selection, terminate right to object. Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within 2 years, and after notice as provided in section 5-205, subsection 1, the court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.

3. Appointment effective. Subject to section 5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.

4. Acceptance of appointment. The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

A. File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

B. Give written notice of the acceptance of appointment to every parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor.

5. Notice of right to object. Unless the appointment was previously confirmed by the court, the notice given under subsection 4, paragraph B must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 5-203.

6. Petition to confirm appointment. Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a

guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-205, subsection 1.

7. Parental rights not superseded; priority. The appointment of a guardian by a parent does not supersede the parental rights of any parent. If all parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent that is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

8. Relation back of powers. The powers of a guardian who timely complies with the requirements of subsections 4 and 6 relate back to give acts by the guardian that are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

9. Termination of authority. The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 5-203.

Maine Comment: This section adopts the provision of the 2010 version of the Uniform Probate Code which sets forth the procedures and requirements for the appointment of a "stand-by guardian," which is new to Maine law. These guardians may be nominated in a will or other signed writing by a parent, and the appointment becomes effective only upon the nominating parent's death (i.e., a testamentary appointment) or an adjudication that the parent is an incapacitated person or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child.

§ 5-203. Objection by minor or others to parental appointment

Until the court has confirmed an appointee under section 5-202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent if all other requirements for appointment, including appointment over the objection of a parent, are met. The court may treat the filing of an objection as a petition for the appointment of an emergency or interim guardian under section 5-204 and proceed accordingly.

Maine Comment: This section adopts the language of the corresponding section in the 2010 version of the Uniform Probate Code, with a modification. Because stand-by guardianships are new to Maine law, this is a change from the prior law which only permitted an objection to a testamentary guardianship. Before a court confirms the appointment of a stand-by guardian pursuant to section 5-202, the minor (if at least fourteen years old), the other parent, or another person who has care or custody of the minor may object to the appointment. The language varies from the provision of the 2010 version of the Uniform Probate Code in clarifying that the objection does not preclude the court from appointing the guardian but only if all other requirements for appointment, including appointment over the objection of a parent, are met. The

court may treat the filing of an objection as a petition for the appointment of an emergency or an interim guardian and proceed accordingly.

§ 5-204. Judicial appointment of guardian; conditions for appointment

1. Petition. A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

2. Appointment. The court may appoint a guardian for a minor if the court finds the appointment is in the best interest of the minor, finds the proposed guardian is suitable and finds:

A. That the parents consent;

B. That all parental rights have been terminated; or

C. By clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including but not limited to:

(1) The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent; or

(2) The parent has failed, without good cause, to maintain a parental relationship with the minor, including but not limited to failing to maintain regular contact with the minor for a length of time that evidences an intent to abandon the minor.

3. Priority for appointment. If a guardian is appointed by a parent pursuant to section 5-202 and the appointment has not been prevented or terminated under section 5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

4. Appointment of a guardian on an emergency basis. If the court finds that following the procedures of this Part will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed 90 days, and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of the hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours after the appointment. The court shall schedule a hearing on the appointment of the guardian within 14 days but not less than 7 days after issuance of the order appointing the guardian, except that a parent may request that the hearing take place sooner. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this section.

5. Child support. When appointing a guardian, including on an emergency or interim basis, the court's order must indicate whether there are any support orders involving the child presently in effect through judicial or administrative proceedings and the effect of the guardianship appointment on the orders. The court shall consider whether to order a parent to pay child support to the guardian in accordance with Title 19-A, Part 3. A guardian must be treated as a caretaker relative for computation of a parental support obligation pursuant to Title

19-A, section 2006, subsection 4. The court may reserve the question of support or decline to issue an order if it determines that an order for support is not warranted at the time of the appointment. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this subsection.

Maine Comment: This section adopts the language of the corresponding section of the 2010 version of the Uniform Probate Code, with several modifications. This section sets forth the standards courts must apply when appointing a guardian of a minor based on a petition. Language has been added to subsection 2 to clarify that any guardian appointed must be "suitable" for such appointment, as defined in section 5-102(31). The standard for appointment over a parent's objection in subsection 2(C) is modified to reflect Maine Supreme Judicial Court case law regarding the fundamental constitutional rights of parents. *See, e.g., Guardianship of Aubrey Thayer*, 2016 ME 52; *In re Guardianship of Sebastian Chamberlain*, 2015 ME 76; *Guardianship of Jewel I*, 2010 ME 17.

Maine's adoption of the provision of the 2010 version of the Uniform Probate Code regarding appointment of a guardian on an emergency basis is a change from the prior law. This provision, in conjunction with sections 5-205(7) and (8) regarding the term or duration of the order and interim orders, replaces the temporary guardianship provisions under prior law. Subsection 4 of this section authorizes a court to appoint a guardian on an emergency basis if the standard is met. Maine modifies the language of the 2010 version of the Uniform Probate Code in that the duration of the guardian's authority may not exceed ninety days. If the guardian is appointed without notice, notice of the appointment must be given within forty-eight hours, and the court must schedule a hearing within fourteen days but not less than seven days after the issuance of the order. A parent may request that the hearing take place sooner. The petitioner for the emergency appointment bears the burden of proof on the appropriateness of the appointment.

Subsection 5 departs from the language of the 2010 version of the Uniform Probate Code in granting courts 5 the authority to issue child support orders in minor guardianship cases, and it makes some revisions to prior Maine law. The guardianship order must indicate whether any support order regarding the child is already in effect and the effect of the guardianship order on such existing order. The court must consider whether to include a support order as part of the guardianship appointment, but it also has the authority to reserve the issue of child support or decline to make an award. A guardian is treated as a "caretaker relative" for purposes of calculating child support under 19-AM.R.S. §2006(4) (Child Support Guidelines – Support Guidelines).

§ 5-205. Judicial appointment of guardian; procedure

1. Petition; notice of hearing. After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

A. The minor, if the minor has attained 14 years of age and is not the petitioner;

B. Any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition;

C. Each living parent of the minor or, if there is none, the adult nearest in kinship who can be found;

D. Any person nominated as guardian by the minor if the minor has attained 14 years of age;

E. Any appointee of a parent whose appointment has not been prevented or terminated under section 5-203; and

F. Any guardian or conservator currently acting for the minor in this State or elsewhere.

If the court finds that receiving information from the Department of Health and Human Services may be necessary for the determination of any issue before the court, it may order a Department of Health and Human Services employee to attend the hearing and to provide information relevant to the proceeding. When receiving information by oral testimony that is confidential pursuant to Title 22, section 4008, the court shall close the proceeding and ensure that it is recorded. When receiving information contained in written or media records that is confidential pursuant to Title 22, section 4008, the court shall review those records in camera, weighing the confidentiality of such records against the necessity for counsel and the parties to have access to them, and enter an appropriate order regarding the scope and manner of access. The court, in its discretion, may take other measures necessary to preserve the confidentiality of the information received.

2. Appointment; other disposition. The court, after the hearing scheduled pursuant to subsection 1, shall make the appointment of a guardian if the court finds that venue is proper, the required notices have been given, the conditions of section 5-204, subsection 2 have been met and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

3. Priority of minor's nominee. The court shall appoint a person or persons nominated by the minor, if the minor has attained 14 years of age, in accordance with the requirements of section 5-204.

4. Appointment of counsel. A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent guardian or petitioner when a parent or legal custodian has counsel.

5. Attorney for a minor; notice to minor. If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age. A minor may appear with or through counsel, but the court is not restricted from requiring the minor to be present for some or all of a hearing or other proceeding. A minor 14 years of age or older must receive notice of any proceeding subsequent to the appointment of a guardian through the same means as required for any other party, and the minor may consent, object or otherwise participate in the proceeding.

6. Informed consent of parent. If the petition for guardianship is filed by or with the consent of a parent, the petition must include a consent signed by the parent verifying that the

parent understands the nature of the guardianship and knowingly and voluntarily consents to the guardianship. If a parent informs the court after the petition has been filed that the parent wishes to consent to the guardianship, the court shall require the parent to sign the consent form at that time. The consent required by this section must be on a court form or substantially similar document.

7. Term or duration of order. The court may specify the term of the appointment based on the parties' agreement or the court's findings. The term may be extended or otherwise modified by agreement of the parties or after a hearing. If no term is specified, the appointment remains in place until modified or the occurrence of an event resulting in termination set forth in section 5-210.

If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides as long as the parent's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress.

8. Interim order. Upon motion by a party or the court's initiative, and pursuant to an agreement of the parties or findings made after a hearing, the court may enter an interim order appointing a guardian for a period of time up to 6 months or pending the court's order after the scheduled final hearing on a petition for appointment, if such an order is necessary to provide for the minor's housing, health, education, medical or other essential needs prior to the hearing. Any interim order must meet the requirements of section 5-204 and this section, including notice, and may be extended or modified pursuant to an agreement of the parties or findings made after a hearing.

9. Mediation. The court may refer the parties to mediation at any time after a petition or motion is filed, if meditation services are available at a reasonable fee or no cost, and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that any party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

10. Identifying information sealed. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or the minor would be jeopardized by disclosure of identifying information, including but not limited to the address of a party or the minor, the information must be sealed by the register or clerk and not disclosed to any other party or to the public unless the court orders the disclosure to be made after a hearing in which

the court takes into consideration the health, safety or liberty of the party or minor and determines that the disclosure is in the interest of justice.

Maine Comment: This section adopts the corresponding provision of the 2010 version of the Uniform Probate Code, with several modifications that also represent changes to Maine law. Subsection 1 is derived from the 2010 version of the Uniform Probate Code, with the exception of the final paragraph, which is new to Maine law. That paragraph grants courts the authority to order a Department of Health and Human Services employee to attend an appointment hearing involving a family with which the Department has previously worked to provide information relevant to the proceeding. It also addresses the confidentiality of any information provided by the employee.

Subsection 3, derived from the 2010 version of the Uniform Probate Code, requires the court to appoint a person or persons nominated by the minor, if at least fourteen years old. The language is modified to clarify that any such appointment must also be in accordance with the other appointment requirements, including those set forth in section 5-204(2).

Maine retains the appointment of counsel language located in section 5-204(6) of the now-repealed Title 18-A; it is relocated to this section at subsection 4 so that it is adjacent to the provision regarding the appointment of counsel for a minor and other procedural rights.

Subsection 5, a new provision derived in part from the 2010 version of the Uniform Probate Code, states that any minor may be appointed counsel by the court, and it clarifies that a minor who is entitled to notice of the hearing (those fourteen and older) may appear through counsel, has standing in the proceeding, and is entitled to notice of subsequent proceedings. A minor who is fourteen years of age or older must receive notice of proceedings subsequent to the appointment of a guardian. A minor may appear with or through counsel, but the court may still require the minor to be present for some or all of a hearing or other proceeding.

Subsection 6 is not derived from the 2010 version of the Uniform Probate Code and is new to Maine law. It requires that, before a court may appoint a guardian based on a parent's consent, the parent must provide a signed statement, such as a court form, verifying that the parent understands the nature of the guardianship and knowingly and voluntarily consents to the guardianship.

The first paragraph of subsection 7 addresses the term or duration of an order including a court's authority to specify the term of the order; this language is not in the 2010 version of the Uniform Probate Code, and it represents a change to Maine law. The balance of that subsection addresses the length of an appointment if a parent is under an order to active duty for more than thirty days is derived from the 2010 version of the Uniform Probate Code and was formerly in section 5-207(c-1) of the now-repealed Title 18-A.

Subsections 8 through 10 are not derived from the 2010 version of the Uniform Probate Code and are new to Maine law. Subsection 8 grants courts the express authority to enter an interim order appointing a guardian where necessary to address a minor's needs. The court may specify the duration of the appointment, and the court may extend or modify the term based on an agreement of the parties or the court's findings. The court may enter an interim order appointing a guardian for up to six months or pending the order after the scheduled final hearing if an

interim order is necessary to provide for the minor's housing, health, education, medical or other essential needs before the hearing. The interim order must meet all other requirements for appointment of a guardian, including notice, and the court may extend or modify it based on an agreement of the parties or findings after a hearing.

Subsection 9 grants courts the express authority to require the parties to a minor guardianship proceeding to participate in mediation, provided that the mediation services are available at a reasonable or no cost.

Subsection 10 requires a court to seal identifying information, including an address, of a party or minor where the health, safety or liberty of the party or minor would be jeopardized by disclosure of such information. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or the minor would be jeopardized by disclosure of identifying information, the information must be sealed and not disclosed unless ordered by the court after notice and hearing.

§ 5-206. Terms of order appointing guardian

1. Terms of order. An order appointing a guardian of a minor must include the following:

A. The reasons for the appointment of the guardian, including whether there was any agreement by the parties or findings after a hearing;

B. The powers and duties granted to the guardian, including those set forth in section 5-207;

C. The rights and responsibilities retained by the parent, as described in subsection 3;

D. The anticipated duration of the appointment, including whether it remains in place until a petition to modify or terminate and whether the parties agree to termination after a particular event, such as return from deployment;

E. A description of the process and standards for modification and termination; and

F. Notice of the court's authority to hold a hearing and find that a party has violated a part of the order and is in contempt and to order relief to the other party for the violations or contempt.

2. Other orders concerning minor. If any orders regarding custody or other parental rights with respect to a minor are in effect at the time of the appointment of a guardian of the minor, the order must refer to the orders and indicate the effect of the appointment on the rights and responsibilities set forth in the orders.

3. Rights and responsibilities retained by parent. An order appointing a guardian of a minor must specify whether the minor's parent retains any of the following rights and responsibilities after the appointment and, if any such rights or responsibilities are not retained, the reasons they are not retained:

A. A schedule of parent-child contact or a determination by the court that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the minor. The court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the best interest of the minor. Any schedule of contact must reflect any existing parent-child contact order in effect to the extent reasonably practicable and consistent with the court's findings or the agreement of the parties. The court

may set forth specific conditions that must be satisfied by the parent prior to the start of some or all aspects of the contact schedule;

B. Access to records and information regarding the minor as provided under Title 19-A, section 1653, subsection 2, paragraph D, subparagraph (4);

C. Parental rights and responsibilities as described under Title 19-A, section 1501, subsection 5; and

D. Child support as defined in Title 19-A, section 1501, subsection 2.

4. Parent as coguardian. A parent may copetition and be appointed as a coguardian of the parent's minor child if the court determines a joint appointment with a nonparent is in the best interest of the minor and is made with the parent's consent.

Maine Comment: This section adopts the corresponding provision of the 2010 version of the Uniform Probate Code, with several modifications that also represent changes to Maine law. The new language in this section provides courts the authority to craft orders that will best meet the needs of the child involved and accurately reflect the situation of the parties, much like Maine law already requires for other kinds of orders addressing rights and responsibilities regarding a child. Subsection 1 specifies the terms that must be included in the order appointing a guardian for a minor. Subsection 2 requires courts to refer to and address any existing orders then in effect regarding custody or other parental rights of a child (such as a divorce or parental rights judgment) in the order appointing the guardian. If any orders concerning custody or other parental rights of the minor are in effect at the time of the appointment of the guardian, the guardianship order must refer to such orders and indicate the effect of the appointment on the rights and responsibilities set forth in the other order.

The language in section 5-207 of the now-repealed Title 18-A regarding limited guardianships has been replaced with provisions in subsection 3 requiring orders appointing guardians to specify which, if any, rights and responsibilities are retained by a minor's parent regarding parent-child contact, access to records, rights and responsibilities (decision-making) pursuant to 19-A M.R.S. § 1501(5) (General Provisions – Definitions), and child support, and the reasons any such rights are not retained. *See Guardianship of Kiara Lantigua et al.*, 2016 ME 29.

Finally, subsection 4 clarifies that a parent may co-petition and be appointed as co-guardian of the parent's child if the parent has consented to the guardianship and the court determines the joint appointment with a non-parent is in the minor's best interest. *See Guardianship of LaBree*, 2013 ME 82; *Guardianship of Jewel II*, 2010 ME 80.

§ 5-207. Duties of guardian

1. Guardian has duties and responsibilities of a parent. Except as otherwise limited by the court, a guardian of a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health and welfare. A guardian shall act at all times in the best interest of the minor and exercise reasonable care, diligence and prudence.

2. Specific duties and responsibilities. A guardian shall:

A. Become or remain personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capacities, limitations, needs, opportunities and physical and mental health;

B. Take reasonable care of the minor's personal effects and bring a protective proceeding if necessary to protect other property of the minor;

C. Expend money of the minor that has been received by the guardian for the minor's current needs for support, care, education, health and welfare;

D. Conserve any excess money of the minor for the minor's future needs, but if a conservator has been appointed for the estate of the minor, the guardian shall pay the money at least quarterly to the conservator to be conserved for the minor's future needs;

E. Report the condition of the minor and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the minor's welfare or as required by court rule; and

F. Inform the court of any change in the minor's custodial dwelling or address.

3. Reporting on the status of the minor. The court may require the guardian of a minor to submit regular status reports about the minor, to be submitted under oath or affirmation to the court and served on the parent and guardian ad litem, if still active, on an annual basis or under other conditions set by the court.

A. The court may require the status report to include specific information, including but not limited to the following to the extent applicable to the guardianship:

(1) The current address of the minor and each parent;

(2) The minor's health care and health needs, including any medical and mental health services the child received;

(3) The minor's educational needs and progress, including the name of the minor's school, day care or other early education program, the minor's grade level and the minor's educational achievements;

(4) Contact between the minor and the minor's parents, including the frequency and duration of the contact and whether it was supervised;

(5) How the parents have been involved in decision making for the minor;

(6) Whether the parents have provided any financial support for the minor;

(7) How the guardian has carried out the guardian's responsibilities and duties under the order of appointment;

(8) An accounting of any funds received on the minor's behalf;

(9) The minor's strengths, challenges and any other areas of concern; and

(10) Recommendations with supporting reasons as to whether the guardianship order should be continued, modified or terminated.

B. Before deciding whether to require status reports, the court shall consider whether reporting would create a substantial likelihood of harm to the health, safety or liberty of the minor.

C. The contents of status reports are confidential and may not be released to any nonparty except by court order.

D. A parent may petition the court to seek a status report from the guardian if one is not otherwise required. A person who is not a parent but is interested in the minor's welfare may petition the court to seek a status report based upon specific concerns about the minor's care.

E. Nothing in this subsection limits a court's authority to otherwise supervise the guardianship, including scheduling a status conference to address matters raised in a status report or to be held at a specified time after the entry of the order or appointing a guardian ad litem or visitor to conduct an investigation. The court shall accept any information submitted by a minor 14 years of age or older regarding the guardianship.

Maine Comment: This section adopts the corresponding provision of the 2010 version of the Uniform Probate Code, with modifications that also represent changes to Maine law. Subsection 3 is a new provision, not derived from the 2010 version of the Uniform Probate Code, that grants courts the authority to require a guardian to provide regular status reports about the minor, to be submitted under oath or affirmation to the court and served on the parent on an annual basis or under other conditions set by the court. The contents of status reports are confidential and may not be released to a nonparty except by order of the court. A parent or other person interested in the minor's welfare may petition the court to seek a status report when one is not required or based upon specific concerns about the minor's care. An active guardian *ad litem* may also receive the report. The court shall accept any information submitted by a minor fourteen years of age or older regarding the guardianship. The court must consider, before imposing a reporting requirement, whether such reporting would create a substantial likelihood of harm to the health, safety or liberty of the child. Subsection 3 also sets out categories of specific information that may be requested in the report and clarifies that the court retains authority to take other steps to supervise the guardianship.

§ 5-208. Powers of guardian

1. Guardian has powers of a parent. Except as otherwise limited by the court, a guardian of a minor has the powers of a parent regarding the minor's support, care, education, health and welfare.

2. Specific powers. A guardian may:

A. Apply for and receive money for the support of the minor otherwise payable to the minor's parent, guardian or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship or custodianship;

B. If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the minor, take custody of the minor and establish the minor's place of custodial dwelling, but may establish or move the minor's custodial dwelling outside the State only upon express authorization of the court;

C. If a conservator for the estate of a minor has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or to pay money for the benefit of the minor;

D. Except as limited by section 5-807, consent to medical or other care, treatment or service for the minor;

E. Consent to the marriage of the minor; and

F. If reasonable under all of the circumstances, delegate to the minor certain responsibilities for decisions affecting the minor's well-being.

3. Consent to adoption. The court may specifically authorize the guardian to consent to the adoption of the minor.

4. Powers of coguardians. If coguardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.

Maine Comment: This section adopts the corresponding provision of the 2010 version of the Uniform Probate Code, which does not represent a change from prior law.

§ 5-209. Rights and immunities of guardian

1. Reasonable compensation and reimbursement. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing provided by the guardian to the minor, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the minor, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

2. Personal liability. A guardian need not use the guardian's personal funds for the minor's expenses. A guardian is not liable to a 3rd person for acts of the minor solely by reason of the guardianship. A guardian is not liable for injury to the minor resulting from the negligence or act of a 3rd person providing medical or other care, treatment or service for the minor except to the extent that a parent would be liable under the circumstances.

Maine Comment: This section adopts the corresponding provision of the 2010 version of the Uniform Probate Code, which does not represent a change from prior law.

§ 5-210. Modification or termination of guardianship; other proceedings after appointment

1. Modification of guardianship order. A guardian of a minor, a parent of a minor, a person interested in the welfare of a minor or the minor, if 14 years of age or older, may file a motion asking the court to modify the terms of an order appointing a guardian or to take other action in the best interest of the minor as circumstances require. The motion must be filed with the court and served on all parties entitled to notice. Unless the motion specifies that is it filed with the consent of all parties entitled to notice, the matter must be set for hearing to determine whether there has been a substantial change in circumstances necessitating modification of the order and how the court should modify the order in furtherance of the best interest of the minor and the parent's rights. The court may identify certain requirements that must be met before specific provisions of the order are modified. A court may modify a term of a guardianship order as needed to grant relief to a party to address contempt or other failure to follow the order.

2. Termination of guardianship. A guardianship of a minor terminates upon the minor's death, adoption, emancipation, marriage or attainment of majority or as ordered by the court pursuant to this section.

3. Termination of appointment. The appointment of a guardian or conservator terminates upon the death, resignation or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the minor or protected person.

4. Petition for removal or permission to resign. A minor, if 14 years of age or older, a parent of the minor or a person interested in the welfare of the minor may petition for removal of a guardian on the ground that removal would be in the best interest of the minor or for other good cause. A guardian may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian.

5. Appointment of additional or successor guardian. The court may appoint an additional guardian at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian becomes eligible to act on the occurrence of the vacancy or designated event or the filing of the acceptance of appointment, whichever last occurs. A successor guardian succeeds to the predecessor's powers.

6. Termination without consent; best interest; subsequent petitions. The court may not terminate the guardianship of a minor in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the minor. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the minor. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

7. Parent's petition to terminate guardianship; burden of proof. A parent may bring a petition to terminate the guardianship of a minor. A parent's notification to the court of the revocation of prior consent for a guardianship must be considered a petition to terminate the guardianship. Before the court may apply the termination requirements in subsection 6, a party opposing a parent's petition to terminate a guardianship bears the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor, in accordance with the standard set forth in section 5-204, subsection 2, paragraph C. If the party opposing termination of the guardianship fails to meet its burden of proof on the question of the parent's fitness to regain custody, the court shall terminate the guardianship and make any further order that may be appropriate. In a contested action, the court may appoint counsel for the minor or for any indigent guardian or parent. In ruling on a petition to terminate a guardianship, the court may modify the terms of the guardianship or order transitional arrangements pursuant to section 5-211.

Maine Comment: This section adopts the corresponding provisions of the 2010 version of the Uniform Probate Code, with several modifications that reflect, clarify, or revise Maine law. This section provides a single location in Title 18-C addressing post-appointment proceedings in a minor guardianship matter. The language in subsection 1, which is not derived from the 2010 version of the Uniform Probate Code and is new to Maine law, grants courts the authority to modify a guardianship order on motion of the guardian, parent of the minor, a person interested in the welfare of the minor, or the minor, if fourteen years of age or older, and it includes additional language regarding the procedure for seeking such modifications. The court has the authority to modify the terms of the order or to take other action in the best interest of the minor, as circumstances require. If not all parties consent to the modification, the court must determine after a hearing whether there has been a substantial change in circumstances necessitating modification of the order and how it should modify the order in furtherance of the best interest of the minor and the parent's rights. The court may identify certain requirements to be met before making modifications, and it may modify an order to address a party's contempt or other failure to follow the order.

Subsections 2, 3, 4, and 5 are derived from the 2010 version of the Uniform Probate Code and do not represent a substantive change to Maine law.

Subsection 6 and 7 address the standards and burdens of proof applicable to contested petitions to terminate a guardianship. Under subsection 6, except upon a petition to terminate the guardianship filed by the parent, the court may not terminate the guardianship without the consent of the guardian unless the court finds by a preponderance of the evidence that the termination is in the best interest of the minor. Subsection 7 provides that if a parent petitions for the termination of the guardianship, the party opposing the termination (likely the guardian) bears the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor. The court must determine unfitness by applying the "unwilling or unable to exercise their parental rights standard" in section 5-204(2)(C). If the party fails to prove that the parent is unfit, the court shall terminate the guardianship and make any further order that may be appropriate. *See Guardianship of Alisha K. Golodner*, 2017 ME 54; *Guardianship of David C.*, 2010 ME 136.

§ 5-211. Transitional arrangement for minors

In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the minor. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation. In determining the best interest of the minor, a court may consider the minor's relationship with the guardian and need for stability.

Maine Comment: The 2010 version of the Maine Probate Code has no provision concerning transitional arrangements for minors. This section carries forward section 5-213 of the now-repealed Title 18-A to support transitional arrangements in the best interest of the minor. An additional sentence has been added to this provision to allow a court to consider the child's relationship with the guardian and need for stability when the court evaluates a child's best

interest in the context of ordering transitional arrangements for minors at the time a guardianship order is issued, modified, or terminated.

§ 5-212. Appointment of guardian ad litem for minor

In any proceeding under this Part, including for issuing, modifying or terminating an order of guardianship for a minor, the court may appoint a guardian ad litem for the minor. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. The court shall follow the requirements of section 1-111 and other applicable law or court rules in making the appointment.

Maine Comment: This section is not derived from the 2010 version of the Uniform Probate Code, and grants specific authority to courts to appoint a guardian *ad litem* for a minor at any stage of a guardianship proceeding. The section cross-references section 1-111, which addresses the requirements for such appointments where authorized elsewhere in Title 18-C, as well as "other applicable law" as there are statutes outside of Title 18-C that govern guardians *ad litem* in minor guardianship proceedings, such as 4 M.R.S. §§ 1554 & 1555 (Children's Guardians Ad Litem: Guardian Ad Litem Responsibilities & Appointment of Guardians Ad Litem in Title 18-C and Title 19-A cases).

PART 3

GUARDIANSHIP OF ADULT

§ 5-301. Basis for appointment of guardian for adult

1. Appointment. On petition and after notice and hearing, the court may:

A. Appoint a guardian for a respondent who is an adult if it finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

(1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making;

(2) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives; and

(3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or

B. With appropriate findings, treat the petition as one for a conservatorship under Part 4 or a protective arrangement instead of guardianship or conservatorship under Part 5, enter any other appropriate order or dismiss the proceeding.

2. Powers. The court shall grant to a guardian appointed under subsection 1 only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders

that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of the respondent.

§ 5-302. Petition for appointment of guardian for adult

1. Petition for appointment. A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for the appointment of a guardian for the adult.

2. Contents of petition. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for care of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian by the respondent;

(10) A person nominated as guardian by the respondent's parent, spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected; and

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

D. The reason a guardianship is necessary, including a brief description of:
(1) The nature and extent of the respondent's alleged need;

(2) Any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;

(3) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(4) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's alleged need;

E. Whether the petitioner seeks a limited guardianship or full guardianship;

F. If the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate;

G. If a limited guardianship is requested, the powers to be granted to the guardian;

H. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

I. If the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

J. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

§ 5-303. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-302 for appointment of a guardian for a respondent who is an adult, the court shall set a date, time and place for hearing the petition.

2. Notice to respondent. A copy of a petition under section 5-302 and notice of a hearing on the petition must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to other persons. In a proceeding on a petition under section 5-302, notice of the hearing also must be given to any person required to be listed in the petition under section 5-302, subsection 2, paragraphs A to C and any other person the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

4. Notice of petition after appointment. Notice of a hearing on a petition that is filed after the appointment of a guardian and that seeks an order under this Part, together with a copy of the petition, must be given to the adult subject to guardianship, the guardian and any other person as the court determines.

§ 5-304. Appointment of visitor

1. Appointment of visitor. On receipt of a petition for appointment of a guardian for a respondent who is an adult under section 5-302, the court shall appoint a visitor. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Interview with respondent. A visitor appointed under subsection 1 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a guardian;

B. Determine the respondent's views about the appointment, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

3. Additional duties. In addition to the duties imposed by subsection 2, the visitor shall:

A. Interview the petitioner and proposed guardian, if any;

B. Visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;

C. Obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; and

D. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

4. Report of visitor. A visitor under this section shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:

A. Whether or not the respondent wishes to contest any aspect of the proceedings or to seek any limitation on the proposed guardian's powers;

B. A recommendation whether an attorney should be appointed to represent the respondent;

C. A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage;

D. Recommendations regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternatives for meeting

the respondent's needs are available and, if a guardianship is recommended, whether it should be full or limited and, if a limited guardianship, the powers to be granted to the guardian;

E. A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;

F. A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;

G. A recommendation whether a further professional evaluation under section 5-306 is necessary;

H. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

I. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

J. Any other matter as the court directs.

§ 5-305. Appointment and role of attorney for adult

1. Appointment of attorney required. The court shall appoint an attorney to represent the respondent in a proceeding on a petition under section 5-302 if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed guardian's powers.

2. Duties of attorney. An attorney representing the respondent in a proceeding on a petition under section 5-302 shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

§ 5-306. Professional evaluation

1. Evaluation; report. In every adult guardianship matter, the respondent must be examined by a licensed physician or psychologist who is acceptable to the court and who is qualified to evaluate the respondent's alleged cognitive and functional abilities. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement and recommendation for the appropriate treatment, support or habilitation plan; and

D. The date of the examination on which the report is based.

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1.

§ 5-307. Attendance and rights at hearing

1. Attendance by respondent. Except as otherwise provided in subsection 2, a hearing under section 5-303 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology.

2. Hearing without respondent in attendance. A hearing under section 5-303 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so; or

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-303 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-303.

5. Rights of respondent at hearing. For or at a hearing under section 5-303, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Attendance by proposed guardian required. Unless excused by the court for good cause, the proposed guardian shall attend a hearing under section 5-303.

7. Closed upon request; good cause. A hearing under section 5-303 must be closed on request of the respondent and a showing of good cause.

8. Participation; best interest of respondent. Any person may request to participate in a hearing under section 5-303. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

§ 5-308. Confidentiality of records

1. Matter of public record; exception. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the records after:

A. The respondent or individual subject to guardianship requests the records be sealed; and

B. Either:

(1) The petition for guardianship is dismissed; or

(2) The guardianship is terminated.

2. Access to court records. An adult subject of a proceeding for a guardianship, whether or not a guardian is appointed, any attorney designated by the adult and a person entitled to notice under section 5-310, subsection 5 are entitled to access court records of the proceeding and resulting guardianship, including a guardian's report or plan. In addition, a person for good cause may petition the court for access to court records of the guardianship, including an annual report or guardian's plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interest of the adult.

3. Reports confidential; availability. A report under section 5-304 of a visitor or a professional evaluation under section 5-306 is confidential and must be sealed on filing but is available to:

A. The court;

B. The individual who is the subject of the report or evaluation, without limitation as to use;

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

D. An agent appointed under a power of attorney for health care or advance health care directive, or power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and

E. Other persons when it is in the public interest or for a purpose the court orders for good cause.

§ 5-309. Who may be guardian of adult; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a guardian for an adult shall consider persons otherwise qualified in the following order of priority:

A. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;

B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;

C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive;

D. A spouse or domestic partner of the respondent; and

E. A family member or other individual who has exhibited special care and concern for the respondent.

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential guardian's relationship with the respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to which the potential guardian and the respondent have similar values and preferences and the likelihood the potential guardian will be able to satisfy the duties of a guardian successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority.

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

A. The individual is related to the respondent by blood, marriage or adoption; or

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

5. Long-term care institution; exceptions. An owner, operator or employee of a long-term care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

§ 5-310. Order of appointment

1. Order contents. A court order appointing a guardian for an adult must clearly:

A. Include a finding that clear and convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance or supported decision making;

B. Include a finding that clear and convincing evidence established that the respondent was given proper notice of the hearing on the petition;

C. State whether the adult subject to guardianship retains the right to vote and, if the adult does not retain the right to vote, include findings that support removing that right, which must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process; and

D. State whether the adult subject to guardianship retains the right to marry and, if the adult's right to marry is subject to conditions or if the adult does not retain the right to marry, include findings that support the conditions on that right or the removal of that right.

2. Rights retained. An adult subject to guardianship retains the right to vote unless the order under subsection 1 includes the findings required by subsection 1, paragraph C. An adult subject to guardianship retains the right to marry unless the order under subsection 1 includes the findings required by subsection 1, paragraph D.

3. Basis for full guardianship. A court order establishing a full guardianship for an adult clearly must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.

4. Limited guardianship; powers granted to guardian. A court order establishing a limited guardianship for an adult must state clearly the powers granted to the guardian.

5. Notice; access to reports and plans. The court shall, as part of any order establishing a guardianship for an adult, identify any person that subsequently is entitled to:

A. Notice of the rights of the adult subject to guardianship;

B. Notice of a change in the primary dwelling of the adult subject to guardianship;

C. Notice that the guardian has delegated:

(1) The power to manage the care of the adult subject to guardianship;

(2) The power to make decisions about where the adult subject to guardianship lives;

(3) The power to make major medical decisions on behalf of the adult subject to guardianship;

(4) Any power that requires court approval under section 5-315; or

(5) Substantially all powers of the guardian.

D. Notice that the guardian will be unavailable to visit the adult subject to guardianship for more than 2 months or unable to perform the guardian's duties for more than one month;

E. A copy of the guardian's report and plan;

F. Access to court records pertaining to the guardianship;

G. Notice of the death or significant change in the condition of the adult subject to guardianship;

H. Notice that the court has limited or modified the powers of the guardian; and

I. Notice of the guardian's removal.

6. Entitled to notice; exceptions. A spouse, a domestic partner and the adult children of the adult subject to guardianship are entitled to notice under subsection 5 unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.

§ 5-311. Notice of order of appointment; rights

A guardian appointed under section 5-309 shall give to the adult subject to guardianship and to all other persons given notice under section 5-303 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

§ 5-312. Emergency guardian

1. Basis for emergency guardianship. On petition by a person interested in an adult's welfare or on its own after a petition has been filed under section 5-302, the court may appoint an emergency guardian for the adult if the court finds:

A. Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a guardian under section 5-301 may exist.

2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-309 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing. The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice and a

hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and any other person as the court determines of the appointment. If the respondent objects to the appointment, the court shall hold a hearing within 14 days of the appointment.

5. Not a determination. Appointment of an emergency guardian under this section is not a determination that the conditions required for appointment of a guardian under section 5-301 have been satisfied.

6. Removal; report; application. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires. In other respects, the provisions of this Act concerning guardians apply to an emergency guardian appointed under this section.

§ 5-313. Duties of guardian for adult

1. Fiduciary. A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.

2. Promote self-determination. A guardian for an adult shall promote the self-determination of the adult subject to guardianship and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

A. Become or remain personally acquainted with the adult subject to guardianship and maintain sufficient contact with the adult, including through regular visitation, to know of the adult's abilities, limitations, needs, opportunities and physical and mental health;

B. To the extent reasonably feasible, identify the values and preferences of the adult subject to guardianship and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities and social interactions; and

C. Make reasonable efforts to identify and facilitate supportive relationships and services for the adult subject to guardianship.

3. Reasonable care, diligence and prudence. A guardian for an adult at all times shall exercise reasonable care, diligence and prudence when acting on behalf of or making decisions for the adult subject to guardianship. In furtherance of this duty, the guardian shall:

A. Take reasonable care of the personal effects, pets and service or support animals of the adult subject to guardianship and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property;

B. Expend money of the adult subject to guardianship that has been received by the guardian for the adult's current needs for support, care, education, health and welfare;

C. Administer assets of the adult subject to guardianship having a value of $5,000 or less;

D. Conserve any excess money of the adult subject to guardianship for the adult's future needs, but if a conservator has been appointed for the adult, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the adult's future needs; and

E. Monitor the quality of services, including long-term care services, provided to the adult subject to guardianship.

4. Decision of the adult. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.

5. Decision in best interest of the adult. If a guardian for an adult cannot make a decision under subsection 4 because the guardian does not know and cannot reasonably determine the decision that the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

B. Other information the guardian believes the adult would have considered if the adult were able to act; and

C. Other factors that a reasonable person in the circumstances of the adult would consider, including consequences for others.

6. Notice to court. A guardian for an adult immediately shall notify the court if the condition of the adult subject to guardianship has changed so that the adult is capable of exercising rights previously removed.

§ 5-314. Powers of guardian for adult

1. Powers. Except as otherwise limited by the court, a guardian for an adult may:

A. Apply for or receive money or benefits for the support of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator;

B. If otherwise consistent with an order by a court with jurisdiction relating to the dwelling of the adult, establish the adult's place of dwelling;

C. Consent to medical or other care, treatment or service for the adult;

D. If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit;

E. To the extent reasonable, delegate to the adult certain responsibility for decisions affecting the adult's well-being; and

F. Receive personally identifiable health care information concerning the adult.

2. Adoption. The court may by specific order authorize a guardian for an adult to consent to the adoption of the adult.

3. Specific order of court required. The court may by specific order authorize a guardian for an adult to:

A. Consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed or made subject to conditions under section 5-310;

B. Petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage; or

C. Support or oppose a petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage.

4. Court's consideration. In determining whether to authorize a power under subsection 2 or 3, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values and prior directions and whether the underlying act would be in the best interest of the adult.

5. Duties with respect to dwelling. In exercising the guardian's power under subsection 1, paragraph B to establish the dwelling of the adult subject to guardianship, a guardian shall:

A. Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in section 5-313, subsections 4 and 5. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with section 5-313, subsection 5 a residential setting that is consistent with the best interest of the adult;

B. In selecting among residential settings, give priority to a residential setting that is in a location that will allow the adult subject to guardianship to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless doing so would be inconsistent with the decision-making standard in section 5-313, subsections 4 and 5;

C. Not later than 30 days after a change in the dwelling of the adult subject to guardianship, give notice of the change to the court, the adult subject to guardianship and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardianship received advance notice of the change and whether the adult objected to the change;

D. Establish or move the permanent place of dwelling of an adult subject to guardianship to a nursing home, mental health facility or other facility that places restrictions on the individual's ability to leave or have visitors only if:

(1) The establishment or move is set forth in the guardian's plan;

(2) The court authorizes the establishment or move; or

(3) Notice of the establishment or move is given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed;

E. Establish or move the place of dwelling of an adult subject to guardianship outside this State only if consistent with the guardian's plan and authorized by the court by specific order; and

F. Take action that would result in the sale of or surrender the lease to the primary dwelling of the adult subject to guardianship only if:
(1) The action is specifically set forth in the guardian's plan;

(2) The court authorizes the action by specific order; or

(3) Notice of the action is given at least 14 days before the action to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed.

6. Duties with respect to health care. In exercising the guardian's power under subsection 1, paragraph C to make health care decisions, a guardian shall:
A. Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options;

B. Defer to a decision by an agent under a power of attorney for health care or an advance health care directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and

C. Take into account:
(1) The risks and benefits of treatment options; and

(2) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

§ 5-315. Special limitations on guardian's power

1. Limitations; health care; finances. Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the adult. If a power of attorney for health care or an advance health care directive is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

2. Commitment to mental health facility. A guardian for an adult may not initiate the commitment of the adult to a mental health facility except in accordance with the State's procedure for involuntary civil commitment under Title 34-B, chapter 3, subchapter 4, article 3.

3. Restrictions on contact. A guardian for an adult may not restrict the ability of the adult to communicate, visit or interact with others, including receiving visitors or making or receiving telephone calls, personal mail or electronic communications, including through social media, or participating in social activities, unless:
A. Authorized by the court by specific order;

B. A protective order or a protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or

C. The guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological or financial harm to the adult and the restriction is:
(1) For a period of not more than 7 business days if the person has a family or preexisting social relationship with the adult; or

(2) For a period of not more than 60 days if the person does not have a family or preexisting social relationship with the adult.

§ 5-316. Guardian's plan

1. Plan; revision. The petitioner for appointment of a guardian for an adult shall file with the petition a plan for the care of the adult. When there is a subsequent change in circumstances, or the guardian seeks to deviate significantly from the plan previously filed, the guardian shall file with the court a revised plan for the care of the adult. The plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the guardian. The plan must identify:
A. The living arrangement, services and supports the guardian expects to arrange, facilitate or continue for the adult;

B. Social and educational activities the guardian expects to facilitate on behalf of the adult;

C. Any person with whom the adult has a relationship and any plan the guardian has for facilitating visits with the person;

D. The anticipated nature and frequency of the guardian's visits and communication with the adult;

E. Goals for the adult including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals;

F. Whether the adult already has a plan in place and, if so, whether the guardian's plan is consistent with the adult's plan; and

G. A statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

2. Notice of revised plan. A guardian shall give notice of the filing of a revised plan under subsection 1, along with a copy of the plan, to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines. The notice must include a statement of the right to object to the revised plan and be given not later than 14 days after the filing.

3. Objection to revised plan. An adult subject to guardianship and any person entitled under subsection 2 to receive notice and a copy of the guardian's plan may object to the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a guardian's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or the revised plan the court shall consider an objection under subsection 3 and whether the plan

or revised plan is consistent with the guardian's duties and powers under sections 5-313 and 5-314. The court may schedule a hearing on any revised plan submitted and may not approve any revised plan until 30 days after its filing.

5. Copy of approved plan. After a guardian's plan under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines.

§ 5-317. Guardian's report; monitoring of guardianship

1. Report; contents. A guardian for an adult at least annually shall submit to the court a report in a record regarding the condition of the adult and accounting for money and other property in the guardian's possession or subject to the guardian's control. Each report must state or contain:

A. The mental, physical and social condition of the adult;

B. The living arrangements of the adult during the reporting period;

C. A summary of the supported decision making, technological assistance, medical services, educational and vocational services and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

D. A summary of the guardian's visits with the adult, including the dates of the visits;

E. Action taken on behalf of the adult;

F. The extent to which the adult has participated in decision making;

G. If the adult is living in a mental health facility or living in a facility that provides the adult with health care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment or habilitation consistent with the adult's preferences, values, prior directions and best interest;

H. Anything of more than de minimis value that the guardian, any individual who resides with the guardian or the spouse, domestic partner, parent, child or sibling of the guardian has received from an individual providing goods or services to the adult;

I. If the guardian has delegated powers to an agent, the powers delegated and the reason for the delegation;

J. Any business relation the guardian has with a person the guardian has paid or a person that has benefited from the property of the adult;

K. A copy of the guardian's most recent plan and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

L. Plans for future care and support;

M. A recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; and

N. Whether any coguardian or successor guardian appointed to serve when a designated future event occurs is alive and able to serve.

2. Appointment of visitor. The court may appoint a visitor to review a report submitted under this section, interview the guardian or adult subject to guardianship or investigate any other matter involving the guardianship.

3. Notice of filing of report; copy. Notice of the filing of a guardian's report under this section, together with a copy of the report, must be given to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and any other person as the court determines. The notice and report must be given not later than 14 days after the filing of the report.

4. System to monitor reports. The court shall establish a system for monitoring reports submitted under this section and review each report at least annually to determine whether:

A. The report provides sufficient information to establish the guardian has complied with the guardian's duties;

B. The guardianship should continue; and

C. The guardian's requested fees, if any, should be approved.

5. Noncompliance; modification or termination. If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

A. Shall notify the adult, the guardian and all persons entitled to notice under section 5-310, subsection 5 or a subsequent order;

B. May require additional information from the guardian;

C. May appoint a visitor to interview the adult or guardian or investigate any matter involving the guardianship; and

D. May consider removing the guardian under section 5-318 or terminating the guardianship or changing the powers of the guardian or other terms of the guardianship under section 5-319.

6. Fees not reasonable. If the court has reason to believe that fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

7. Approval of report. A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If, after notice and hearing, the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

§ 5-318. Removal of guardian for adult; appointment of successor

1. Removal; successor. The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

2. Hearing. The court shall conduct a hearing to determine whether to remove a guardian for an adult and appoint a successor on:

A. Petition of the adult, the guardian or a person interested in the welfare of the adult that contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor may be appropriate, but the court may decline to hold a hearing

if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that removal of the guardian and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the adult.

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

4. Attorney for the adult. An adult subject to guardianship who seeks to remove the guardian and have a successor appointed has a right to choose an attorney to represent the adult. If the adult subject to guardianship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

5. Procedure to select successor. In selecting a successor guardian of an adult subject to guardianship, the court shall follow the procedures under section 5-309.

6. Notice of appointment of successor. Not later than 30 days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order.

§ 5-319. Termination or modification of guardianship for adult

1. Petition for termination or modification. An adult subject to guardianship, the guardian for the adult or a person interested in the welfare of the adult may petition for:

A. Termination of the guardianship on the ground that a basis for appointment under section 5-301 does not exist or termination would be in the best interest of the adult, or for other good cause; or

B. Modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

2. Hearing. The court shall conduct a hearing to determine whether termination or modification of a guardianship of an adult is appropriate on:

A. Petition under subsection 1 that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because of a change in the functional needs of the adult or supports or services available to the adult;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the adult's needs are available; or

D. A determination by the court that a hearing would be in the best interest of the adult.

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

4. Termination. On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that the basis for appointment of a guardian under section 5-301 is satisfied.

5. Modification. The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports or services or other circumstances.

6. Procedure. Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult that apply to a petition for guardianship.

7. Attorney for the adult. An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has a right to choose an attorney to represent the adult in this matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

PART 4

CONSERVATORSHIP

§ 5-401. Basis for appointment of conservator

1. Conservator for minor; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor, if the court finds by a preponderance of evidence that:

A. The minor owns money or property requiring management or protection that otherwise cannot be provided; or

B. Appointment of a conservator is in the best interest of the minor and:

(1) If the minor has a parent, the court gives weight to any recommendation of the minor's parent whether an appointment is in the best interest of the minor; and

(2) Either:

(a) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(b) Appointment is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

2. Conservator for adult; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court determines by clear and convincing evidence that:

A. The adult is unable to manage property or financial affairs because:

(1) Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance and supported decision making; or

(2) The adult is missing, detained or unable to return to the United States;

B. Appointment is necessary to:
(1) Avoid harm to the adult or significant dissipation of the property of the adult; or

(2) Obtain or provide money needed for the support, care, education, health or welfare of the adult, or of an individual entitled to the adult's support, and protection is necessary or desirable to obtain or provide money for the purpose; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

3. Powers. The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and enter orders that encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship or other less restrictive alternatives would meet the needs of the respondent.

§ 5-402. Petition for appointment of conservator

1. Petitioner. The following may petition for the appointment of a conservator:
A. The individual for whom the order is sought;

B. A person interested in the estate, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property and financial affairs of the individual; or

C. The guardian of the individual.

2. Contents. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:
A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

B. The name and address of the respondent's:
(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before filing of the petition;

C. The name and current address of each of the following, if applicable:
(1) A person responsible for the care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for a respondent in this State or another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care or an advance health directive in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

(10) Any proposed conservator, including a person nominated by the respondent if the respondent is 14 years of age or older; and

(11) If the individual for whom a conservator is sought is a minor:

(a) An adult with whom the minor resides if not otherwise listed; and

(b) Any person not otherwise listed that had the care or custody of the minor for 60 or more days during the 2 years preceding the filing of the petition or any person that had the primary care or custody of the minor for at least 730 days during the 5 years preceding the filing of the petition;

D. A general statement of the respondent's property with an estimate of its value, and the source and amount of other anticipated income or receipts;

E. The reason conservatorship is necessary, including a brief description of:
(1) The nature and extent of the respondent's alleged need;

(2) If the petition alleges the respondent is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;

(3) Any protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's alleged need which have been considered or implemented;

(4) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(5) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's need;

F. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

G. Whether the petitioner seeks a limited conservatorship or a full conservatorship;

H. If the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

I. If the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed; and

J. If the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any other requested limitation on the authority of the conservator.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

§ 5-403. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition for appointment of a conservator under section 5-402, the court shall set a date, time and place for hearing the petition.

2. Notice to respondent. A copy of a petition under section 5-402 and notice of a hearing on the petition must be served personally on the respondent at least 14 days before the hearing. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to others. In a proceeding on a petition under section 5-402, notice of the hearing also must be given to the persons required to be listed in the petition under section 5-402, subsection 3, paragraphs A to C and any other person interested in the respondent's welfare as the court determines at least 14 days prior to the hearing. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

4. Notice of petition after order. Notice of a hearing on a petition that is filed after the appointment of a conservator and that seeks an order under this Part, together with a copy of the petition, must be given to the individual subject to conservatorship if the individual is 14 years of age or older and is not missing, detained or unable to return to the United States, the conservator and any other person as the court determines.

§ 5-404. Petition for protective order

1. Petition. The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected, including the parent, guardian, custodian or domestic partner of the person to be protected, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for a protective order.

2. Contents of petition. A petition under subsection 1 must contain such information and be in such form as the Supreme Judicial Court by rule provides.

3. Purpose; priority scheduling. A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.

A. The petition must include the following information and may include other information required by rule:

(1) Name, address and telephone number of the petitioner;

(2) Name, address and telephone number of the principal;

(3) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;

(4) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs effectively and any facts supporting an allegation that an emergency exists;

(5) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and

(6) Names, addresses and relationships of all persons who are required to receive notice of the petition.

B. This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court.

§ 5-405. Appointment and role of visitor

1. Visitor for minor respondent. If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a visitor to investigate a matter related to the petition or to inform the minor or a parent of the minor about the petition or a related matter.

2. Visitor for adult respondent. If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor unless the adult is represented by an attorney. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

3. Duties of visitor for adult respondent. A visitor appointed for an adult under subsection 2 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a conservator;

B. Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties and the scope and duration of the proposed conservatorship;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

4. Additional duties. In addition to the duties imposed by subsection 3, the visitor appointed for an adult under subsection 2 shall:

A. Interview the petitioner and proposed conservator, if any;

B. Review financial records of the respondent, if relevant to the visitor's recommendation under subsection 5, paragraph B;

C. State whether the respondent's needs could be met by a less restrictive alternative, including a protective arrangement instead of conservatorship and, if so, identify the less restrictive alternative; and

D. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

5. Report. A visitor appointed for an adult under subsection 2 shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:
A. Whether or not the respondent wants to challenge any aspect of the proceeding or to seek any limitation on the conservator's powers;

B. A recommendation whether an attorney should be appointed to represent the respondent;

C. A recommendation:
(1) Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's needs are available;

(2) If a conservatorship is recommended, whether it should be full or limited; and

(3) If a limited conservatorship is recommended, the powers to be granted to the conservator and the property that should be placed under the conservator's control;

D. A statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

E. A recommendation whether a further professional evaluation under section 5-407 is necessary;

F. A statement whether the respondent is able to attend a hearing at the location court proceedings are typically conducted;

G. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

H. Any other matter as the court directs.

§ 5-406. Appointment and role of attorney

1. Attorney for respondent. The court shall appoint an attorney to represent a respondent in a proceeding on a petition under section 5-402 if:
A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed conservator's powers.

2. Duties of attorney. The attorney representing the respondent in a proceeding on a petition under section 5-402 shall:
A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court may appoint an attorney to represent a parent of a minor who is the subject of a proceeding on a petition under section 5-402 if:

A. The parent objects to appointment of a conservator;

B. The court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or

C. The court otherwise determines the parent needs representation.

§ 5-407. Professional evaluation

1. Evaluation; report. The respondent must be examined by a licensed physician or psychologist who is acceptable to the court, who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and who will not be advantaged or disadvantaged by a decision to grant the petition and does not otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs; and

D. The date of the examination on which the report is based.

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1.

§ 5-408. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under section 5-403 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology.

2. Hearing without respondent; findings. A hearing under section 5-403 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so;

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

C. The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-403 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-403.

5. Rights of respondent at hearing. At a hearing under section 5-403, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Attendance by proposed conservator required. Unless excused by the court for good cause, the proposed conservator shall attend a hearing under section 5-403.

7. Closed upon request; good cause. A hearing under section 5-403 must be closed on request of the respondent and a showing of good cause.

8. Participation; best interest of respondent. Any person may request to participate in a hearing under section 5-403. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

§ 5-409. Confidentiality of records

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

A. The respondent, the individual subject to conservatorship or the parent of a minor subject to conservatorship requests the record be sealed; and

B. Either:

(1) The petition for conservatorship is dismissed; or

(2) The conservatorship is terminated.

2. Access to records. An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual and a person entitled to notice under section 5-411 or a subsequent order are entitled to access court records of the proceeding and resulting conservatorship, including the conservator's plan and report. In addition, a person for good cause may petition the court for access to court records of the

conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

3. Reports; availability. A report under section 5-405 of a visitor or professional evaluation under section 5-407 is confidential and must be sealed on filing but is available to:

A. The court;

B. The individual who is the subject of the report or evaluation, without limitation as to use;

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

D. An agent appointed under a power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and

E. Other persons when it is in the public interest or for a purpose the court orders for good cause.

§ 5-410. Who may be conservator; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a conservator shall consider persons otherwise qualified in the following order of priority:

A. A conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction;

B. A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances;

C. An agent appointed by the respondent to manage the respondent's property under a power of attorney for finances;

D. A spouse or domestic partner of the respondent; and

E. A family member or other individual who has exhibited special care and concern for the respondent.

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential conservator's relationship with the respondent, the potential conservator's skills, the expressed wishes of the respondent, the extent to which the potential conservator and the respondent have similar values and preferences and the likelihood that the potential conservator will be able to satisfy the duties of a conservator successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under subsection 1 and appoint a person having a lower priority or no priority.

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is

employed to provide paid services to the respondent, may not be appointed as conservator unless:

A. The individual is related to the respondent by blood, marriage or adoption; or

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

5. Long-term health care institution; exceptions. An owner, operator or employee of a long-term health care institution at which the respondent is receiving care may not be appointed as conservator unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

§ 5-411. Order of appointment

1. Conservator for minor; findings. A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

2. Conservator for adult; findings. A court order appointing a conservator for an adult must include a clear finding that:

A. The identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance or supported decision making; and

B. Clear and convincing evidence established the respondent was given proper notice of the hearing on the petition.

3. Basis for full conservatorship. A court order establishing a full conservatorship for an adult clearly must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

4. Limited conservatorship; powers granted to conservator. A court order establishing a limited conservatorship must state clearly the property placed under the control of the conservator and the powers granted to the conservator.

5. Notice; access to reports and plans. The court shall, as part of an order establishing a conservatorship, identify any person that subsequently is entitled to:

A. Notice of the rights of the individual subject to conservatorship;

B. Notice of a sale of or surrender of a lease to the primary dwelling of the individual subject to conservatorship;

C. Notice that the conservator has delegated any power that requires court approval under section 5-414 or substantially all powers of the conservator;

D. Notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

E. Copies of the conservator's plan and report;

F. Access to court records pertaining to the conservatorship;

G. A transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

H. Notice of the death or significant change in the condition of the individual subject to conservatorship;

I. Notice that the court has limited or modified the powers of the conservator; and

J. Notice of the conservator's removal.

6. Entitled to notice; exceptions. If an individual subject to conservatorship is an adult, the spouse, domestic partner and adult children of the adult subject to conservatorship are entitled under subsection 5 to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest of the adult subject to conservatorship.

7. Notice when minor is subject to conservatorship. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection 5 to notice unless the court determines notice would not be in the best interest of the minor.

§ 5-412. Notice of order of appointment; rights

1. Notice of appointment, order; rights. A conservator appointed under section 5-401 shall give to the individual subject to conservatorship and to all other persons given notice under section 5-403 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

2. Notice if person missing. If a conservator is appointed under section 5-401, subsection 2, paragraph A, subparagraph (2) and the individual subject to conservatorship is missing, notice under subsection 1 to the individual is not required.

§ 5-413. Emergency conservator

1. Appointment; findings. On petition by a person interested in an individual's welfare or on its own after a petition has been filed under section 5-402, the court may appoint an emergency conservator for the individual if the court finds:

A. Appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the respondent's property or financial interests;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a conservator under section 5-401 may exist.

2. Duration of emergency conservatorship. The duration of authority of an emergency conservator may not exceed 60 days and the emergency conservator may exercise only the powers specified in the order. The emergency conservator's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency conservator in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:
(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-410 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:
(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing. The court may appoint an emergency conservator without notice and a hearing only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and other persons as the court determines of the appointment. If a person objects to the appointment, the court shall hold a hearing within 14 days.

5. Not a determination. Appointment of an emergency conservator under this section is not a determination that the conditions required for appointment of a conservator under section 5-401 have been satisfied.

6. Removal; report; application. The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires. In other respects, the provisions of this Part concerning conservators apply to an emergency conservator appointed under this section.

§ 5-414. Powers of conservator requiring court approval

1. Powers requiring specific authorization; notice. Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under section 5-403, subsection 4 and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

A. Make gifts, except those of de minimis value;

B. Sell, encumber an interest in or surrender a lease to the primary dwelling of the individual subject to conservatorship;

C. Convey, release or disclaim contingent or expectant interests in property, including marital property and any right of survivorship incident to joint tenancy;

D. Exercise or release a power of appointment;

E. Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;

F. Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

G. Exercise a right to an elective share in the estate of a deceased spouse or domestic partner of the individual subject to conservatorship or to renounce or disclaim a property interest;

H. Grant a creditor a priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under section 5-428, subsection 5; and

I. Make, modify, amend or revoke the will of the individual subject to conservatorship in compliance with the laws of the State governing executing wills.

2. Approval based on decision of individual. In approving a conservator's exercise of the powers listed in subsection 1, the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained.

3. To determine decision of individual. To determine under subsection 2 the decision the individual subject to conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable. The court also shall consider:

A. The financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support, and the interest of creditors;

B. Possible reduction of income, estate, inheritance or other tax liabilities;

C. Eligibility for governmental assistance;

D. The previous pattern of giving or level of support provided by the individual subject to conservatorship;

E. Any existing estate plan or lack of estate plan of the individual subject to conservatorship;

F. The life expectancy of the individual subject to conservatorship and the probability that the conservatorship will terminate before the individual's death; and

G. Any other relevant factors.

4. Power of attorney for finances. A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes precedence over that of the conservator, unless there is a court order to the contrary.

§ 5-415. Petition for order subsequent to appointment

An individual subject to conservatorship or a person interested in the welfare of the individual may file a petition in the court for an order:

1. Bond or collateral. Requiring the conservator to furnish bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;

2. Accounting. Requiring an accounting for the administration of the conservatorship estate;

3. Distribution. Directing distribution;

4. Removal; temporary or successor. Removing the conservator and appointing a temporary or successor conservator;

5. Modification. Modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is currently excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;

6. Inventory, plan or report. Rejecting or modifying the conservator's inventory, plan or report; or

7. Other relief. Granting other appropriate relief.

§ 5-416. Bond or alternative asset-protection arrangement

1. Bond or alternative asset-protection arrangement required. The court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. The court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service except as provided by subsection 3.

2. Amount of bond; collateral. Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

3. Bond not required. A regulated financial service institution qualified to do trust business in this State need not give a bond.

§ 5-417. Terms and requirements of bond

1. Bond requirements. The following rules apply to the bond required under section 5-416.

A. Except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable.

B. By executing a bond provided by a conservator, a surety submits to the jurisdiction of the court that issued letters of office to the conservator in a proceeding pertaining to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the court records at the place where the bond is filed and any other address of the surety then known to the person required to provide the notice.

C. On petition of a successor conservator or any person affected by a breach of the obligation of the bond, a proceeding may be brought against a surety for breach of the obligation of the bond.

D. A proceeding against the bond may be brought until liability under the bond is exhausted.

2. Proceeding against surety. A proceeding may not be brought against a surety of a bond under this section on a matter as to which a proceeding against the conservator is barred.

3. Notice of nonrenewal. The surety or sureties of the bond must immediately serve notice to the court and to the individual under conservatorship if the bond is not renewed by the conservator.

§ 5-418. Duties of conservator

1. Duties as fiduciary. A conservator is a fiduciary and has a duty of prudence and duty of loyalty to the individual subject to conservatorship.

2. Promote self-determination. A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf and develop or regain the capacity to manage the individual's personal affairs.

3. Decision of individual. In making a decision on behalf of the individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values and actions to the extent actually known or reasonably ascertainable by the conservator.

4. Best interest of individual. If a conservator cannot make a decision under subsection 3 because the conservator does not know and cannot reasonably determine the decision that the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the conservator believes the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the individual, the conservator

shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

B. Other information the conservator believes the individual would have considered if the individual were able to act; and

C. Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

5. Prudent investor standard. Except when inconsistent with the conservator's duties under subsections 1 to 4, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

A. The circumstances of the individual subject to conservatorship and the conservatorship estate;

B. General economic conditions;

C. The possible effect of inflation or deflation;

D. The expected tax consequences of an investment decision or strategy;

E. The role of each investment or course of action in relation to the conservatorship estate as a whole;

F. The expected total return from income and appreciation of capital;

G. The need for liquidity, regularity of income and preservation or appreciation of capital; and

H. The special relationship or value, if any, of specific property to the individual subject to conservatorship.

6. Propriety of investment and management. The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

7. Reasonable effort to verify facts. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

8. Special skills or expertise. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

9. Consistent with estate plan and other instrument. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative or other appointive instrument of the individual.

10. Insurance. A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or a court issues an order finding:

A. The property lacks sufficient equity; or

B. Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual subject to conservatorship.

11. Cooperation, power of attorney for finances. If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

12. Digital assets. A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by court order.

13. Adult becomes capable. A conservator of an adult shall notify the court if the condition of the adult subject to conservatorship has changed so that the adult is capable of exercising rights previously removed immediately upon learning of the change.

§ 5-419. Conservator's plan

1. Plan; revision. The petitioner for appointment as conservator for an adult shall file with the petition a plan for protecting, managing, expending and distributing the assets of the conservatorship estate. When there is a change in circumstances or when the conservator seeks to deviate significantly from the conservator's plan previously filed, the conservator shall file with the court a revised plan for protecting, managing, expending and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

A. A budget setting forth projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual subject to conservatorship;

B. How the conservator will involve the individual subject to conservatorship in decisions about management of the conservatorship estate;

C. Any step the conservator plans to take to develop or restore the ability of the individual subject to conservatorship to manage the conservatorship estate; and

D. An estimate of the duration of the conservatorship.

2. Notice of revised plan. A conservator shall give notice of the filing of a revised plan under subsection 1, along with a copy of the revised plan, to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

3. Objection to revised plan. An individual subject to conservatorship and any person entitled under subsection 2 to receive notice and a copy of the conservator's revised plan may object to the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a conservator's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or revised plan, the court shall consider any objection under subsection 3 and whether the plan or revised plan is consistent with the conservator's duties and powers. The court may not approve the plan or revised plan until 30 days after its filing.

5. Copy of approved plan. After a conservator's plan or revised plan under this section is approved by the court, the conservator shall provide a copy of the plan or revised plan to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines.

§ 5-420. Inventory; records

1. Inventory. Not later than 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

2. Notice of filing of inventory. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

3. Records. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian of the individual or any person as the conservator or the court determines.

§ 5-421. Administrative powers of conservator not requiring court approval

1. Powers unless limited; powers of trustee. Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional powers granted to a trustee by law of this State other than this Part.

2. Powers of conservator. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the appointment, without specific court authorization or confirmation, may:

A. Collect, hold and retain property included in the conservatorship estate, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

B. Receive additions to the conservatorship estate;

C. Continue or participate in the operation of a business or other enterprise;

D. Acquire an undivided interest in property included in the conservatorship estate in which the conservator, in a fiduciary capacity, holds an undivided interest;

E. Invest assets of the conservatorship estate;

F. Deposit money of the conservatorship estate in a financial institution, including one operated by the conservator;

G. Acquire or dispose of property of the conservatorship estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of or abandon property included in the conservatorship estate;

H. Make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze existing or erect a new party wall or building;

I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation, exchange or partition land by giving or receiving consideration and dedicate an easement to public use without consideration;

J. Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

K. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

L. Grant an option involving disposition of property included in the conservatorship estate or accept or exercise an option for the acquisition of property;

M. Vote a security, in person or by general or limited proxy;

N. Pay a call, assessment or other sum chargeable or accruing against or on account of a security;

O. Sell or exercise a stock subscription or conversion right;

P. Consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

Q. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

R. Insure the conservatorship estate against damage or loss in accordance with section 5-418, subsection 10 and the conservator against liability with respect to a 3rd party;

S. Borrow money, with or without security, to be repaid from the conservatorship estate or otherwise;

T. Advance money for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate as against the individual subject to conservatorship for the advances;

U. Pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

V. Pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration and protection of the conservatorship estate;

W. Pay a sum distributable to an individual subject to conservatorship or individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:
(1) To the guardian of the distributee;

(2) To a distributee's custodian under the Maine Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act of any state; or

(3) If there is no guardian, custodian or custodial trustee, to a relative or other person having physical custody of the distributee;

X. Prosecute or defend an action, claim or proceeding in any jurisdiction for the protection of the conservatorship estate or of the conservator in the performance of the conservator's duties;

Y. Structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

Z. Execute and deliver any instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

§ 5-422. Distribution from conservatorship estate

Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan filed under section 5-419, a conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules.

1. Appropriate standard. A conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health or welfare for the individual subject to conservatorship, or an individual who is in fact dependent on the individual subject to conservatorship, made by a guardian of the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a guardian or parent of the minor.

2. Liability for distribution. A conservator acting in compliance with the conservator's duties under section 5-418 is not liable for a distribution made based on a recommendation under subsection 1 unless the conservator knows the distribution is not in the best interest of the individual subject to conservatorship.

3. Considerations for expenditure, distribution. In making an expenditure or distribution under this subsection, the conservator shall consider:

A. The size of the conservatorship estate, the estimated duration of the conservatorship and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

B. The accustomed standard of living of the individual subject to conservatorship and an individual who is in fact dependent on the individual subject to conservatorship;

C. Other money or source used for the support of the individual subject to conservatorship; and

D. The preferences, values and prior directions of the individual subject to conservatorship.

4. Compensation or reimbursement. Money expended or distributed under this subsection may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be rendered to the individual subject to conservatorship if it is reasonable

to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

§ 5-423. Conservator's report and accounting; monitoring

1. Report. A conservator shall file a report in a record with the court regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time as the court directs.

2. Contents. A report under subsection 1 must state or contain:

A. An accounting that contains a list of property included in the conservatorship estate and of the receipts, disbursements, liabilities and distributions during the period for which the report is made;

B. A list of the services provided to the individual subject to conservatorship;

C. A copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how and why the conservator has deviated;

D. Any recommended change in the conservatorship, including its scope and whether the conservatorship needs to continue;

E. Annual credit report of the individual subject to conservatorship and to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship, along with, with all but the last 4 digits of the account numbers and the individual's social security number redacted;

F. Anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, domestic partner, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

G. Any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship;

H. Any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and

I. Whether any coconservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve.

3. Visitor. The court may appoint a visitor to review a report under this section or conservator's plan under section 5-419, interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

4. Notice of report; copy. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order, and a person the court determines is entitled to the report. Notwithstanding section 5-409, the credit report provided pursuant to subsection 2, paragraph E is confidential and may not be

provided with the rest of the conservator's report except to the individual subject to conservatorship. The notice and report must be given not later than 14 days after filing.

5. Monitoring; frequency of report. The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

A. The plan and report provide sufficient information to establish the conservator has complied with the conservator's duties;

B. The conservatorship should continue; and

C. The conservator's requested fees, if any, should be approved.

6. Noncompliance. If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

A. Shall notify the conservator, the individual subject to conservatorship and all persons entitled to notice under section 5-411, subsection 5 or a subsequent order;

B. May require additional information from the conservator;

C. May appoint a visitor to interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs; and

D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.

7. Unreasonable fees. If the court determines there is reason to believe a conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the fees.

8. Approval of report or accounting. A conservator may petition the court for approval of a report or accounting filed under this section. The court after review may approve the report or accounting. An order, after notice and hearing, approving a final report or accounting discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report or accounting and the hearing as to a matter adequately disclosed in the report or accounting.

§ 5-424. Attempted transfer of property by individual subject to conservatorship

1. Interest not transferable or assignable; not subject to claims. The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferable or assignable by the individual and is not subject to levy, garnishment or similar process for claims against the individual unless allowed under section 5-428.

2. Contract void against individual and property. If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

3. Protection of 3rd parties. A 3rd party that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this State other than this Act.

§ 5-425. Transaction involving conflict of interest

A transaction involving a conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by the court by specific order after notice to all persons entitled to notice under section 5-411, subsection 5 or a subsequent order. A transaction affected by a substantial conflict between fiduciary duties and personal interests includes a sale, encumbrance or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, domestic partner, descendant, sibling, agent or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

§ 5-426. Protection of person dealing with conservator

1. Protection of 3rd party. A person that assists or deals with a conservator in good faith and for value in any transaction, other than one requiring a court order under section 5-414, is protected as though the conservator properly exercised the power in question. Knowledge by a person that the person is dealing with a conservator does not alone require the person to inquire into the existence of the authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority that are stated in letters of office, or as otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

2. Application of protection. Protection under subsection 1 extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and is not a substitute for protection provided to a person that assists or deals with a conservator by comparable provisions in law of this State other than this Act relating to commercial transactions or simplifying transfers of securities by fiduciaries.

§ 5-427. Death of individual subject to conservatorship

1. Delivery of will. If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will if feasible, or if not feasible a beneficiary named in the will, of the delivery.

2. Powers and duties of personal representative; notice. If 40 days after the death of an individual subject to conservatorship no personal representative has been appointed and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware and to all of the decedent's heirs and all devisees of the will, if any. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

3. Effect of appointment as personal representative. Issuance of an order under this section has the effect of an order of appointment of a personal representative under section 3-308 and Article 3, Parts 6 to 10.

4. Distribution; discharge. On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate by distributing property subject to conservatorship to the individual's successors. Not later than 30 days after distribution, the conservator shall file a final report and petition for discharge.

§ 5-428. Presentation and allowance of claim

1. Claims against estate or protected person. A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship on presentation and allowance in accordance with the priorities under subsection 4. A claimant may present a claim by:

A. Sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the name and address of the claimant and the amount claimed; or

B. Filing with the court a record of the claim, in a form acceptable to the court, and sending or delivering a copy of the statement to the conservator.

2. Presented claim; allowance; disallowance. A claim under subsection 1 is presented on receipt by the conservator of the statement of claim by the conservator or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed by the conservator in a record sent or delivered to the claimant not later than 60 days after its presentation. Before payment the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls the running of a statute of limitations that has not expired relating to the claim until 30 days after its disallowance.

3. Unpaid claim. A claimant whose claim under subsection 1 has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

4. Distribution; order. If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

A. Costs and expenses of administration;

B. A claim of the Federal Government or State Government having priority under law other than this Act;

C. A claim incurred by the conservator for support, care, education, health or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;

D. A claim arising before the conservatorship; and

E. All other claims.

5. Preference of claims. Preference may not be given in the payment of a claim under subsection 4 over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

A. Doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and

B. The court authorizes the preference under section 5-414, subsection 1, paragraph H.

6. Security interest in conservatorship estate. If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

§ 5-429. Personal liability of conservator

1. Not personally liable. Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal in the contract or before entering into the contract the conservator's representative capacity.

2. Personally liable. A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

3. Claims asserted against conservator. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate or a claim based on a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

4. Determination of liability. A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge or indemnification or another appropriate proceeding or action.

§ 5-430. Removal of conservator; appointment of successor

1. Removal by court. The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

2. Hearing upon petition, communication or determination. The court shall conduct a hearing to determine whether to remove a conservator and appoint a successor on:

A. Petition of the individual subject to conservatorship, conservator or person interested in the welfare of the individual that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

3. Notice of petition. Notice of a petition under subsection 2, paragraph A must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

4. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to remove the conservator and have a successor appointed is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-406. The court shall award reasonable attorney's fees to the attorney for the individual as provided in section 5-119.

5. Selection of successor conservator. In selecting a successor conservator, the court shall follow the procedures under section 5-410.

6. Notice of appointment of successor conservator. Not later than 30 days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and all persons entitled to the notice under section 5-411, subsection 5 or a subsequent order.

§ 5-431. Termination or modification of conservatorship

1. Conservatorship for a minor. A conservatorship for a minor terminates on the earlier of:

A. An order of the court;

B. The minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age;

C. Emancipation of the minor; and

D. Death of the minor.

2. Conservatorship for an adult. A conservatorship for an adult terminates on order of the court or when the adult dies.

3. Petition for termination or modification. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

A. Termination of the conservatorship on the ground that a basis for appointment under section 5-401 does not exist or termination would be in the best interest of the individual, or for other good cause; or

B. Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

4. Hearing. The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

A. Petition under subsection 3 that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. A communication from the individual subject to conservatorship, the conservator or a person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

D. A determination by the court that a hearing would be in the best interest of the individual.

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

9. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions in section 5-406. The court shall award reasonable attorney's fees to the individual's attorney as provided in section 5-119.

10. Property; report; petition for discharge. On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or the individual's heirs, successors or assigns. The order of termination must provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

11. Discharge. The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

12. Distribution. On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other persons entitled to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

PART 5

OTHER PROTECTIVE ARRANGEMENTS

§ 5-501. Authority for protective arrangements

1. Order protective arrangement. Under this Part, a court:

A. Upon receiving a petition for a guardianship for an adult may order one or more protective arrangements instead of guardianship as a less restrictive alternative to guardianship; and

B. Upon receiving a petition for a conservatorship for an individual may order one or more protective arrangements instead of conservatorship as a less restrictive alternative to conservatorship.

2. Protective arrangement instead of guardianship. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this Part for one or more protective arrangements instead of guardianship.

3. Protective arrangement instead of conservatorship. The following persons may petition under this Part for one or more protective arrangements instead of conservatorship:

A. The individual for whom the protective arrangements are sought;

B. A person interested in the property, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; and

C. The guardian of the individual.

§ 5-502. Basis for protective arrangements instead of guardianship for adult

1. Findings. After the hearing conducted on a petition for guardianship under section 5-302 or one or more protective arrangements instead of guardianship under section 5-501, subsection 1, the court may enter an order for one or more protective arrangements instead of guardianship under subsection 2 if the court finds by clear and convincing evidence that:

A. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making; and

B. The respondent's identified needs cannot be met by less restrictive alternatives.

2. Orders other than guardianship. If the court makes the findings under subsection 1, the court, instead of appointing a guardian, may:

A. Authorize or direct one or more transactions necessary to meet the respondent's need for health, safety or care, including but not limited to:

(1) One or more particular medical treatments or refusals of particular medical treatments;

(2) A move to a specified place of dwelling; or

(3) Visitation or supervised visitation between the respondent and another person;

B. Restrict access to the respondent by a person whose access places the respondent at serious risk of physical or psychological harm; and

C. Order other arrangements on a limited basis that are appropriate.

3. Factors. In deciding whether to enter an order under this section, the court shall consider the factors under sections 5-313 and 5-314 that a guardian must consider when making a decision on behalf of an adult subject to guardianship.

§ 5-503. Basis for protective arrangements instead of conservatorship for adult or minor

1. Findings. After the hearing conducted on a petition for conservatorship for an adult under section 5-402 or one or more protective arrangements instead of conservatorship for an adult under section 5-501, subsection 3, the court may enter an order for one or more protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds:

A. By clear and convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making, or the adult is missing, detained or unable to return to the United States;

B. By a preponderance of the evidence that:

(1) The respondent has property likely to be wasted or dissipated unless management is provided; or

(2) The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

2. Protective arrangements for minors. After the hearing conducted on a petition for conservatorship for a minor under section 5-402 or a protective arrangement instead of conservatorship for a minor under section 5-501, subsection 3, the court may enter an order for a protective arrangement or protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

A. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

B. The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

3. Orders other than conservatorship. If the court makes the findings under subsection 1 or 2, the court, instead of appointing a conservator, may:

A. Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including but not limited to:

(1) An action to establish eligibility for benefits;

(2) Payment, delivery, deposit or retention of funds or property;

(3) Sale, mortgage, lease or other transfer of property;

(4) Purchase of an annuity;

(5) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;

(6) Addition to or establishment of a trust;

(7) Ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or

(8) Settlement of a claim; or

B. Restrict access to the respondent's property by a person whose access to the property places the respondent at serious risk of financial harm.

4. Order to restrict access. If, after the hearing conducted under section 5-505 on a petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a court may enter an order to restrict access to the respondent or the respondent's property by a person that the court finds by clear and convincing evidence:

A. Through fraud, coercion, duress or the use of deception and control, caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and

B. Poses a serious risk of substantial financial harm to the respondent or the respondent's property.

5. Factors. In deciding whether to enter an order under subsection 3 or 4, the court shall consider the factors under section 5-418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

6. Minors; factors. In deciding whether to enter an order under subsection 3 or 4 for a respondent who is a minor, the court also shall consider the best interest of the respondent, the preference of the parents of the respondent and the preference of the respondent if the minor is 14 years of age or older.

§ 5-504. Petition

1. Petition contents. A petition for one or more protective arrangements instead of guardianship or conservatorship must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the protective arrangements and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:
(1) A person responsible for care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian or conservator by the respondent;

(10) A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected;

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition; and

(13) If the respondent is a minor:

(a) An adult with whom the respondent resides if not otherwise listed; and

(b) Any person not otherwise listed that had primary care or custody of the respondent for 60 or more days during the 2 years immediately preceding the filing of the petition or any person that had primary care or custody of the respondent for at least 730 days during the 5 years immediately preceding the filing of the petition;

D. The nature of the protective arrangement or protective arrangements sought;

E. The reason a protective arrangement sought is necessary, including a brief description of:
(1) The nature and extent of the respondent's alleged need;

(2) Any less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented and, if there are none, the reason they have not been considered or implemented; and

(3) The reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

F. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

G. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

H. If one or more protective arrangements instead of conservatorship are sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

I. If one or more protective arrangements instead of guardianship are sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

2. Attorney for petitioner. A petition under subsection 1 must state the name and address of an attorney representing the petitioner, if any.

§ 5-505. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-501, the court shall set a date, time and place for hearing on the petition.

2. Notice to respondent. A copy of a petition under section 5-501 and notice of the hearing under subsection 1 must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to others. In a hearing under subsection 1, notice of the hearing also must be given to the persons listed in the petition and any other person interested in the respondent's welfare as the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

4. Notice of petition after order. Notice of a hearing on a petition filed under this Act after the court has ordered a protective arrangement or protective arrangements under this Part, together with a copy of the petition, must be given to the respondent and any other person as the court determines.

§ 5-506. Appointment of visitor

1. Petition for protective arrangement. On receipt of a petition for one or more protective arrangements instead of guardianship under section 5-501, the court shall appoint a visitor. A visitor appointed under this subsection must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Protective order for minor. On receipt of a petition for a protective order instead of conservatorship for a minor under section 5-501, the court may appoint a visitor to investigate a matter related to the petition or to inform the respondent or a parent of the respondent about the petition or a related matter.

3. Protective order for adult. On receipt of a petition for a protective order instead of conservatorship for an adult under section 5-501, the court shall appoint a visitor unless the respondent is represented by an attorney.

4. Visitor's duties. A visitor appointed under subsection 1 or 3 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, and the respondent's rights at the hearing;

B. Determine the respondent's views with respect to the order sought;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney;

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets;

E. If the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

F. If one or more protective arrangements instead of guardianship are sought, obtain information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition;

G. If one or more protective arrangements instead of conservatorship are sought, review financial records of the respondent if relevant to the visitor's recommendation under subsection 5, paragraph C; and

H. Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

5. Report. A visitor under this section promptly shall file a report in a record with the court, which must include:

A. A recommendation whether an attorney should be appointed to represent the respondent;

B. To the extent relevant to the order sought, a summary of self-care, independent living tasks and financial management tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage;

C. Recommendations regarding the appropriateness of the protective arrangement sought and whether less restrictive alternatives for meeting the respondent's needs are available;

D. If the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

E. A recommendation whether a professional evaluation under section 5-508 is necessary;

F. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

G. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

H. Any other matter as the court directs.

§ 5-507. Appointment and role of attorney

1. Appointment of attorney. The court shall appoint an attorney to represent the respondent in a proceeding under this Part if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitations on the protective arrangement.

2. Attorney's duties. An attorney representing the respondent in a proceeding under this Part shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this Part if:

A. The parent objects to the entry of an order for a protective arrangement or protective arrangements instead of guardianship or conservatorship;

B. The court determines that counsel is needed to ensure that consent to the entry of an order for one or more protective arrangements is informed; or

C. The court otherwise determines the parent needs representation.

§ 5-508. Professional evaluation

1. Order professional evaluation. At or before a hearing on a petition under this Part for a protective arrangement, the court shall order a professional evaluation of the respondent:

A. If the respondent requests the evaluation; or

B. Unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.

2. Examination; report. If the court orders an evaluation under subsection 1, the respondent must be examined by a licensed physician or psychologist approved by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment, support or habilitation plan; and

D. The date of the examination on which the report is based.

3. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1.

§ 5-509. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under this Part may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology.

2. Hearing without respondent; findings. A hearing under this Part may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so;

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance;

C. The respondent is represented by an attorney and the attorney represents that the respondent does not want to attend the hearing;

D. The visitor has confirmed with the respondent that the respondent has no objection to the protective arrangements and that the respondent does not wish to attend the hearing; or

E. The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

3. Assistance to respondent. The respondent may be assisted in a hearing under this Part by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under this Part.

5. Rights of respondent at hearing. At a hearing under this Part, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Closed upon request; good cause. A hearing under this Part must be closed on request of the respondent and a showing of good cause.

7. Participation; best interest of respondent. Any person may request to participate in a hearing under this Part. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

§ 5-510. Notice of order

The court shall give notice of an order under this Part to the individual who is the subject of the protective arrangements instead of guardianship or conservatorship, a person whose access to the respondent is restricted by the order and any other person as the court determines.

§ 5-511. Confidentiality of records

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of one or more protective arrangements instead of a guardianship or conservatorship is a matter of public record unless the court seals the record after:

A. The respondent, the individual subject to the protective arrangements or the parent of a minor subject to the protective arrangements requests the record be sealed; and

B. Either:

(1) The proceeding is dismissed;

(2) The protective arrangement is no longer in effect; or

(3) Any act authorized by the order granting the protective arrangement has been completed.

2. Access to records. A respondent, an individual subject to a proceeding for one or more protective arrangements instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to one or more protective arrangements and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangements or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

3. Reports sealed; availability. A report of a visitor or professional evaluation generated in the course of a proceeding under this Part must be sealed on filing but is available to:

A. The court;

B. The individual who is the subject of the report or evaluation, without limitation as to use;

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

D. Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal;

E. If the order is for one or more protective arrangements instead of guardianship and unless the court directs otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and

F. Other persons when it is in the public interest or for a purpose the court orders for good cause.

ARTICLE 6

NONPROBATE TRANSFERS ON DEATH

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

§ 6-101. Nonprobate transfers on death

1. Nonprobate transfer on death nontestamentary. A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement or other written instrument of a similar nature is nontestamentary. Also nontestamentary is a written provision that:

A. Money or other benefits due to, controlled by or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

B. Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

C. Any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

2. Rights of creditors. Nothing in this section limits the rights of creditors under other laws of this State.

Maine Comment: This section does not constitute a substantive change to Maine law. This section deviates from the Uniform Probate Code by adding language from section 6-201(b) of the now-repealed Title 18-A, confirming that the section does not limit the rights of creditors.

§ 6-102. Liability of nonprobate transferees for creditor claims and statutory allowances

1. "Nonprobate transfer" defined. As used in this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this State, to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply the property to discharge claims against the transferor's probate estate.

2. Liability of nonprobate transferee. Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

3. Priority of liability. Nonprobate transferees are liable for the insufficiency described in subsection 2 in the following order of priority:

A. A transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

B. The trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled; and

C. Other nonprobate transferees, in proportion to the values received.

4. Interests of beneficiaries to satisfy liability. Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devises under it.

5. Instrument direct apportionment; conflicts. A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that instrument or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

6. Liability enforceable in this State. Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this State, whether or not the transferee is located in this State.

7. Written demand for proceeding. A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand and not of

the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

8. Deadline for proceedings. A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

9. Liability of obligor, trustee. Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following provisions apply.

A. Payment or delivery of assets by a financial institution, register or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

B. A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

Maine Comment: This section is a new section but includes many concepts which were previously included in various sections of Maine law. This new section serves a useful function of addressing these issues in a comprehensive way and establishing an order of priority in the procedure for enforcing claims against various non-probate assets. This section includes a significant change from prior Maine law by shortening the time period for bringing a claim from two years after the decedent's date of death to one year. This section does not supersede existing law that insulates death benefits in life insurance contracts, retirement plans, or IRAs from creditors' claims.

PART 2

MULTIPLE-PARTY ACCOUNTS

SUBPART 1

DEFINITIONS AND GENERAL PROVISIONS

§ 6-201. Definitions

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

1. Account. "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit and share account.

2. Agent. "Agent" means a person authorized to make account transactions for a party.

3. Beneficiary. "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

4. Financial institution. "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association and credit union.

5. Multiple-party account. "Multiple-party account" means an account payable on request to one or more of 2 or more parties, whether or not a right of survivorship is mentioned.

6. Party. "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

7. Payment. "Payment," as it relates to payment of sums on deposit, includes withdrawal, payment to a party or 3rd person pursuant to a check or other request and a pledge of sums on deposit by a party or a setoff, reduction or other disposition of all or part of an account pursuant to a pledge.

8. POD designation. "POD designation" means the designation of:

A. A beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

B. A beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

9. Receive. "Receive," as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

10. Request. "Request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution. If terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

11. Sums on deposit. "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

12. Terms of the account. "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

§ 6-202. Limitation on scope of Part

This Part does not apply to:

1. Business purpose. An account established for a partnership, joint venture or other organization for a business purpose;

2. Controlled by agent or trustee. An account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association or charitable or civic organization; or

3. Other relationship. A fiduciary or trust account in which the relationship is established other than by the terms of the account.

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

§ 6-203. Types of account; existing accounts

1. Single-party or multiple-party accounts. An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to section 6-212, subsection 3, either a single-party account or a multiple-party account may have a POD designation, an agency designation or both.

2. Accounts governed by this Part. An account established before, on or after the July 1, 2019, whether in the form prescribed in section 6-204 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of this Part and is governed by this Part.

Maine Comment: This section is new and had no previous counterpart in the now-repealed Title 18-A. It coordinates with the adoption of forms under section 6-204 of the Uniform Probate Code and sets out clearly the options when an account is established.

§ 6-204. Forms

1. Form. A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this Part applicable to an account of that type.

UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

.....

.....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....

.....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....

.....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or More Agents]:

.....

.....

[Select One and Initial]:

..... AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

2. Depositor's intent. A contract of deposit that does not contain provisions in substantially the form provided in subsection 1 is governed by the provisions of this Part applicable to the type of account that most nearly conforms to the depositor's intent.

Maine Comment: This section is new and had no previous counterpart in the now-repealed Title 18-A. The mechanics of this form should encourage the depositor and financial institution to consider the rights of a party to the account during lifetime and the distribution of the account after a party's death. Since the form is not required to make the terms of the multiple-party account effective, it offers flexibility and a helpful alternative for depositors.

§ 6-205. Designation of agent

1. Designation of agent by all parties. By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

2. Disability or incapacity. Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

3. Death. Death of the sole party or last surviving party terminates the authority of an agent.

Maine Comment: This section is new and had no previous counterpart in the now-repealed Title 18-A. This section allows financial institutions to offer an option to depositors who seek the

convenience of an agency relationship but intend the proceeds of account to pass according to the depositor's will or to the depositor's heirs after death. While not supplanting the comprehensive Maine Uniform Power of Attorney Law, section 5-901, *et seq.*, of the now-repealed Title 18-A, this section offers a limited agency role for specific financial accounts.

§ 6-206. Applicability of Part

The provisions of subpart 2 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors and do not apply to the right of those persons to payment as determined by the terms of the account. Subpart 3 governs the liability and set-off rights of financial institutions that make payments pursuant to subpart 3.

SUBPART 2

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

§ 6-211. Ownership during lifetime

1. "Net contribution" defined. As used in this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party that have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. "Net contribution" includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

2. Interest based on net contribution of each party. During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise the net contribution of each is presumed to be an equal amount.

3. Beneficiary; no right to sums. A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

4. Agent; no beneficial right to sums. An agent in an account with an agency designation has no beneficial right to sums on deposit.

§ 6-212. Rights at death

1. Multiple-party account. Except as otherwise provided in this Part, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If 2 or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 6-211 belongs to the surviving spouse. If 2 or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under

section 6-211 belongs to the surviving parties in equal shares and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 6-211, and the right of survivorship continues between the surviving parties.

2. POD designation. In an account with a POD designation:

A. On death of one of 2 or more parties, the rights in sums on deposit are governed by subsection 1; and

B. On death of the sole party or the last survivor of 2 or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If 2 or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

3. No POD designation; no right of survivorship. Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 6-211 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

4. Liability for unpaid requests for payment. The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

§ 6-213. Alteration of rights

1. Rights determined by terms of account. Rights at the death of a party under section 6-212 are determined by the terms of the account at the death of the party. A party may alter the terms of the account by a notice signed by the party and given to the financial institution to change the terms of the account or to stop or vary payment under the terms of the account. To be effective, the notice must be received by the financial institution during the party's lifetime.

2. Right of survivorship not altered by will. A right of survivorship arising from the express terms of the account, section 6-212 or a POD designation may not be altered by a will.

§ 6-214. Accounts and transfers nontestamentary

Except as provided in Article 2, Part 2 or as a consequence of and to the extent directed by section 6-102, a transfer resulting from the application of section 6-212 is effective by reason of

the terms of the account involved and this Part and is not testamentary or subject to Articles 1 to 4.

SUBPART 3

PROTECTION OF FINANCIAL INSTITUTIONS

§ 6-221. Authority of financial institution

A financial institution may enter into a contract of deposit for a multiple-party account to the same extent as it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

Maine Comment: This section does not constitute a substantive change to Maine law other than incorporating the agency designation adopted in section 6-205 and related sections.

§ 6-222. Payment on multiple-party account

A financial institution, on request, may pay sums on deposit in a multiple-party account to:

1. One or more of the parties. One or more of the parties, whether or not another party is disabled, incapacitated or deceased when payment is requested and whether or not the party making the request survives another party; or

2. Personal representative. The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under section 6-212.

§ 6-223. Payment on POD designation

A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

1. One or more of the parties. One or more of the parties, whether or not another party is disabled, incapacitated or deceased when the payment is requested and whether or not a party survives another party;

2. Beneficiaries. The beneficiary or beneficiaries if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

3. Personal representative. The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

§ 6-224. Payment to designated agent

A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

Maine Comment: This section is new and had no previous counterpart in the now-repealed Title 18-A. It coordinates with the adoption by Maine of section 6-205 of the Uniform Probate Code.

§ 6-225. Payment to minor

If a financial institution is required or permitted to make payment pursuant to this Part to a minor designated as a beneficiary, payment may be made pursuant to the Maine Uniform Transfers to Minors Act.

Maine Comment: This section is new and had no previous counterpart in the now-repealed Title 18-A.

§ 6-226. Discharge

1. Payments in accordance with terms of account. Payment made pursuant to this Part in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries or their successors. Payment may be made whether or not a party, beneficiary or agent is disabled, incapacitated or deceased when payment is requested, received or made.

2. Payments after receipt of notice. Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

3. Notice of dispute; refusal to make payments. A financial institution that receives written notice pursuant to this section that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

4. Rights of parties in disputes. Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

Maine Comment: This section deviates from the Uniform Probate Code by deleting language which permits a financial institution to refuse payment if it receives any non-written notice giving the financial institution "reason to believe that a dispute exists" as to payment rights.

§ 6-227. Setoff

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled under section 6-211 or, in the absence of proof of that proportion, an equal share with all parties.

PART 3

TRANSFER ON DEATH SECURITY REGISTRATION

§ 6-301. Definitions

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

1. Beneficiary form. "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

2. Register. "Register" means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

3. Registering entity. "Registering entity" means a person that originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

4. Security. "Security" means a share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security and a security account.

5. Security account. "Security account" means:

A. A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death; or

B. A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

§ 6-302. Registration in beneficiary form; sole or joint tenancy ownership

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by 2 or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship and not as tenants in common.

Maine Comment: This section deviates from the Uniform Probate Code by deleting references to tenants by the entirety and community property.

§ 6-303. Registration in beneficiary form; applicable law

A security may be registered in beneficiary form if the form is authorized by this Part or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of the registering entity's transfer agent or the registering entity's office making the registration or by this Part or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this Part or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

§ 6-304. Origination of registration in beneficiary form

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

§ 6-305. Form of registration in beneficiary form

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

§ 6-306. Effect of registration in beneficiary form

The designation of a transfer on death, or "TOD," beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

Maine Comment: This section replaces section 6-312 of the now-repealed Title 18-A which previously permitted changes of beneficiary of a security by will.

§ 6-307. Ownership on death of owner

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security

belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§ 6-308. Protection of registering entity

1. Security registration in beneficiary form not required; protections. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Part.

2. Registration to be implemented on death. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Part.

3. Registering entity discharged from all claims; exceptions. A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if the registering entity registers a transfer of the security in accordance with section 6-307 and does so in good faith reliance on:

A. The registration;

B. This Part; and

C. Information provided to the registering entity by affidavit of the personal representative of the deceased owner, by the surviving beneficiary or by the surviving beneficiary's representatives or other information available to the registering entity.

The protections of this Part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Part.

4. Rights of beneficiaries in disputes. The protection provided by this Part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

§ 6-309. Nontestamentary transfer on death

A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Part and is not testamentary.

§ 6-310. Terms, conditions and forms for registration

1. Terms and conditions. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests:

A. For registrations in beneficiary form; and

B. For implementation of registrations in beneficiary form, including requests for cancellation of previously registered transfer on death, or "TOD," beneficiary designations and requests for reregistration to effect a change of beneficiary.

The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

2. Forms. The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

A. Sole owner - sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

B. Multiple owners - sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.; and

C. Multiple owners - primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

§ 6-311. Application of Part

This Part applies to registrations of securities in beneficiary form made before, on or after July 1, 2019 by decedents dying on or after July 1, 2019.

PART 4

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

§ 6-401. Short title

This Part may be known and cited as "the Uniform Real Property Transfer on Death Act."

§ 6-402. Definitions

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

1. Beneficiary. "Beneficiary" means a person that receives property under a transfer on death deed.

2. Designated beneficiary. "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

3. Joint owner. "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. "Joint owner" includes a joint tenant. "Joint owner" does not include a tenant in common without a right of survivorship.

4. Person. "Person" means an individual, corporation, estate, trustee, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

5. Property. "Property" means an interest in real property located in this State that is transferable on the death of the owner.

6. Transfer on death deed. "Transfer on death deed" means a deed authorized under this Part.

7. Transferor. "Transferor" means an individual who makes a transfer on death deed.

§ 6-403. Applicability

This Part applies to a transfer on death deed made before, on or after July 1, 2019 by a transferor dying on or after July 1, 2019.

§ 6-404. Nonexclusivity

This Part does not affect any method of transferring property otherwise permitted under the law of this State.

§ 6-405. Transfer on death deed authorized

An individual may transfer for no consideration property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

§ 6-406. Transfer on death deed revocable

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

§ 6-407. Transfer on death deed nontestamentary

A transfer on death deed is nontestamentary.

§ 6-408. Capacity of transferor; undue influence of transferor

1. Capacity. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

2. Undue influence. In addition to any other criminal or civil causes of action or relief at law or equity, Title 33, chapter 20 applies to transfers under this Part.

§ 6-409. Requirements

A transfer on death deed:

1. Essential elements and formalities. Except as otherwise provided in subsection 2, must contain the essential elements and formalities of a properly recordable inter vivos deed;

2. Death of transferor. Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

3. Recorded before transferor's death. Must be recorded before the transferor's death in the public records in the registry of deeds in the county where the property is located.

§ 6-410. Notice, delivery, acceptance, consideration not required

A transfer on death deed is effective without:

1. Notice, delivery or acceptance. Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

2. Consideration. Consideration.

§ 6-411. Revocation by instrument authorized; revocation by act not permitted

1. Revocation by instrument. Subject to subsection 2, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

A. Is one of the following:

(1) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(2) An instrument of revocation that expressly revokes the deed or part of the deed; or

(3) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

B. Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the registry of deeds in the county where the deed is recorded.

2. More than one transferor. If a transfer on death deed is made by more than one transferor:

A. Revocation by a transferor does not affect the deed as to the interest of another transferor; and

B. A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

3. Revocation after recorded. After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

4. Inter vivos transfer. As described in section 6-412, this section does not limit the effect of an inter vivos transfer of the property.

§ 6-412. Effect of transfer on death deed during transferor's life

During a transferor's life, a transfer on death deed does not:

1. Affect interest or right of transferor or other owner. Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

2. Affect interest or right of transferee. Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

3. Affect interest or right of creditor. Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

4. Affect eligibility or public assistance. Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

5. Create legal or equitable interest. Create a legal or equitable interest in favor of the designated beneficiary; or

6. Subject the property to claims or process. Subject the property to claims or process of a creditor of the designated beneficiary.

§ 6-413. Effect of transfer on death deed at transferor's death

1. Upon death of transferor. Except as otherwise provided in the transfer on death deed, in this section or in section 2-507, 2-603, 2-802 or 2-805 or in Article 2, Part 2, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death.

A. Subject to paragraph B, the interest in the property is transferred to the designated beneficiary in accordance with the deed.

B. The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

C. Subject to paragraph D, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

D. If the transferor has identified 2 or more designated beneficiaries to receive concurrent interests in the property, the share of one that lapses or fails for any reason is transferred to the other or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

2. Subject to all interests. Subject to Title 33, section 201, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Title 33, section 201, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

3. Joint owner. If a transferor is a joint owner and is:

A. Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

B. The last surviving joint owner, the transfer on death deed is effective.

4. No covenant or warranty of title. A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

§ 6-414. Notice of death affidavit

A beneficiary who takes under a transfer on death deed may file for recording in the registry of deeds in the county where the real property is located a notice of death affidavit to confirm title following the death of the transferor. The notice of death affidavit must contain the name and address, if known, of each beneficiary taking under the transfer on death deed, the street address of the property, the date of the transfer on death deed, the book and page number at which the transfer on death deed was recorded prior to the transferor's death, the name of the deceased transferor, the date and place of death and the name and address to which all future tax bills should be mailed. The affidavit must be notarized.

After recording the notice of death affidavit, the register of deeds shall return the original affidavit to the person who filed it and mail a copy of the affidavit to the tax assessor of the municipality where the property is located.

The filing of the notice of death affidavit is not a condition to the transfer of title.

§ 6-415. Disclaimer

A beneficiary may disclaim all or part of the beneficiary's interest as provided by Article 2, Part 9.

§ 6-416. Liability for creditor claims and statutory allowances

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in section 6-102.

§ 6-417. Optional form of transfer on death deed

The following form may be used to create a transfer on death deed. The other sections of this Part govern the effect of this or any other instrument used to create a transfer on death deed.

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

.....

.....

Printed name.....Mailing address

.....

Printed name.....Mailing address

Legal description of the property:

.....

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

.....

.....

Printed name.....Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

.....

.....

Printed name.....Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

.....

(SEAL, if any).....

Signature.....Date.....

.....

(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT
(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the registry of deeds for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the registry of deeds of the county where the property is located. Follow the instructions given by the register of deeds to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each county where the property is located. (2) Complete and acknowledge a new TOD deed that

disposes of the same property, and record it in each county where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

§ 6-418. Optional form of revocation

The following form may be used to create an instrument of revocation under this Part. The other sections of this Part govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

.....

.....

Printed name.....Mailing address

.....

Printed name.....Mailing address

Legal description of the property:

.....

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

.....

(SEAL, if any).....

Signature.....Date.....

.....

(SEAL, if any).....

Signature.....Date.....

ACKNOWLEDGMENT
(insert acknowledgment)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the registry of deeds of each county where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the registry of deeds for the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the registry of deeds of the county where the property is located. Follow the instructions given by the register of deeds to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

§ 6-419. Uniformity of application and construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§ 6-420. 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 Section 101(c) of that Act, 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

§ 6-421. Effective date

This Part takes effect July 1, 2019.

ARTICLE 7

TRUST ADMINISTRATION

PART 1

POWERS OF TRUSTEES

§ 7-101. Prohibitions and requirements applicable to trusts that are private foundations

1. Prohibited acts. In the administration of any trust that is a private foundation, as defined in Section 509 of the Internal Revenue Code of 1986, a charitable trust, as defined in Section 4947(a)(1) of the Internal Revenue Code of 1986, or a split-interest trust, as defined in Section 4947(a)(2) of the Internal Revenue Code of 1986, the following acts are prohibited:

A. Engaging in any act of self-dealing, as defined in Section 4941(d) of the Internal Revenue Code of 1986, that would give rise to any liability for the tax imposed by Section 4941(a) of the Internal Revenue Code of 1986;

B. Retaining any excess business holdings, as defined in Section 4943(c) of the Internal Revenue Code of 1986, that would give rise to any liability for the tax imposed by Section 4943(a) of the Internal Revenue Code of 1986;

C. Making any investments that would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of the Internal Revenue Code of 1986, so as to give rise to any liability for the tax imposed by Section 4944(a) of the Internal Revenue Code of 1986; and

D. Making any taxable expenditures, as defined in Section 4945(d) of the Internal Revenue Code of 1986, that would give rise to any liability for the tax imposed by Section 4945(a) of the Internal Revenue Code of 1986.

This section does not apply to split-interest trusts or to amounts of split-interest trusts that are not subject to the prohibitions applicable to private foundations by reason of the provisions of Section 4947 of the Internal Revenue Code of 1986.

2. Required distributions. In the administration of any trust that is a private foundation or a charitable trust, there must be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by Section 4942(a) of the Internal Revenue Code of 1986.

3. Exception, contrary to terms of trust. Subsections 1 and 2 do not apply to any trust to the extent that a court of competent jurisdiction determines that the application would be contrary to the terms of the instrument governing the trust and that the trust instrument may not properly be changed to conform to subsections 1 and 2.

4. Attorney General's powers. Nothing in this section impairs the rights and powers of the courts or the Attorney General of this State with respect to any trust.

5. Internal Revenue Code. All references to sections of the Internal Revenue Code of 1986 are deemed to include future amendments to the referenced sections and corresponding provisions of future internal revenue laws.

§ 7-102. Trustees authorized to invest trust funds in affiliated investments; limitations

1. Authorization. An association, corporation or financial institution authorized to exercise trust powers in this State while acting as a fiduciary is authorized to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market, bonds or other securities underwritten or distributed by that association, corporation or financial institution or an affiliate or by a syndicate that includes that association, corporation or financial institution and securities of an investment company registered under the federal Investment Company Act of 1940, 15 United States Code, Section 80a-1 et seq., as amended, for which that association, corporation or financial institution or an affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent or custodian. A person acting as a cofiduciary with an association, corporation or financial institution or an affiliate is authorized to consent to the investment in such interests.

2. Limitations. The authority granted pursuant to subsection 1 may not be exercised:

A. If the investment is prohibited by the instrument, judgment, decree or order creating the fiduciary relationship; or

B. Unless, in the case of cofiduciaries, the association, corporation or financial institution or an affiliate procures the consent of its cofiduciaries to the investment.

3. Disclosures. The disclosures required by this section must be provided by a statement or letter mailed to the last known address of each person to whom statements for the fiduciary estate are provided. The disclosures may be provided separately or as part of other documents of the fiduciary estate. If made part of other documents of the fiduciary estate, the disclosures must be printed clearly and conspicuously on those documents.

A. A trustee purchasing bonds or securities pursuant to this section shall disclose in writing all capacities in which the trustee or an affiliate acts for the issuer of those bonds or securities and that the trustee or an affiliate may have an interest in the underwriting or distribution of those bonds or securities.

B. If the securities purchased pursuant to subsection 1 are shares of an investment company subject to this section, the trustee shall disclose the services provided and the receipt of compensation for those services before the initial purchase and annually.

§ 7-103. Qualification of foreign trustee

A foreign corporate trustee is required to qualify as a foreign corporation doing business in this State if it maintains the principal place of administration of any trust within the State. A foreign cotrustee is not required to qualify in this State solely because its cotrustee maintains the principal place of administration in this State. Unless otherwise doing business in this State, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this State or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this State.

PART 2

COMMON TRUST FUNDS

§ 7-201. Definitions; establishment of common trust funds

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

A. "Common trust fund" means a trust or fund maintained by a bank or trust company exclusively for the collective investment or reinvestment of money contributed to the trust or fund by the bank or trust company, or an affiliated bank or trust company, as a fiduciary, including a trustee of a trust or fund for the primary purpose of paying employee benefits of any kind.

B. "Fiduciary" includes a trustee, executor, administrator, guardian and custodian under a uniform transfers to minors act.

2. Common trust funds. A bank or trust company qualified to act as fiduciary in this State may establish and operate common trust funds for the purpose of furnishing investments to itself as fiduciary or to itself and others as cofiduciaries, and for the purposes of furnishing investments to affiliated banks, within the meaning of Section 1504 of the Internal Revenue Code of 1986, acting for themselves and others as cofiduciaries, and the bank or trust company may, as the fiduciary or cofiduciary or acting for affiliated banks alone or with their cofiduciaries, invest funds lawfully held for investment in interests in common trust funds, if the investment is not prohibited by the instrument, judgment, decree or order creating the fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company or affiliate procures the consent of its cofiduciaries to the investment. A person acting as a cofiduciary with the bank or trust company or affiliate is authorized to consent to the investment in the interests.

§ 7-202. Court accountings

Unless ordered by decree of the Superior Court, the bank or trust company operating common trust funds, referred to in this section as "the accountant," is not required to render a court accounting with regard to the funds, but the accountant may by petition to the Superior Court or the probate court in the county where the accountant has its principal place of business secure approval of the accounting on such conditions as the court may establish. Whenever a petition for the allowance of such an account is presented, the court having jurisdiction shall assign a time and place for hearing and shall cause public notice to be given by publication 3 weeks successively in a newspaper published in the county whose court has jurisdiction. In addition, the court shall, except to the extent as the several instruments creating the trusts participating in the common trust fund provide otherwise, order personal notice upon all known beneficiaries of the participating trust estates who have a place of residence known to the accountant. Personal notice to known beneficiaries having a place of residence known to the accountant must be made by a written notice deposited in the mails addressed to each known beneficiary at the known place of residence at least 14 days before the time of hearing, or by a written notice either in hand or left at the known place of residence 14 days at least before the time of hearing. The method of service and the form of the notice must be as the court orders.

"Place of residence known to the accountant" as used in this section includes only places of residence actually known to the accountant and does not include residences that could be discovered upon investigation but do not in the due course of business come to the actual knowledge of the accountant. The allowance of an account is conclusive as to all matters shown in the account upon all persons then or thereafter interested in the funds invested in the common trust funds.

§ 7-203. Application of Part

This Part applies to fiduciary relationships in existence on July 1, 2019 or established after that date.

PART 3

BANK AND TRUST COMPANY NOMINEES

§ 7-301. Registration in name of nominees

A state or national bank or trust company, when acting in this State as a fiduciary or cofiduciary with others, may with the consent of its cofiduciary or cofiduciaries, if any, who are authorized to give consent, cause an investment held in that capacity to be registered and held in the name of a nominee or nominees of the bank or trust company. The bank or trust company is liable for the acts of a nominee with respect to a registered investment. "Fiduciary" as used in this Part includes, but is not limited to, personal representatives, guardians, conservators, trustees, agents and custodians.

§ 7-302. Separate records

The records of a bank or trust company must at all times show the ownership of investments held in the name of nominees; such investments must be in the possession and control of the bank or trust company and must be kept separate and apart from the assets of the bank or trust company.

§ 7-303. Applicability of provisions

This Part governs fiduciaries and cofiduciaries acting under wills, agreements, court orders and other instruments existing on January 1, 1981 or made after that date. Nothing contained in this Part may be construed as authorizing a departure from or variation of the express words or limitations set forth in a will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers.

PART 4

UNIFORM PRINCIPAL AND INCOME ACT OF 1997

SUBPART 1

DEFINITIONS AND FIDUCIARY DUTIES

§ 7-401. Short title

This Part may be cited as the "Uniform Principal and Income Act of 1997."

§ 7-402. Definitions

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

1. Accounting period. "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. "Accounting period" includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

2. Beneficiary. "Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

3. Fiduciary. "Fiduciary" means a personal representative or a trustee. "Fiduciary" includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

4. Income. "Income" means money or property that a fiduciary receives as current return from a principal asset. "Income" includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in subpart 4.

5. Income beneficiary. "Income beneficiary" means a person to whom net income of a trust is or may be payable.

6. Income interest. "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

7. Mandatory income interest. "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

8. Net income. "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this Part to or from income during the period.

9. Person. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

10. Principal. "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

11. Remainder beneficiary. "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

12. Terms of a trust. "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

13. Trustee. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court.

§ 7-403. Fiduciary duties; general principles

1. Allocating receipts and disbursements. In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of subparts 2 and 3, a fiduciary:

A. Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Part;

B. May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this Part;

C. Shall administer a trust or estate in accordance with this Part if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

D. Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this Part do not provide a method for allocating the receipt or disbursement to or between principal and income.

2. Fair and reasonable administration. In exercising the power to adjust under section 7-404, subsection 1 or a discretionary power of administration regarding a matter within the scope of this Part, whether granted by the terms of a trust, a will or this Part, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary favor or that the fiduciary may favor one or more of the beneficiaries. A determination in accordance with this Part is presumed to be fair and reasonable to all of the beneficiaries.

§ 7-404. Trustee's power to adjust

1. Power to adjust between principal and income. A trustee may adjust between principal and income by allocating an amount of income to principal or an amount of principal to income to the extent the trustee considers appropriate if the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the provisions of section 7-403, subsection 1, that the trustee is unable to comply with section 7-403, subsection 2.

2. Factors. In deciding whether and to what extent to exercise the power conferred by subsection 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

A. The nature, purpose and expected duration of the trust;

B. The intent of the settlor;

C. The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

D. The needs for liquidity, regularity of income and preservation and appreciation of capital;

E. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

F. The net amount allocated to income under the other sections of this Part and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

G. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

H. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

I. The anticipated tax consequences of an adjustment.

3. Adjustments not permitted. A trustee may not make an adjustment under this section if any of the following applies:

A. The adjustment would diminish the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

B. The adjustment would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

C. The adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

D. The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust, unless both income and principal are so set aside;

E. The trustee's possession or exercise of the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

F. The trustee's possession or exercise of the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

G. The trustee is a beneficiary of the trust; or

H. The trust has been converted to a unitrust under section 7-405.

4. Cotrustees. If subsection 3, paragraph E, F or G applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from possessing or exercising the power to make the adjustment.

5. Release of power to adjust. A trustee may release the entire power conferred by subsection 1 or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection 3, paragraphs A to F or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 3. The release of the power to adjust may be permanent or for a specified period, including a period measured by the life of an individual.

6. Terms of trust deny power of adjustment. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection 1.

§ 7-405. Power to convert to unitrust

1. Convert to unitrust; requirements. Unless expressly prohibited by the terms of the trust, a trustee may release the power to adjust under section 7-404 and convert a trust into a unitrust as described in this section if all of the following apply:

A. The trustee determines that the conversion will improve the ability of the trustee to carry out the intent of the settlor and the purposes of the trust;

B. The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to the following beneficiaries:

(1) All beneficiaries who are currently eligible to receive income from the trust; and

(2) All beneficiaries who would receive, if no power of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice;

C. There is at least one beneficiary eligible to receive income and at least one beneficiary who would receive principal as described in paragraph B; and

D. No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice required under paragraph B.

2. Petition to convert. If a beneficiary timely objects to the conversion to a unitrust under subsection 1 or if the requirements of subsection 1, paragraph C are not met, the trustee may petition the court to approve the conversion to a unitrust. A beneficiary may request a trustee to convert to a unitrust and, if the trustee does not convert, the beneficiary may petition the court to order the conversion. Upon receipt of a petition by the trustee or a beneficiary, the court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will better enable the trustee to carry out the intent of the settlor and the purposes of the trust.

3. Factors. In deciding whether to exercise the power conferred by subsection 1, a trustee shall consider the following factors to the extent they are relevant:

A. The nature, purpose and expected duration of the trust;

B. The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;

C. The needs for liquidity, regularity of income and preservation and appreciation of capital;

D. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary;

E. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

F. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

G. The anticipated tax consequences of the conversion.

4. After conversion; requirements. After a trust is converted to a unitrust, all of the following apply:

A. The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital, from earnings and distributions from capital or from both;

B. The trustee shall make regular distributions in accordance with the terms of the trust construed in accordance with the provisions of this section; and

C. "Income" in the terms of the trust means an annual distribution, known as the "unitrust distribution," equal to 4%, known as the "payout percentage," of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this Part, averaged over the lesser of the 3 preceding years and the period during which the trust has been in existence.

5. Trustee's determination. The trustee of a unitrust subject to this section may in the trustee's discretion from time to time determine all of the following:

A. The effective date of a conversion to a unitrust;

B. The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payment commences or ceases;

C. The frequency of unitrust distributions during the year;

D. The effect of other payments from or contributions to the trust on the trust's valuation;

E. Whether to value the trust's assets annually or more frequently;

F. What valuation dates to use;

G. How frequently to value nonliquid assets and whether to estimate their value;

H. Whether to omit from the calculation of the unitrust distribution trust property occupied or possessed by a beneficiary; and

I. Any other matters necessary for the proper functioning of the unitrust.

6. After conversion; allocation provisions. After a trust is converted to a unitrust, the following allocation provisions apply to the trust:

A. Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution; and

B. Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid from net income, as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution must be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution must be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution must be paid from the principal of the trust.

7. Petition for changes. The trustee of a unitrust subject to this section or, if the trustee declines to do so, a beneficiary may petition the court to do any of the following:

A. Select a payout percentage other than 4%;

B. Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

C. Average the valuation of the trust's net assets over a period other than 3 years; or

D. Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 7-404 is revived.

8. Conversion does not affect certain trust provisions. A conversion to a unitrust does not affect a provision in the terms of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

9. Conversion not permitted. A trustee may not convert a trust into a unitrust if any of the following applies:

A. Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

B. The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under a will or the terms of the trust unless both income and principal are so set aside;

C. The trustee's possession or exercise of the power to convert would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert;

D. The trustee's possession or exercise of the power to convert would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to convert;

E. The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed if the trustee did not have the power to convert; or

F. The trustee is a beneficiary of the trust.

10. Conversion by cotrustee. If subsection 9, paragraph C, D or F applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from exercising the power to convert. If subsection 9, paragraph C, D or F applies to all the trustees, the trustees may petition the court to direct a conversion.

11. Release of power to convert. A trustee may release the power conferred by subsection 1 to convert to a unitrust if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection 9, paragraph C, D or E or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 9. The release of the power to convert to a unitrust may be permanent or for a specified period, including a period measured by the life of an individual.

§ 7-406. Judicial review of discretionary powers

1. Court determination of abuse of fiduciary's discretion. A court may not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this Part unless it determines that the decision was an abuse of the fiduciary's discretion. A court may not determine that a fiduciary abused the fiduciary's discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

2. Abuse of discretion; remedy. If a court determines that a fiduciary has abused the fiduciary's discretion in exercising a discretionary power conferred by this Part, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, according to the provisions of this subsection:

A. To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;

B. To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries or the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary or that beneficiary's estate to return some or all of the distribution to the trust, notwithstanding a spendthrift or similar provision;

C. If the abuse of discretion concerns the power to convert a trust into a unitrust, the court shall require the trustee either to convert the trust to a unitrust or to reconvert from a unitrust; and

D. To the extent that the court is unable, after applying paragraphs A, B and C, to restore the beneficiaries or the trust, or both, to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court may require the fiduciary to pay an appropriate amount from the fiduciary's own funds to one or more of the beneficiaries or the trust, or both.

3. Proposed exercise or nonexercise of discretion; court determination. Upon a petition by the fiduciary, a court having jurisdiction over the trust

or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this Part will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

SUBPART 2

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

§ 7-421. Determination and distribution of net income

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the provisions of this section apply.

1. Determination of net income and net principal. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the provisions of subparts 3 to 5 that apply to trustees and the provisions of subsection 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. Requirements for determinations. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of subparts 3 to 5 that apply to trustees and by:

A. Including in net income all income from property used to discharge liabilities;

B. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes; but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

C. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, exempt property and allowances distributable pursuant to Article 2, Part 4 and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

3. Distribution to beneficiary. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under subsection 2 or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary

amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will under section 3-904.

4. Distribution to other beneficiary. A fiduciary shall distribute the net income remaining after distributions required by subsection 3 in the manner described in section 7-422 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. Reduction of principal or income receipts not permitted. A fiduciary may not reduce principal or income receipts from property described in subsection 1 because of a payment described in section 7-461 or 7-462 to the extent that the will, the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a 3rd party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

§ 7-422. Distribution to residuary and remainder beneficiaries

1. Distribution based on fractional interest. Each beneficiary described in section 7-421, subsection 4 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

2. Determination of share. In determining a beneficiary's share of net income, the provisions of this subsection apply:

A. The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations;

B. The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust;

C. The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation; and

D. The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

3. Records required if not all distributed. If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

4. Application of provisions. A fiduciary may apply the provisions of this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

SUBPART 3

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

§ 7-431. When right to income begins and ends

1. Beginning of income interest. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

2. Asset subject to trust. An asset becomes subject to a trust:

A. On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

B. On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

C. On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a 3rd party because of the individual's death.

3. Successive income interest. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection 4, even if there is an intervening period of administration to wind up the preceding income interest.

4. Ending of income interest. An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§ 7-432. Apportionment of receipts and disbursements when decedent dies or income interest begins

1. Application to principal. A trustee shall allocate an income receipt or disbursement other than one to which section 7-421, subsection 1 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

2. Application to income. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

3. Due date. An item of income or an obligation is due on the date the payor is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this Part. Distributions to shareholders or other owners from an entity to which section 7-441 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§ 7-433. Apportionment when income interest ends

1. Undistributed income. As used in this section, "undistributed income" means net income received before the date on which an income interest ends. "Undistributed income" does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

2. End of mandatory income interest. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

3. Prorate final payment. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

SUBPART 4

ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

§ 7-441. Character of receipts

1. Entity. As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 7-442 applies, a business or activity to which section 7-443 applies or an asset-backed security to which section 7-455 applies.

2. Allocation to income; received from entity. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

3. Allocation to principal; received from entity. A trustee shall allocate the following receipts from an entity to principal:

A. Property other than money;

B. Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

C. Money received in total or partial liquidation of the entity; and

D. Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

4. Money received in partial liquidation. Money is received in partial liquidation:

A. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

B. If the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

5. Money not received in partial liquidation. Money is not received in partial liquidation, nor may it be taken into account under subsection 4, paragraph B, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

6. Statement about source or character of distribution. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

§ 7-442. Distribution from trust or estate

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor

transfers an interest in such a trust to a trustee, section 7-441 or 7-455 applies to a receipt from the trust.

§ 7-443. Business and other activities conducted by trustee

1. Separate accounting for business or other activity. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

2. Net receipts used for business or other activity. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

3. Separate accounting records activities. Activities for which a trustee may maintain separate accounting records include:

A. Retail, manufacturing, service and other traditional business activities;

B. Farming;

C. Raising and selling livestock and other animals;

D. Management of rental properties;

E. Extraction of minerals and other natural resources;

F. Timber operations; and

G. Activities to which section 7-454 applies.

§ 7-444. Principal receipts

A trustee shall allocate to principal:

1. Assets received. To the extent not allocated to income under this Part, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payor under a contract naming the trust or its trustee as beneficiary;

2. Received from sale, exchange, liquidation or change in form of asset. Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to this subpart;

3. Reimbursements because of disbursements. Amounts recovered from 3rd parties to reimburse the trust because of disbursements described in section 7-462, subsection 1, paragraph G or for other reasons to the extent not based on the loss of income;

4. Proceeds of property taken by eminent domain. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

5. Net income without beneficiary. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

6. Other receipts. Other receipts as provided in sections 7-448 to 7-455.

§ 7-445. Rental property

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§ 7-446. Obligation to pay money

1. Interest on obligation to pay money; allocate to income. An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

2. Amount received from sale, redemption or other disposition of obligation to pay money; allocate to principal. A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

3. Not applicable. This section does not apply to an obligation to which section 7-449, 7-450, 7-451, 7-452, 7-454 or 7-455 applies.

§ 7-447. Insurance policies and similar contracts

1. Trust, trustee as beneficiary; allocate to principal. Except as otherwise provided in subsection 2, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

2. Loss of occupancy, use, income, business profits; allocate to income. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 7-443, loss of profits from a business.

3. Not applicable. This section does not apply to a contract to which section 7-449 applies.

§ 7-448. Insubstantial allocations not required

If a trustee determines that an allocation between principal and income required by section 7-449, 7-450, 7-451, 7-452 or 7-455 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 7-404, subsection 3 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 7-404, subsection 4 and may be released for the reasons and in the manner described in section 7-404, subsection 5. An allocation is presumed to be insubstantial if:

1. Increase or decrease of less than 10%. The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

2. Value of asset less than 10%. The value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

§ 7-449. Deferred compensation, annuities and similar payments

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

A. "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. "Payment" includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor. For the purposes of subsections 4, 5, 6 and 7, "payment" also includes any payment from any separate fund, regardless of the reason for the payment.

B. "Separate fund" includes a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.

2. Payment is interest or dividend; allocate to income. To the extent that a payment is characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

3. Payment not interest or dividend; allocation based on if required. If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

4. Payment qualifies for marital deduction. Except as otherwise provided in subsection 5, subsections 6 and 7 apply and subsections 2 and 3 do not apply in determining the allocation of a payment made from a separate fund to a trust:

A. That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7) (2010), as amended, and for which either such an election has been made for federal purposes or for which an election under the pertinent provisions of the laws of the State to qualify as Maine qualified terminable interest property has been made; or

B. That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(5) (2010), as amended.

5. Series of payments qualify for marital deduction. Subsections 4, 6 and 7 do not apply if and to the extent that the series of payments would, without the application of subsection 4, qualify for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7)(C) (2010), as amended.

6. Internal income of separate fund. A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this Part. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

7. Value of separate fund. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither

the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under the federal Internal Revenue Code, 26 United States Code, Section 7520 (2010), as amended, for the month preceding the accounting period for which the computation is made.

8. Not applicable. This section does not apply to a payment to which section 7-450 applies.

§ 7-450. Liquidating asset

1. Liquidating asset. As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. "Liquidating asset" includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. "Liquidating asset" does not include a payment subject to section 7-449, resources subject to section 7-451, timber subject to section 7-452, an activity subject to section 7-454, an asset subject to section 7-455 or any asset for which the trustee establishes a reserve for depreciation under section 7-463.

2. Allocation. A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

§ 7-451. Minerals, water and other natural resources

1. Allocation of receipts. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

A. If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

B. If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

C. If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90% must be allocated to principal and the balance to income; and

D. If an amount is received from a working interest or any other interest not provided for in paragraph A, B or C, 90% of the net amount received must be allocated to principal and the balance to income.

2. Allocation from interest in water. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90% of the amount must be allocated to principal and the balance to income.

3. Timing of extractions. This Part applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

4. Pre-2002 ownership. If a trust owns an interest in minerals, water or other natural resources on January 1, 2002, the trustee may allocate receipts from the interest as provided in this Part or in the manner used by the trustee before January 1, 2002. If the trust acquires an interest in minerals, water or other natural resources after January 1, 2002, the trustee shall allocate receipts from the interest as provided in this Part.

§ 7-452. Timber

1. Allocation of net receipts. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

A. To income to the extent the net receipts do not exceed the product of mean annual growth multiplied by the number of years since the last timber sale, or, if more recent, the date the timber became a part of the trust, multiplied by the stumpage rates obtained, after netting against the stumpage rates obtained the expenses associated with the conduct of the sale;

B. To principal to the extent that the proceeds received exceed the amount determined in paragraph A;

C. To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the provisions of paragraphs A and B; or

D. To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph A, B or C.

2. Deduction for depletion. In determining net receipts to be allocated pursuant to subsection 1, a trustee may deduct and transfer to principal a reasonable amount for depletion.

3. Timing of timber harvests. This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

4. Pre-2003 ownership. If a trust owns an interest in timberland on January 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after January 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

5. Mean annual growth. For purposes of this section, "mean annual growth" means, at the trustee's option, either:

A. The mean annual increment of growth of the timber involved as determined by a licensed professional forester; or

B. Forty-five hundredths of a cord per acre of woodland.

§ 7-453. Property not productive of income

1. Income to obtain marital deduction. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 7-404 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by section 7-404, subsection 1. The trustee may decide which action or combination of actions to take.

2. Proceeds otherwise are principal. In cases not governed by subsection 1, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

§ 7-454. Derivatives and options

1. Derivative. As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

2. Allocation to principal. To the extent that a trustee does not account under section 7-443 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

3. Options to buy or sell property; paid from or allocated to principal. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

§ 7-455. Asset-backed securities

1. Asset-backed security. As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the

proceeds of financial assets that provide collateral for the security. "Asset-backed security" includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 7-441 or 7-449 applies.

2. Payment from interest or current return; allocate to income. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payor identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

3. Payments for trust's interest; allocate to income and principal. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

SUBPART 5

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

§ 7-461. Disbursements from income

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 7-421, subsection 2, paragraph B or C applies:

1. Compensation. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

2. Expenses; income and remainder interests. One-half of all expenses for accountings, judicial proceedings or other matters that involve both the income and remainder interests;

3. Other ordinary expenses. All of the ordinary expenses other than those specified in subsections 1 and 2 incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding or other matter that concerns primarily the income interest; and

4. Recurring premiums. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§ 7-462. Disbursements from principal

1. Required disbursements. A trustee shall make the following disbursements from principal:

A. The remaining 1/2 of the disbursements described in section 7-461, subsections 1 and 2;

B. All of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination and disbursements made to prepare property for sale;

C. Payments on the principal of a trust debt;

D. Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

E. Premiums paid on a policy of insurance not described in section 7-461, subsection 4 of which the trust is the owner and beneficiary;

F. Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

G. Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by 3rd parties and defending claims based on environmental matters.

2. Encumbered principal asset; transfer to income. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

§ 7-463. Transfers from income to principal for depreciation

1. Depreciation. As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

2. Reasonable amount of net cash receipts. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer for depreciation any amount:

A. Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

B. During the administration of a decedent's estate; or

C. Under this section if the trustee is accounting under section 7-443 for the business or activity in which the asset is used.

3. Separate fund not required. An amount transferred to principal pursuant to subsection 2 need not be held as a separate fund.

§ 7-464. Transfers from income to reimburse principal

1. Transfer to reimburse or provide reserve. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

2. Applicable principal disbursement. Principal disbursements to which subsection 1 applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a 3rd party:

A. An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

B. A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

C. Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions;

D. Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

E. Disbursements described in section 7-462, subsection 1, paragraph G.

3. Successive income interest. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection 1.

§ 7-465. Income taxes

1. Tax based on receipts allocated to income. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

2. Tax based on receipts allocated to principal. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

3. Tax on trust's share of entity's taxable income. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

A. From income to the extent that receipts from the entity are allocated only to income;

B. From principal to the extent that receipts from the entity are allocated only to principal;

C. Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

D. From principal to the extent that the tax exceeds the total receipts from the entity.

4. Adjustments because of deduction for payments to beneficiary. After applying subsections 1 to 3, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

§ 7-466. Adjustments between principal and income because of taxes

1. Adjustments to offset shifting of interests or benefits. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

A. Elections and decisions, other than those described in subsection 2, that the fiduciary makes from time to time regarding tax matters;

B. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

C. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary.

2. Increase in estate tax, reduction in income taxes. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

SUBPART 6

MISCELLANEOUS PROVISIONS

§ 7-471. 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 states that enact it.

§ 7-472. Application of Part to all trusts and estates

This Part applies to every trust or decedent's estate, including those in existence on July 1, 2019, beginning with the first fiscal year of the trust or decedent's estate that begins on or after July 1, 2019, except as otherwise expressly provided in the will or terms of the trust or in this Part.

ARTICLE 8

MISCELLANEOUS PROVISIONS

PART 1

RECEIVERSHIPS FOR MISSING AND ABSENT PERSONS

§ 8-101. Estates of absentees; petition

If a person entitled to or having an interest in property within the jurisdiction of the State has disappeared or absconded from the place within or outside the State where the person was last known to be, has no agent in the State and it is not known where the person is, or if a person, having a spouse or minor child dependent to any extent upon the person for support, has disappeared or absconded without making sufficient provision for support and it is not known where the person is, or, if it is known that the person is outside the State, anyone who would under the law of the State be entitled to administer the estate of the absentee if the absentee were deceased may file a petition under oath in the court for the county where the property is situated. The petition must state the name, age, occupation and last known residence or address of the absentee, the date and circumstances of the disappearance and the names and residences of other persons, whether members of the absentee's family or otherwise, of whom inquiry may be made. The petition must also contain a schedule of the absentee's known property, real and personal, and its location within the State and request that such property be taken possession of and a receiver appointed under this Part.

§ 8-102. Warrant

Upon receipt of a petition under section 8-101, the court may issue a warrant, which may run throughout the State, directed to the public administrator in the county where the property or some of it is situated, commanding the public administrator to take possession of the property listed in the schedule and expeditiously make return of the warrant with a schedule of the property taken. The public administrator shall cause any portion of the warrant relating to land to be recorded in the registry of deeds for the county where the land is located. The public administrator is entitled to the fees allowed by the court for serving the warrant, but may not receive more than those established by law for similar service upon a writ of attachment. The fees and the costs of publishing and serving the notice must be paid by the petitioner. If a receiver is appointed under section 8-105, the fees must be repaid by the receiver to the petitioner and the receiver may be compensated for these fees under section 8-112.

§ 8-103. Notice

Upon the return of a warrant issued under section 8-102, the court shall issue a notice reciting the substance of the petition, warrant and return, which must be addressed to the absentee, to all persons who claim an interest in the absentee's property and to all whom it may

concern, ordering them to appear at a time and place named and show cause why a receiver of the property should not be appointed to hold and dispose of the property listed in the schedule under this Part.

§ 8-104. Publication

The return day may not be less than 30 days nor more than 60 days after the date of the notice. The court shall order the notice to be published once in each of 3 successive weeks in one or more newspapers within the county in which the petition was filed under section 8-101 and a copy of the notice to be mailed to the last known address of the absentee. The court may order additional and alternative notice to be given within or outside the State.

§ 8-105. Hearing; appointment of receiver of property; bond

The absentee or a person who claims an interest in any of the property may appear and show cause why the petition should not be granted. The court may, after hearing, dismiss the petition and order that the property in possession of the public administrator be returned to the person entitled to the property or it may appoint as receiver a person who, under the law of the State, is entitled to administer the estate of the absentee if the absentee were deceased or, if no eligible person is known or if all eligible persons decline to serve, the court may appoint the public administrator as receiver of the property in the possession of the public administrator and named in the schedule. If a receiver is appointed, the court shall find and record the date of the absentee's disappearance or absconding and the receiver shall give bond to the State of Maine in a sum and under the conditions ordered by the court.

§ 8-106. Possession by receiver

After approval of a bond under section 8-105, the court may order the public administrator to transfer and deliver to the receiver possession of the property under the warrant. The receiver shall file a schedule of the property received in the registry of probate.

§ 8-107. Collection of debts

In addition to property transferred to the receiver under section 8-106, the receiver shall take possession of any other property within the State that belongs to the absentee and demand and collect all debts due the absentee from any person in the State and hold the same as if it had been transferred and delivered to the receiver by the public administrator. If the receiver takes any additional real estate, the receiver shall file a certificate describing the real estate with the register of deeds for the county where the real estate is located.

§ 8-108. Appointment of receiver for absentee's debts

If an absentee has left no corporeal property within the State, but there are debts or obligations due or owing the absentee from persons in the State, a petition may be filed as provided in section 8-101, stating the nature and amount of the absentee's known debts and obligations and praying that a receiver may be appointed. Upon receipt of the petition, the court may issue a notice as provided in section 8-103 without issuing a warrant and may, upon the return of the notice and after a hearing, dismiss the petition or appoint a receiver and authorize and direct the receiver to demand and collect the absentee's debts and obligations. The receiver shall give bond as provided in section 8-105 and shall hold the proceeds of the absentee's debts

and obligations and all property received by the receiver and distribute the same as provided in this Part.

§ 8-109. Perishable goods

The court may make orders for the care, custody, leasing and investing of all property and its proceeds in the possession of the receiver. If any of the property consists of live animals or is perishable or cannot be kept without great or disproportionate expense, the court may, after the return of the warrant, order the property to be sold at public or private sale. Upon petition of the receiver, the court may order all or part of the property, including the absentee's rights in land, to be sold at public or private sale to supply money for payments authorized by this Part or for reinvestment approved by the court.

§ 8-110. Support of dependents

The court may order the absentee's property or its proceeds acquired by mortgage, lease or sale to be applied in payment of expenses incurred or that may be incurred to support and maintain the absentee's spouse and dependent children and to discharge any debts and claims for spousal support proved against the absentee.

§ 8-111. Arbitration of claims

The court may authorize the receiver appointed under section 8-108 to adjust by arbitration or compromise any demand in favor of or against the absentee's estate.

§ 8-112. Compensation; cessation of duties

The receiver appointed under section 8-108 may receive compensation and disbursements ordered by the court, to be paid out of the absentee's property or proceeds. If, within 8 years after the date of the disappearance or absconding found by the court under section 8-105, the absentee appears or a personal representative, assignee in insolvency or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver and pay over the remainder of the absentee's property. If the absentee does not appear and claim the absentee's property within 8 years, all of the absentee's right, title and interest in the property, real or personal, or the proceeds thereof, ceases, and no action may be brought by the absentee.

§ 8-113. Termination of receivership

If at the expiration of 8 years after the date of the disappearance or absconding found by the court under section 8-105, the absentee's property has not been accounted for, delivered or paid over under section 8-112, the court shall order distribution of the remainder to the persons to whom, and in the shares and proportions in which, the absentee's property would have been distributed if the absentee had died intestate within the State on the day 8 years after the date of the disappearance or absconding. The receiver shall deduct from the share of each distributee and pay to the State Tax Assessor the amount each distributee would have paid in an inheritance tax to the State if the distributee had received the property by inheritance from a deceased resident of the State.

§ 8-114. Limitations

Notwithstanding sections 8-112 and 8-113, if a receiver is not appointed within 7 years after the date of disappearance or absconding found by the court under section 8-105, the time limited to accounting for, or fixed for distributing, the absentee's property or its proceeds, or for barring actions relative thereto, is one year after the date of the appointment of a receiver.

PART 2

PROCEDURES GOVERNING BONDS

§ 8-201. Applicability to proceedings on other bonds

Except as otherwise provided by law, and whenever the provisions of this Part are applicable, proceedings, judgment and execution on the bonds given to the State of Maine or the court by personal representatives, guardians, conservators, trustees, surviving partners, assignees of insolvent debtors and others must be conducted in the manner provided in this Part.

§ 8-202. Surety on bond may cite trust officers for accounting

Whenever a surety on a bond has reason to believe that the trust officer has depleted or is wasting or mismanaging the estate, the surety may cite the trust officer before the court as provided in section 3-110. If upon hearing the court is satisfied that the estate held in trust by the trust officer has been depleted, wasted or mismanaged, the court may remove the trust officer and appoint a new trust officer.

§ 8-203. Agreement with sureties for joint control

It is lawful for any party of whom a bond, undertaking or other obligation is required to agree with the surety or sureties for the deposit of any or all money and assets for which the party and the surety or sureties are or may be held responsible with a national bank, savings bank, safe-deposit company or trust company authorized by law to do business in this State or with another depository approved by the court having jurisdiction over the trust or undertaking for which the bond is required if such deposit is otherwise proper and in a manner that prevents the withdrawal of the money or assets or any part thereof without the written consent of the surety or sureties or an order of the court made on such notice to the surety or sureties as the court may direct. Such agreement does not in any manner release from or change the liability of the principal or sureties under the terms of the bond.

§ 8-204. Approval of bond by judge

Except as otherwise provided by sections 3-603 to 3-606, 4-204, 4-207, 5-125, 5-415 and 5-416 and Title 18-B, section 702, a bond required to be given to the State of Maine or the court or to be filed in the probate office is insufficient until it has been examined by the court and approved by the court in writing.

§ 8-205. Insufficient sureties

When the sureties in a bond under section 8-204 are insufficient, the court, on petition of any person interested and with notice to the principal, may require a new bond with sureties approved by the court.

§ 8-206. Discharge of surety

On application of any surety or principal of a bond under this Part, the court, after notice to all parties interested, may discharge the surety or sureties from all liability for any subsequent breach but not for any prior breaches and may require a new bond of the principal with sureties approved by the court.

§ 8-207. New bonds or removal of principal

In proceedings under sections 8-205 and 8-206, if the principal does not give a new bond within the time ordered by the court, the principal must be removed and another appointed.

§ 8-208. Reduction of liability where signed by surety company

If a surety company becomes surety on a bond given to the State of Maine, the court may, upon petition of any party in interest and after notice to all interested parties, reduce the amount for which the principal and surety are liable for a subsequent violation of the conditions of the bond.

§ 8-209. Actions on bonds

Actions or proceedings on probate bonds of any kind payable to the State of Maine or the court may be commenced by any person interested in the estate or other matter for which the bond was given, either in the probate court in which the bond was filed or in the Superior Court of the county in which the bond was filed.

§ 8-210. Principal made party in action against surety

If the principal of the bond resides in the State when an action is brought under section 8-209, and is not made a party to the action, or if at the trial or on proceedings on a judgment against the sureties only the principal is in the State, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring the principal into court.

§ 8-211. Proceedings and judgment

With approval of the court after a continuance is issued under section 8-210, the surety may request a writ, in the form prescribed by the court, to arrest the principal, if liable to arrest, or to attach the principal's estate and summon the principal to appear and answer as a defendant in the action. If, 14 days after service of the writ, the principal fails to appear at the time appointed and judgment is rendered for the plaintiff, the judgment must be against the principal and the other defendants as if the principal had been a party. Any attachment made on the writ may be used to satisfy the judgment as if the attachment had been issued in the original action.

§ 8-212. Limitation of actions on bonds

Except in the case of personal representatives provided for under sections 3-1005 and 3-1007, and whenever applicable under section 8-201, an action on a bond must be commenced within 6 years after the principal has been cited by the court to appear to settle the account or, if not cited, within 6 years from the time of the breach of the bond, unless the breach is fraudulently concealed by the principal or surety from the persons pecuniarily interested and who are parties to the action, in which case the action must be commenced within 3 years from the time the breach is discovered.

§ 8-213. Judicial authorization of actions

The court may expressly authorize or instruct a personal representative or other fiduciary, on the court's own initiative or on the complaint of any interested person, to commence an action on the bond for the benefit of the estate. Nothing in this section may be deemed to limit the power or duty of a successor fiduciary to bring proceedings the fiduciary is authorized to bring without express court authorization under section 3-606, subsection 1, paragraph D; section 5-417, subsection 1, paragraph C; Title 18-B, section 702; or any other provision of law.

§ 8-214. Forfeiture for failure to account when ordered

When it appears in an action on a bond against a principal that the principal is unable to account for personal property of the estate that the principal has received, execution must be awarded against the principal for the full value of the unaccounted-for property, without any allowance for charges of administration or debts paid.

§ 8-215. Judgment in trust for all interested

Every judgment and execution in an action on the bond must be recovered by the court in trust for all interested parties. The judge shall order the delinquent fiduciary, if still in office, to account for the amount or to assign the amount to the fiduciary's successor to be collected and distributed or otherwise disposed of as assets.

ARTICLE 9

ADOPTION

Prefatory Comment**:** The Maine Adoption Act, Article 9 of Title 18-C, is not based on the Uniform Probate Code (which does not address adoption) or any other uniform law. Article 9 includes minor revisions to format and organization of the Adoption Act as part of the recodification of the entire probate code. It also reflects substantive changes, as noted in the Comments to some sections in this Article.

Revisions appear throughout Article 9 to ensure that the Adoption Act is consistent with the Maine Parentage Act ("MPA"), P.L. 2015, ch. 296 (codified at Title 19-A, chapter 61), which became effective on July 1, 2016. Specifically, the Adoption Act now reflects the many ways – in addition to a biological connection – that one may be a legal parent of a child pursuant to the MPA, which "applies to the determination of parentage in the State." *See* 19-A M.R.S. § 1833(1) (Maine Parentage Act: Short Title, Scope, Definitions and Central Provisions – Scope and Application). Specifically, the prior Article 9 language limiting parentage to biological or genetic connections has been eliminated, as the definition of "parent" under the MPA reflects that there may be other bases on which to establish parentage, such as acknowledgment, presumption, and de facto parentage. *See* 19-A M.R.S. § 1851 (Maine Parentage Act: Establishment of Parentage – Establishment of Parentage). Similarly, the gender-based language regarding "mothers" and

“fathers” throughout the Adoption Act has been replaced with the term “parent” as either men or women may be in the position of a parent or putative parent for the notice and consent requirements for adoption of a minor child.

PART 1

GENERAL PROVISIONS

§ 9-101. Short title

This Article may be known and cited as "the Adoption Act."

§ 9-102. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Adoptee. "Adoptee" means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.

2. Adult. "Adult" means a person who is 18 years of age or older.

3. Child. "Child" means a person who is under 18 years of age.

4. Consent. "Consent," used as a noun, means a voluntary agreement to an adoption by a specific petitioner that is executed by a parent or custodian of the adoptee.

5. Department. "Department" means the Department of Health and Human Services.

6. Licensed child-placing agency. "Licensed child-placing agency" means an agency, person, group of persons, organization, association or society licensed to operate in this State pursuant to Title 22, chapter 1671.

7. Parent. "Parent" means a person who, with respect to a child:

A. Has established parentage pursuant to Title 19-A, chapter 61; or

B. When no person described in paragraph A exists, is the legal guardian of the child.

8. Petitioner. "Petitioner" means a person filing a petition to adopt an adult or a child, and includes both petitioners under a joint petition, except as otherwise provided in this Article.

9. Putative parent. "Putative parent" means a person who is the alleged parent of a child but whose parentage has not been but may be legally determined in accordance with Title 19-A, chapter 61.

10. Surrender and release. "Surrender and release," used as a noun, means a voluntary relinquishment of all parental rights to a child to the department or a licensed child-placing agency for the purpose of placement for adoption.

§ 9-103. Jurisdiction

1. Probate Court jurisdiction. Subject to Title 4, section 152, subsection 5-A, the Probate Court has exclusive jurisdiction over the following:

A. Petitions for adoption;

B. Consents and reviews of withholdings of consent by persons other than a parent;

C. Surrenders and releases;

D. Termination of parental rights proceedings brought pursuant to section 9-204;

E. Proceedings to determine the rights of putative parents of children whose adoptions or surrenders and releases are pending before the Probate Court; and

F. Reviews conducted pursuant to section 9-205.

2. District Court jurisdiction. The District Court has jurisdiction to conduct hearings pursuant to section 9-205. The District Court has jurisdiction over any matter described in subsection 1 if the proceeding concerns a child over whom the District Court has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

§ 9-104. Venue; transfer

1. Venue if adoptee placed by agency or department. If an adoptee is placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the court in the county or division where:

A. The petitioner resides;

B. The adoptee resides or was born;

C. An office of the agency that placed the adoptee for adoption is located; or

D. Parental rights of the minor adoptee's parents have been terminated.

2. Venue if agency or department not involved in placement. If an adoptee is not placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the county or division where the adoptee resides or where the petitioners reside.

3. Transfer. If, in the interests of justice or for the convenience of the parties, the court finds that the matter should be heard in another court, the court may transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the court.

§ 9-105. Rights of adopted persons

Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parents would have. An adoptee also retains the right to inherit from the adoptee's former parents if the adoption decree so provides, as specified in section 2-117.

§ 9-106. Legal representation

1. Attorney for parents. The parents are entitled to an attorney for any hearing held pursuant to this Article. If a parent or putative parent wants an attorney but is unable to afford one, the parent or the putative parent may request the court to appoint an attorney. If the court finds the requesting party indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The attorney may not be the attorney for the adoptive parents.

2. Attorney for minor indigent parent. When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent parent at every stage of the proceedings unless the minor indigent parent refuses representation or the court determines that representation is unnecessary.

§ 9-107. Indian Child Welfare Act of 1978

The federal Indian Child Welfare Act of 1978, United States Code, Title 25, Section 1901 et seq. governs all proceedings under this Article that pertain to an Indian child as defined in that Act.

§ 9-108. Application of prior laws

The laws in effect on June 30, 2019 apply to proceedings for which any of the following occurred before July 1, 2019:

1. Consent. The filing of a consent;

2. Surrender and release. The filing of a surrender and release;

3. Waiver of notice. The filing of a waiver of notice by a parent or putative parent under former Title 19, section 532-C;

4. Order terminating parental rights. The issuance of an order terminating parental rights; or

5. Adoption petition. The filing of a petition for adoption.

§ 9-109. Mediation

The court may refer the parties to mediation at any time after a petition is filed if mediation services are available at a reasonable fee or no cost, and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

Maine Comment: This section grants courts the express authority to require the parties to a contested adoption proceeding to participate in mediation, provided that mediation services are available at a reasonable or no cost, and to present any agreement to the court for approval.

PART 2

DETERMINATION OF PARENTAGE AND TERMINATION OF PARENTAL RIGHTS

§ 9-201. Determination of parentage

1. Affidavit of parentage. When a parent of a child wishes to consent to the adoption of the child or to execute a surrender and release for the purpose of adoption of the child and a putative parent has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child or waived the right to notice, the parent must file an affidavit of parentage with the court so that the court may determine how to give notice of the proceedings to the putative parent.

2. Notice of intent to consent or execute surrender and release. If a court finds from the affidavit of the parent submitted pursuant to subsection 1 that the putative parent's whereabouts are known, the court shall order that notice of the parent's intent to consent to adoption or to execute a surrender and release, or the parent's actual consent or surrender and

release, for the purpose of adoption of the child, be served upon the putative parent. If the court finds that the putative parent's whereabouts are unknown, the court shall order notice by publication in accordance with the applicable rules of procedure. If the parent does not know or refuses to tell the court who a putative parent is, the court may order publication in accordance with the applicable rules of procedure in a newspaper of general circulation in the area where the petition is filed, where the child was conceived or where the putative parent is most likely to be located. The notice must specify the names of the parent and the child.

3. Waiver of notice. A putative parent may waive the right to notice under this section in a document acknowledged before a notary public or a judge. The notary public may not be an attorney who represents either the parent or any person who is likely to become the legal guardian, custodian or parent of the child.

A. The waiver of notice must indicate that the putative parent understands that the waiver of notice operates as a consent to adoption or a surrender and release for the purposes of adoption for any adoption of the child and that by signing the waiver of notice the putative parent voluntarily gives up any rights to the child.

B. The waiver of notice may state that the putative parent neither admits nor denies parentage.

4. Determination of parentage of putative parent. If, after notice, the putative parent of the child wishes to establish parentage of the child, the putative parent must, within 20 days after notice has been given or within a longer period of time as ordered by the court, petition the court to initiate proceedings to establish parentage under Title 19-A, chapter 61.

5. Hearing date. Upon receipt of a petition under subsection 4, the court shall fix a date for a hearing to determine the putative parent's parentage of the child.

6. Appointment of attorneys. The court shall appoint an attorney who is not the attorney for the putative parent, the parent or the potential transferee agency or a potential adoptive parent to represent the child and to protect the child's interests in the proceedings under this section.

7. Notice of hearing. Notice of a hearing under this section must be given to a parent, a putative parent, the attorney for the child and any other parties the court determines appropriate. Notice need not be given to a putative parent who has waived the right to notice as provided in subsection 3.

8. Studies and reports. Upon order of the court, the department or licensed child-placing agency shall furnish studies and reports relevant to the proceedings under this section.

9. Findings; effect of parent not waiving notice. If the putative parent is determined to be the child's parent pursuant to one or more of the means of establishing parentage under Title 19-A, chapter 61, and does not execute a waiver of notice pursuant to subsection 3, then a petitioner must bring a petition to terminate the parent's parental rights pursuant to section 9-204 if the petitioner proceeds with the adoption.

10. Findings; putative parent does not seek to establish or establish parentage of the child. If the putative parent does not bring a petition to establish parentage under subsection 4 or does not establish parentage of the child under Title 19-A, chapter 61, the court shall rule that the putative parent's consent or surrender and release is not needed for the adoption.

Maine Comment: The provisions in this section regarding putative parents and the determination of parentage have been revised to reflect the constitutional considerations discussed in *Adoption of Tobias D.*, 2012 ME 45. Specifically, rather than imposing on a putative parent the burden to "establish" his or her parental rights, subsection 4 provides a putative parent an opportunity to petition for a determination of his or her parentage of the child under the MPA. If the putative parent is determined to be the child's parent and does not consent to the adoption, the language in proposed subsection 9 provides that his or her parental rights must be terminated under section 9-204 if the adoption is to proceed.

§ 9-202. Surrender and release; consent

1. Surrender and release or consent; presence of judge. With the approval of the court of any county within the State and after a determination by the court that a surrender and release or a consent is in the best interest of the child, the parents or surviving parent of a child may at any time at least 72 hours after the child's birth:

A. Surrender and release all parental rights to the child and the custody and control of the child to a licensed child-placing agency or the department to enable the licensed child-placing agency or the department to have the child adopted by a suitable person; or

B. Consent to have the child adopted by a specified petitioner.

The parents or the surviving parent must execute the surrender and release or the consent in the presence of the judge. The adoptee, if 14 years of age or older, must execute the consent in the presence of the judge. The waiver of notice by the putative parent is governed by section 9-201, subsection 3.

2. Approval of surrender and release or consent. The court may approve a surrender and release or a consent only if:

A. A licensed child-placing agency or the department certifies to the court that counseling was provided or was offered and refused. This requirement does not apply if:

(1) One of the petitioners is a blood relative; or

(2) The adoptee is an adult;

B. The court has explained the individual's parental rights and responsibilities, the effects of the surrender and release or the consent, that in all but specific situations the individual has the right to revoke the surrender and release or consent within 5 working days and the existence of the adoption registry and the services available under Title 22, section 2706-A. The individual does not have the right to revoke the consent when the individual is a consenting party and also a petitioner;

C. The court determines that the surrender and release or the consent has been duly executed and was given freely after the parent was informed of the parent's rights; and

D. Except when a consenting party is also a petitioner, at least 5 working days have elapsed since the parents or parent executed the surrender and release or the consent and the parents or parent did not withdraw or revoke the surrender and release or consent before the judge or, if the judge was not available, before the register.

3. Original; copies. The original surrender and release or consent must be filed in the court where the surrender and release or the consent is executed. An attested copy of the surrender and release or consent must be filed in the court in which the petition is filed. The court in which the surrender and release or the consent is executed shall provide an attested copy to each surrendering or consenting party and an attested copy to the transferring agency. The copy given to the surrendering or consenting party must contain a statement explaining the importance of keeping the court informed of a current name and address.

4. Valid after 5 days; exception. A surrender and release or a consent is not valid until 5 working days after it has been executed, except that consent by a parent petitioning to adopt that parent's own child with that parent's spouse is valid upon signature.

5. Consent acknowledged. Consent may be acknowledged before a notary public who is not an attorney for the adopting parents or a partner, associate or employee of an attorney for the adopting parents when consent is given by:

A. The department or a licensed child-placing agency; or

B. A public agency or a duly licensed private agency to which parental rights have been transferred under the law of another state or country.

6. Final and irrevocable; exceptions. Except as provided in subsection 7 and section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable when duly executed.

7. Consent; limitations. A consent is final only for the adoption consented to, and if that petition for adoption is withdrawn or dismissed or if the adoption is not finalized within 18 months of the execution of the consent, a review must be held pursuant to section 9-205.

8. Surrender and release or consent from another state. The court shall accept a surrender and release or a consent by a court of comparable jurisdiction in another state if the court receives an affidavit from a member of that state's bar or a certificate from that court of comparable jurisdiction stating that:

A. The party executing the surrender and release or the consent followed the procedure required to make a surrender and release or a consent valid in the state in which it was executed; and

B. The court of comparable jurisdiction advised the person executing the surrender and release or the consent of the consequences of the surrender and release or the consent under the laws of the state in which the surrender and release or the consent was executed.

The court shall accept a waiver of notice by a putative parent that meets the requirements of section 9-201, subsection 3.

Maine Comment: This section has been revised so that a parent cannot execute a surrender and release until at least seventy-two hours after the birth and that the parent has five working days to revoke such surrender and release.

§ 9-203. Duties and responsibilities subsequent to surrender and release

Without notice to the parent or parents, the surrender and release authorized pursuant to section 9-202 may be transferred together with all rights under section 9-202 from the transferee agency to the department or from the department as original transferee to any licensed child-

placing agency. If the licensed child-placing agency or the department is unable to find a suitable adoptive home for a child surrendered and released by a parent or parents, the licensed child-placing agency or the department to whom custody and control of that child have been surrendered and released or transferred shall request a review pursuant to section 9-205.

§ 9-204. Termination of parental rights

1. Petition for termination; adoption petition brought solely by parent. A petition for termination of parental rights may be brought in the court in which a petition for adoption is properly filed as part of that petition for adoption. A petition for termination of parental rights may not be included as part of a petition for adoption brought solely by another parent of the child unless the adoption is sought to confirm the parentage status of the petitioning parent.

2. Title 22, chapter 1071, subchapter 6 applies. Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter 6.

3. Grounds for Termination. The court may order termination of parental rights if:

A. The parent consents to the termination. Consent must be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

B. The court finds, based on clear and convincing evidence, that:

(1) Termination is in the best interest of the child; and

(2) Either:

(a) The parent is unwilling or unable to protect the child from jeopardy, as defined by Title 22, section 4002, subsection 6, and these circumstances are unlikely to change within a time that is reasonably calculated to meet the child's needs;

(b) The parent has been unwilling or unable to take responsibility for the child within a time that is reasonably calculated to meet the child's needs; or

(c) The parent has abandoned the child, as described in Title 22, section 4002, subsection 1-A;

In making findings pursuant to this paragraph, the court may consider the extent to which the parent had opportunities to rehabilitate and to reunify with the child, including actions by the child's other parent to foster or to interfere with a relationship between the parent and child or services provided by public or nonprofit agencies.

4. Guardian ad litem for child. The court may appoint a guardian ad litem for a child who is the subject of a petition for termination of parental rights under subsection 1. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

A. The court shall pay reasonable costs and expenses for the guardian ad litem.

B. In general, the guardian ad litem shall act in pursuit of the best interest of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate:

(1) Reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child;

(2) Review of relevant school records and other pertinent materials;

(3) Interviewing the child with or without other persons present; and

(4) Interviews with parents, guardians, teachers and other persons who have been involved in caring for or treating the child.

The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make recommendations to the court.

Maine Comment: This section includes substantive changes to prior law. Subsection 1 precludes petitions to terminate parental rights in adoption cases where the adoption is sought solely by a person who is already the legal parent of the child, with a narrow exception to permit such adoptions if a parent is petitioning to secure his or her parentage status when the child's other parent(s) have abandoned the child. *See In re Adoption of Liam O.*, 2016 ME 66. This change precludes a parent from bringing an action to adopt that parent's own child for the sole purpose of terminating another parent's rights.

In subsection 2, Title 18-C clarifies and revises the standard for termination of parental rights. The standard is consistent with that set forth in 22 M.R.S. § 4055 (Child and Family Services Protection Act: Termination of Parental Rights – Grounds for Termination), which applies in child protection proceedings, except that it does not include the language in 22 M.R.S.A. § 4055(1)(B)(2)(c) regarding the parent's failure to make a good faith effort to follow a reunification plan. It is unlikely that any such plan would be ordered or implemented in the context of the adoption proceeding. *See Adoption of Isabelle T.*, 2017 ME 220. The revised language instead permits a court to consider "the extent to which the parent had opportunities to rehabilitate and to reunify with the child, including actions by the child's other parent to foster or to interfere with a relationship between the parent and child or services provided by public or non-profit agencies." This language permits a more appropriate and context-specific finding regarding the parent's opportunities and efforts to reunify with the child.

§ 9-205. Review

1. Judicial review required; 18 months. The court shall conduct a judicial review if:

A. A child is not adopted within 18 months of the execution of a surrender and release;

B. The adoption is not finalized within 18 months of the consent to an adoption by a parent or parents; or

C. A petition for adoption is not finalized within 18 months.

2. Determination whether adoption viable plan; review; plan; District Court. If, after judicial review under subsection 1, the court determines that adoption is still a viable plan for the child, the court shall schedule another judicial review within 2 years. If the court determines that adoption is no longer a viable plan, the court shall attempt to notify the parents, who must be given an opportunity to present an acceptable plan for the child. If either or

both parents are able and willing to assume physical custody of the child, the court shall declare the surrender and release or the consent void.

If the parents are not notified or are unable or unwilling to assume physical custody of the child or if the court determines that placement of the child with the parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

PART 3

ADOPTION PROCEDURES

§ 9-301. Petition for adoption and change of name; filing fee

Spouses or unmarried persons jointly or an unmarried person, whether resident or nonresident of the State, may petition the court to adopt a person, regardless of age, and to change that person's name. The fee for filing the petition is $65 plus:

1. National criminal history record check fee. The fee for a national criminal history record check for noncriminal justice purposes set by the Federal Bureau of Investigation for each prospective adoptive parent who is not a parent of the child; and

2. State criminal history record check fee. The fee for a state criminal history record check for noncriminal justice purposes established pursuant to Title 25, section 1541, subsection 6 for each prospective adoptive parent who is not a parent of the child.

Maine Comment: To reflect marriage equality and to clarify that two unmarried persons may jointly petition to adopt, the prior language of permitting a "husband and wife jointly or an unmarried person" has been replaced with "spouses or unmarried persons jointly or an unmarried person." *See Adoption of M.A.*, 2007 ME 123.

§ 9-302. Consent for adoption

1. Written consent. Before an adoption is granted, written consent to the adoption must be given by:

A. The adoptee, if the adoptee is 14 years of age or older;

B. Each of the adoptee's living parents, except as provided in subsection 2;

C. A person or agency having legal custody or guardianship of the adoptee if the adoptee is a child or to whom the child has been surrendered and released, except that the person's or agency's lack of consent, if adjudged unreasonable by a court, may be overruled by the court. In order for the court to find that the person or agency acted unreasonably in withholding consent, the petitioner must prove, by a preponderance of the evidence, that the person or agency acted unreasonably. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is on the petitioner, the person or agency should proceed if the person or agency has important facts necessary to the petitioner in presenting the petitioner's case. The court shall consider the following:

(1) Whether the person or agency determined the needs and interests of the child;

(2) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;

(3) Whether the person or agency made the decision consistent with the facts;

(4) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and

(5) All other factors that have a bearing on a determination of the reasonableness of the person's or agency's decision in withholding consent; and

D. A guardian appointed by the court, if the adoptee is a child, when the child has no living parent, guardian or legal custodian who may consent.

A petition for adoption must be pending before a consent is executed.

2. Consent not required. Consent to adoption is not required of:

A. A putative parent if the putative parent:

(1) Received notice and failed to respond to the notice within the prescribed time period;

(2) Waived the right to notice under section 9-201, subsection 3;

(3) Does not establish parentage of the child under section 9-201, subsection 9; or

(4) Holds no parental rights regarding the adoptee under the laws of the foreign country in which the adoptee was born;

B. A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter 6;

C. A parent who has executed a surrender and release pursuant to section 9-202;

D. A parent whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed private agency pursuant to the laws of another state or country; or

E. A parent of an adoptee who is 18 years of age or older.

3. Consent by department; notice. When the department consents to the adoption of a child in its custody, the department shall immediately notify:

A. The District Court in which the action under Title 22, chapter 1071 is pending; and

B. The guardian ad litem for the child.

Maine Comment: Subsection 2, regarding when a putative parent's consent to the adoption is not required, has been revised to be consistent with the amendments to the establishment of parentage provisions in section 9-201.

§ 9-303. Petition

1. Sworn; contents. A petition for adoption must be sworn to by the petitioner and must include:

A. The full name, age and place of residence of the petitioner and, if married, the place and date of marriage;

B. The date and place of birth of the adoptee, if known;

C. The birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name, if any;

D. The residence of the adoptee at the time of the filing of the petition;

E. A statement of the petitioner's intention to establish a parent-child relationship between the petitioner and the adoptee and a statement that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

F. The names and addresses of all persons or agencies known to the petitioner that affect the custody of, visitation with or access to the adoptee;

G. The relationship, if any, of the petitioner to the adoptee;

H. The names and addresses of the department and the licensed child-placing agency, if any;

I. The names and addresses of all persons known to the petitioner at the time of filing from whom consent to the adoption is required; and

J. If the petition is for the adoption of a minor child, a statement that the petitioner acknowledges that after the adoption is finalized, the transfer of the long-term care and custody of the adoptee without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

2. Information to be shared and updated. A petitioner shall indicate to the court what information the petitioner is willing to share with the parents and under what circumstances and shall provide a mechanism for updating that information.

3. Caption. The caption of a petition for adoption may be styled "In the Matter of the Adoption Petition of (name of adoptee)." The petitioner must also be designated in the caption.

§ 9-304. Investigation; guardian ad litem; registry

1. Background check; study and report. Upon the filing of a petition for adoption of a minor child, the court shall request a background check and shall direct the department or a licensed child-placing agency to conduct a study and make a report to the court.
A. The study must include an investigation of the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. The department or licensed child-placing agency shall submit the report to the court within 60 days.
(1) If the court has a report that provides sufficient, current information, the court may waive the requirement of a study and report.

(2) If the petitioner is a relative of the child or the spouse or domestic partner of the child's parent, the court may waive the requirement of a study and report.

B. The court shall request a background check for each prospective adoptive parent who is not a parent of the child. The background check must include a screening for child abuse cases in the records of the department and criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.
(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each prospective parent who is not a parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the court for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the court for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interest of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the court are for official use only and may not be disseminated outside the court except as required under Title 22, section 4011-A.

(7) The expense of obtaining the information required by this paragraph is incorporated in the adoption filing fee established in section 9-301. The court shall collect the total fee and transfer the appropriate funds to the Department of Public Safety and the department.

The court may waive the background check of a prospective adoptive parent if a previous background check was completed by a court or by the department under this subsection within a reasonable period of time and the court is satisfied that nothing new that would be included in the background check has transpired since the last background check.

This subsection does not authorize the court to request a background check for a petitioner who is also the current legal parent of the child.

2. Background checks by department. The department may, pursuant to rules adopted by the department, at any time before the filing of the petition for adoption, conduct background checks for each prospective adoptive parent of a minor child in its custody.

A. The department may request a background check for each prospective adoptive parent who is not a parent of the child. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(1) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(2) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(3) Each prospective parent who is not a parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(4) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(5) State and federal criminal history record information may be used by the department for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interest of the child.

(6) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering a petition for adoption under subsection 1.

B. Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Child's background. This subsection governs the collection and disclosure of information about the background of a child subject to a petition for adoption under subsection 1.

A. The department, the licensed child-placing agency or any other person who acts to place or assist in placing a child for adoption shall make reasonable efforts to obtain medical and genetic information about the child, the parent who gave birth to the child and a parent who was a source of the gametes used in the child's conception. Specifically, the department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall attempt to obtain from the child's parents any information concerning:

(1) A current medical, psychological and developmental history of the child, including an account of the child's prenatal care and medical condition at birth, results of newborn screening, any drug or medication taken during pregnancy by the parent who gave birth to the child, any subsequent medical, psychological or psychiatric examination and diagnosis, any physical, sexual or emotional abuse suffered by the child and a record of any immunizations and health care received since birth; and

(2) Relevant information concerning the medical, psychological and social history of a parent who was the source of the gametes used in the child's conception, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health during pregnancy of the parent who gave birth to the child and the health of a parent who was the source of the gametes used in the child's conception at the time of the child's birth.

B. The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption may request from donors or gestational carriers, as defined in Title 19-A, section 1832, their medical or genetic information identical to that described in paragraph A, subparagraphs (1) and (2) and shall make reasonable efforts to obtain any medical and genetic information concerning such individuals that is in the possession of the child's parent or parents.

C. Prior to the child being placed for adoption, the department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall provide the information described in paragraph A to the prospective adoptive parents.

D. If the department, the licensed child-placing agency or any other person who acts to place or assists in placing the child for adoption has specific, articulable reasons to question the truth or accuracy of any of the information obtained, those reasons must be disclosed in writing to the prospective adoptive parents.

E. The prospective adoptive parents must be informed in writing if any of the information described in this subsection cannot be obtained, either because the records are unavailable or because the parents are unable or unwilling to consent to its disclosure or to be interviewed.

F. If after a child is placed for adoption and either before or after the adoption is final the child suffers a serious medical or mental illness for which the specific medical, psychological or social history of the child's parents, donors or gestational carriers or the child may be useful in diagnosis or treatment, the prospective adoptive or adoptive parents may request that the department, the licensed child-placing agency or any other person who placed or assisted to place the child attempt to obtain additional information. The department, licensed child-placing agency or other person shall attempt to obtain the information promptly and shall disclose any information collected to the prospective adoptive or adoptive parents as soon as reasonably possible. The department, licensed child-placing agency or other person may charge a fee to the prospective adoptive or adoptive parents to cover the cost of obtaining and providing the additional information. Fees collected by the department must be dedicated to defray the costs of obtaining and providing the additional information. Fees may be reduced or waived for low-income prospective adoptive or adoptive parents.

G. The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall file the information collected with the court and, if it appears that the adoption will be granted and this information has not previously been made available to the adoptive parents pursuant to Title 22, section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall make the information available to the adoptive parents, prior to issuing the decree pursuant to subsection 8, with protection for the identity of persons other than the child.

H. If the child to be placed for adoption is from a foreign country that has jurisdiction over the child and the prospective adoptive parents are United States citizens, compliance with federal and international adoption laws is deemed to be in compliance with this subsection.

4. Rebuttable presumption; sexual offenses. There is a rebuttable presumption that the petitioner would create a situation of jeopardy for the child if the adoption were granted and that the adoption is not in the best interest of the child if the court finds that the petitioner for the adoption of a minor child:

A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the petitioner was at least 5 years older than the minor at the time of the offense, except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the petitioner and the minor victim at the time of the offense; or

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The petitioner may present evidence to rebut the presumption.

5. Probationary period. The court may require that a minor child subject to a petition for adoption under this section live for one year in the home of the petitioner before the petition is granted and that the child, during all or part of this probationary period, be under the supervision of the department or a licensed adoption agency.

6. Guardian ad litem. The court may appoint a guardian ad litem for a minor child subject to a petition for adoption under this section at any time during the proceedings.

7. Adoption registry and services. Before the adoption of a minor child is decreed, the court shall ensure that the petitioners are informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

8. Declaration; name change. If the court is satisfied with the identity and relations of the parties to a petition for adoption under this section, with the ability of the petitioner to bring up and educate the child properly, considering the condition of the child's parents, and with the fitness and propriety of the adoption, the court shall make a decree setting forth the facts and declaring that from that date the child is the child of the petitioner and that the child's name is changed, without requiring public notice of that change.

9. Certified copy of birth certificate; certificate of adoption. A certified copy of the birth certificate of the child proposed for adoption must be presented with the petition for adoption if the certified copy can be obtained or made available by filing a delayed birth registration. After the adoption has been decreed, the register shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

10. Transfer of long-term care or custody without court order. Before the adoption is decreed under subsection 8, the court shall ensure that the petitioners are informed that the transfer of the long-term care and custody of the child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

Maine Comment: Subsection 1(A)(2) of this section has been revised to explicitly grant courts the discretion to waive background checks in cases of a stepparent or other second-parent adoption. Subsection 3, which imposes a duty on agencies involved with adoptions to attempt to collect medical and genetic information regarding the child and the child's parents, has been revised to require agencies to attempt to obtain information only concerning a parent who gave birth to the child or was a source of the gametes used in the child's conception. Further, because

one or both of the individuals involved in the conception and gestation of the child may not be parents of the child to be adopted, this section now grants agencies the discretion to seek medical and genetic information from donors or gestational carriers, as those roles are defined under the MPA, and requires agencies to attempt to obtain any information about such individuals in the possession of the child's parents.

§ 9-305. Evidence; procedure

The court may proceed as follows in considering a petition for adoption.

1. Adoptee interview. The court may interview any adoptee, and shall interview an adoptee who is 12 years of age or older, outside the presence of the prospective adoptive parents, to determine the adoptee's attitudes and desires about the adoption and other relevant issues.

2. Inspection of records; disclosure. The court may conduct an inspection in camera of records of relevant child protective proceedings and may disclose only that information necessary for the determination of any issue before the court. Any disclosure of information must be done pursuant to Title 22, section 4008, subsection 3.

3. Recording; expenses. The parties may request a recording of the proceedings. The requesting party shall pay the expense of the recording.

§ 9-306. Allowable payments; expenses

1. Allowable payments by or on behalf of petitioner. Except when one of the petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following expenses may be paid by or on behalf of a petitioner in any proceeding under this Article:

A. The actual cost of legal services related to the surrender and release or the consent and to the adoption process;

B. Prenatal and postnatal counseling expenses for the person giving birth to the child;

C. Prenatal, birthing and other related medical expenses for the person giving birth to the child;

D. Necessary transportation expenses to obtain the services listed in paragraphs A, B and C;

E. Foster care expenses for the child;

F. Necessary living expenses for the person giving birth to the child and the child;

G. For a putative parent, legal and counseling expenses related to the surrender and release, the consent and the adoption process; and

H. Fees to a licensed child-placing agency providing services in connection with the pending adoption.

2. Full accounting of disbursements by petitioner. Prior to the dispositional hearing pursuant to section 9-308, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report must be signed under penalty of perjury and must be submitted to the court on or before the date the final decree is granted. The accounting report must be itemized and show the services related to the adoption or to the placement of the adoptee for adoption that were received by the adoptee's parents, by the adoptee or on behalf of the

petitioner. The accounting must include the dates of each payment and the names and addresses of each attorney, physician, hospital, licensed child-placing agency or other person or organization who received funds or anything of value from the petitioner in connection with the adoption or the placement of the adoptee with the petitioner or participated in any way in the handling of the funds, either directly or indirectly. This subsection does not apply when one of the petitioners is a blood relative or the adoptee is an adult.

3. Payments not contingent; other expenses and payments prohibited. Payment for expenses allowable under subsection 1 may not be contingent upon any future decision a parent might make pertaining to the child. Other expenses or payments to parents are not authorized.

§ 9-307. Adoption not granted

If the court determines that it is unable to finalize an adoption to which parents have consented, the court shall notify the parents that the court has not granted the adoption and shall conduct a review pursuant to section 9-205.

§ 9-308. Final decree; dispositional hearing; effect of adoption

1. Final decree of adoption; requirements. The court shall grant a final decree of adoption if the petitioner who filed the petition has been heard or has waived hearing and the court is satisfied from the hearing or record that:

A. All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the court;

B. An adoption study, when required by section 9-304, has been filed with the court;

C. A list of all disbursements as required by section 9-306 has been filed with the court;

D. The petitioner is a suitable adopting parent and desires to establish a parent-child relationship with the adoptee;

E. The best interest of the adoptee, described in subsection 2, are served by the adoption;

F. The petitioner has acknowledged that the petitioner understands that the transfer of the long-term care and custody of an adoptee who is a minor child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D; and

G. All requirements of this Article have been met.

2. Best interest of adoptee. In determining the best interest of an adoptee, the court shall consider and evaluate the following factors to give the adoptee a permanent home at the earliest possible date:

A. The love, affection and other emotional ties existing between the adoptee and the adopting person or persons, a parent or a putative parent;

B. The capacity and disposition of the adopting person or persons, the parent or parents or the putative parent to educate and give the adoptee love, affection and guidance and to meet the needs of the adoptee. An adoption may not be delayed or denied because the adoptive parent and the adoptee do not share the same race, color or national origin; and

C. The capacity and disposition of the adopting person or persons, the parent or parents or the putative parent to provide the adoptee with food, clothing and other material needs, education, permanence and medical care or other remedial care recognized and permitted in place of medical care under the laws of this State.

3. Findings; decree; confidentiality. The court shall enter its findings in a written final decree that includes the new name of the adoptee. The final decree must further order that from the date of the decree the adoptee is the child of the petitioner and must be accorded the status set forth in section 9-105. If the court determines that it is in the best interest of the adoptee, the court may require that the names of the adoptee and of the petitioner be kept confidential.

4. Notice to parents. Upon completion of an adoption proceeding, the parents who consented to an adoption or who executed a surrender and release must be notified by the court of the completion by regular mail at their last known address. Notice under this subsection is not required to a parent who is also a petitioner. When the parents' rights have been terminated pursuant to Title 22, section 4055, the notice must be given to the department and the department shall notify the parents of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion and does not affect the rights or responsibilities of adoptees or adoptive parents.

5. Notice to grandparents. The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-E.

6. Effect of adoption. An order granting the adoption has the following effect:

A. An order granting the adoption of the child by the petitioner divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except an adoptee inherits from the adoptee's former parents if provided in the adoption decree.

B. An adoption order may not disentitle a child to benefits due the child from any 3rd person, agency or state or the United States and may not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

Maine Comment: Subsection 6 has been added to this section, which describes the effect of the adoption on the legal relationship between the adoptee and the former parent, on the inheritance rights of the adoptee, and on the adoptee's entitlement to certain rights and benefits.

Relatedly, in Public Law 2017, chapter 402, the Maine Legislature has also revised the Child and Family Services and Child Protection Act, Title 22, chapter 1071, to ensure consistency in the effects of the termination of parental rights on inheritance, whether it is through an adoption or child protective proceeding. The revision to the permanency guardianship adoption statute at 22 M.R.S. § 4038-E(11)(A) (Child and Family Services and Child Protection Act: Protection Order; Permanency Guardianship – Adoption from Permanency Guardianship) provides that an adoptee

inherits from the adoptee's former parents "if so provided in the adoption decree." Similarly, in the revision to 22 M.R.S. § 4056(1) (Child and Family Services and Child Protection Act: Termination of Parental Rights – Effects of Termination Order), after a termination of parental rights in a child protective proceeding, the child may inherit from his or her former parents "if so provided in the order." The inheritance provisions in this section and 22 M.R.S. §§ 4038-E & 4056 are also consistent with the intestacy inheritance provisions in section 2-117, which was revised substantially to be consistent with the MPA.

§ 9-309. Appeals

1. Appeal; bond not required of child or next friend. Any party may appeal from any order entered under this Article to the Supreme Judicial Court sitting as the Law Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child or next friend and costs may not be awarded against either.

2. Appeal expedited. An appeal from any order under this Article must be expedited.

3. Attorney, guardian ad litem continues. An attorney or guardian ad litem appointed to represent a party in an adoption proceeding continues to represent the interests of that party in any appeal unless otherwise ordered by the court.

§ 9-310. Records confidential

Notwithstanding any other provision of law and except as provided in Title 22, section 2768, all court records relating to an adoption decreed on or after August 8, 1953 are confidential. The court shall keep records of those adoptions segregated from all other court records. If a court determines that examination of records pertaining to a particular adoption is proper, the court may authorize that examination by specified persons, authorize the register to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure.

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child when the adopted child attains 18 years of age and to the adopted child's descendants, adoptive parents or legal guardian on petition of the court.

§ 9-311. Interstate placements

1. Certificate of compliance; bring child to this State. A person or agency who intends to bring a child to this State from another state for the purpose of adoption must provide to the court the certification of compliance as required by the department pursuant to Title 22, chapter 1153 or 1154, as applicable.

2. Certificate of compliance; remove child from this State. A person or agency who intends to remove a child from this State for the purpose of adoption in another state must obtain from the department certification of compliance with Title 22, chapter 1153 or 1154, as applicable, prior to the removal of the child from this State.

3. Department certification required. The court may not grant a petition to adopt a child who has been brought to or will be removed from this State for the purpose of adoption without department certification of compliance with Title 22, chapter 1153 or 1154, as applicable.

4. Civil violation. An agency or person who fails to comply with this section commits a civil violation for which a fine of not less than $100 and not more than $5,000 may be adjudged.

§ 9-312. Foreign adoptions

If an adoption in a foreign country has been finalized and the adopting parents are seeking an adoption under the laws of this State to give recognition to the foreign adoption, a court may enter a decree of adoption based solely upon a judgment of adoption in a foreign country and may order a change of name if requested by the adoption parents. The fee for filing the petition is $55.

§ 9-313. Advertisement

1. Definitions. As used in this section, the following terms have the following meanings.

A. "Advertise" means to communicate by any public medium that originates within this State, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television, or by any computerized communication system, including by e-mail, website, Internet account or any similar medium of communication provided via the Internet.

B. "Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information in an electronic device in order to view, create, use or edit the user's account information, profile, display, communications or stored data.

2. Advertising prohibited. A person may not:

A. Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody;

B. Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption, adoptive placement or any other permanent physical placement of a child;

C. Advertise that the person will place a child for adoption or in any other permanent physical placement; or

D. Advertise for the purpose of finding a person to adopt or otherwise take into permanent custody a particular child.

3. Exceptions. This section does not prohibit:

A. The department or a child-placing agency from advertising in accordance with rules adopted by the department; or

B. An attorney licensed to practice in this State from advertising the attorney's availability to practice or provide services relating to the adoption of children.

4. Violation. A person who violates subsection 2 commits a civil violation for which a fine of not more than $5,000 may be adjudged.

§ 9-314. Immunity from liability for good faith reporting; proceedings

A person, including an agent of the department, who participates in good faith in reporting violations of this Article or participates in a related child protection investigation or proceeding is immune from any criminal or civil liability for reporting or participating in the investigation or proceeding. For purposes of this section, "good faith" does not include instances when a false report is made and the person knows the report is false.

§ 9-315. Annulment of the adoption decree

1. Annulment; reasons and limitations. A court may, on petition filed within one year of the decree of adoption and after notice and hearing, reverse and annul an adoption decree based on findings by clear and convincing evidence that the adoption was obtained as a result of fraud, duress or illegal procedures.

A. If the adoptee is a minor, the court shall appoint a guardian ad litem on behalf of the minor adoptee and shall consider the best interest of the child, taking into account the factors set forth in Title 19-A, section 1653, subsection 3. The court shall sustain the decree unless there is clear and convincing evidence of one or more bases for annulment and that the decree is not in the best interest of the child.

The court may allocate the costs of the guardian ad litem to one or more of the parties and may appoint counsel for a minor adoptee or a party to the annulment proceedings. A minor adoptee may appear and be represented by counsel.

B. Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued, the decree may not be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice or lack of jurisdiction of the parties or of the subject matter.

2. Notice. Notice of a petition to annul must be given to the parents, except those whose parental rights were terminated through a proceeding pursuant to Title 22, section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption including the adoptive parents, an adoptee who is 14 years of age or older and the agency involved in the adoption.

3. Certified copy of annulment. After the court annuls a decree of adoption, the register shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

Maine Comment: This section has been revised to narrow the basis on which a court can annul an adoption, particularly in cases where the adoptee is still a minor. *See Adoption of Priscilla D.*, 2016 ME 81; *In re Richard E.*, 2009 ME 93. The Adoption Act has been revised to impose a one-year limitations period for all annulment petitions. An adoption decree can be challenged only on the basis of "fraud, duress or illegal procedures." In annulment proceedings where the adoptee is a minor, this section now requires courts to appoint a guardian *ad litem* for the adoptee and to sustain the decree unless the court makes a specific finding that the decree is not in the best interests of the adoptee. This section also clarifies that the adoptee may appear through counsel.

PART 4

ADOPTION ASSISTANCE PROGRAM

§ 9-401. Authorization; special needs children

1. Program. There is established in the Department of Health and Human Services the Adoption Assistance Program, referred to in this Part as "the program."

2. Adoption assistance for special needs children. Subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, the department may provide through the program adoption assistance for special needs children in its care or custody or in the custody of a nonprofit private licensed child-placing agency in this State if those children are legally eligible for adoption and, when reasonable but unsuccessful efforts have been made to place them without adoption assistance, would not otherwise be adopted without the assistance of this program.

3. One-time adoption expenses. The department shall, subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, reimburse adoptive parents of a special needs child for one-time adoption expenses when reasonable but unsuccessful efforts have been made to place the child without such assistance.

4. "Special needs child" defined. As used in this Part, "special needs child" means a child who:

A. Has a physical, mental or emotional handicap that makes placement difficult;

B. Has a medical condition that makes placement difficult;

C. Is a member of a sibling group that includes at least one member who is difficult to place;

D. Is difficult to place because of age or race;

E. Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or

F. Has in that child's family background factors such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems.

5. Funds. For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E.

6. Amount of adoption assistance. The amount of adoption assistance under the program may vary depending upon the resources of the adoptive parents and the special needs of the child, as well as the availability of other resources, but may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds.

7. Duration of assistance. The duration of assistance under the program may continue until the cessation of legal parental responsibility or until the parents are no longer supporting the child, at which time the adoption assistance ceases. However, if the child has need of educational benefits or has a physical, mental or emotional handicap, adoption assistance may continue until the adoptee has attained 21 years of age if the adoptee, the parents and the department agree that the need for care and support exists.

8. Children from another state. Children who are in the custody of a person or agency in another state who are brought to this State for the purpose of adoption are not eligible for adoption assistance through the program except for reimbursement of nonrecurring expenses if the child meets the requirements of the United States Social Security Act, 42 United States Code, Section 673(c).

§ 9-402. Adoption assistance

1. Eligible applicants. An application for the program may be submitted by the following persons:

A. A foster parent interested in adopting an eligible child in the foster parent's care;

B. A person interested in adopting an eligible child; or

C. An adoptive parent who was not informed of the program or of facts relevant to a child's eligibility when adopting a child who was at the time of adoption eligible for participation in the program.

2. Standards for adoption apply. All applicants for the program must meet department standards for adoption except for financial eligibility.

3. Assistance based on special needs. Assistance under the program may be provided for special needs only and may be varied based on the special needs of the child. Assistance may be provided for a period of time based on the special needs of the child.

§ 9-403. Administration

1. Written agreement before final decree; exceptions; reduction in payments. A written agreement between an applicant entering into the program and the department must precede the final decree of adoption, except that an application may be filed subsequent to the finalization of the adoption if there were facts relevant to the child's eligibility that were not presented at the time of the request for assistance or if the child was eligible for participation in the program at the time of placement and the adoptive parents were not informed of the program.

Except as provided by section 9-401, subsection 8, once an adoption assistance payment is agreed upon and the agreement signed by the prospective adoptive parents, the department may not reduce the adoption assistance payment amounts.

2. Annual determination. If assistance under the program continues for more than one year, the need for assistance must be annually redetermined. Adoption assistance continues regardless of the state in which the adoptive parents reside, or the state to which the adoptive parents move, as long as the adoptive parents continue to be eligible based on the annual redetermination of need.

3. Transfer to legal guardian; new agreement. Upon the death of all adoptive parents, adoption assistance under the program may be transferred to the legal guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

§ 9-404. Rules

The department shall adopt rules for the program consistent with this Part.

TITLE 33

PROPERTY

CHAPTER 5-A

RULE AGAINST PERPETUITIES

§ 111. Statutory rule against perpetuities

1. Validity of nonvested property interest. A nonvested property interest is invalid unless:

A. When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

B. The interest either vests or terminates within 90 years after its creation.

2. Validity of general power of appointment subject to a condition precedent. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

A. When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

B. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

3. Validity of nongeneral or testamentary power of appointment. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

A. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

B. The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

4. Possibility of post-death child disregarded. In determining whether a nonvested property interest or a power of appointment is valid under subsection 1, paragraph A; subsection 2, paragraph A; or subsection 3, paragraph A, the possibility that a child will be born to an individual after the individual's death is disregarded.

5. Effect of certain "later of"-type language. Language contained in a governing instrument that measures a period from the creation of a trust or other property arrangement is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives in being if the language seeks:

A. To disallow the vesting or termination of any interest or trust beyond the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement;

B. To postpone the vesting or termination of any interest or trust until the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement; or

C. To operate in effect in any fashion similar to that described in paragraph A or B upon the later of:

(1) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; and

(2) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement.

Maine Comment: This chapter is amended to provide greater certainty and clarity. Subsection 1(A) of this section preserves the validating side of the common law rule. By satisfying the common law rule, a nonvested future interest in property is valid at the moment of its creation. Subsection 1(B) of this section is a salvage strategy for future interests that would have been invalid at common law. Rather than invalidating such interests at creation, the wait-and-see rule allows for a period of time during which the nonvested interests are permitted to vest according to the trust's terms. Simplifying Maine's previous statute, the current statute now contains a certain ninety-year fixed vesting period of time.

§ 112. When nonvested property interest or power of appointment created

1. General principles. Except as provided in subsections 2 and 3 and in section 115, subsection 1, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

2. Unqualified beneficial owner. For purposes of this chapter, if there is an individual who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section 111, subsection 2 or 3, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

3. Arising out of transfer of property. For purposes of this chapter, a nonvested property interest or a power of appointment arising out of a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

§ 113. Reformation

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and so that the reformed disposition is within the 90 years allowed by section 111, subsection 1, paragraph B; section 111, subsection 2, paragraph B; or section 111, subsection 3, paragraph B if:

1. Nonvested property interest or power of appointment. A nonvested property interest or a power of appointment becomes invalid under section 111;

2. Class gift. A class gift is not but might become invalid under section 111 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

3. Certain nonvested property interest not validated. A nonvested property interest that is not validated by section 111, subsection 1, paragraph A can vest but not within 90 years after its creation.

Maine Comment: This section specifically provides for reformation. Under this section, the court is given statutory authority to reform a disposition within the limits of the allowable ninety-year period, in the manner deemed by the court to most closely approximate the transferor's plan of distribution.

§ 114. Exclusions from statutory rule against perpetuities

Section 111 does not apply to:

1. Nonvested property interest or power of appointment arising out of nondonative transfer; exceptions. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

A. A premarital or postmarital agreement;

B. A separation or divorce settlement;

C. A spouse's election;

D. An arrangement similar to those described in paragraphs A, B and C arising out of a prospective, existing or previous marital relationship between the parties;

E. A contract to make or not to revoke a will or trust;

F. A contract to exercise or not to exercise a power of appointment;

G. A transfer in satisfaction of a duty of support; or

H. A reciprocal transfer;

2. Fiduciary's power. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

3. Power to appoint fiduciary. A power to appoint a fiduciary;

4. Discretionary power of trustee to distribute. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

5. Nonvested property interest held by charity, government or governmental agency or subdivision. A nonvested property interest held by a charity, government or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

6. Not subject to rule or excluded by other statute. A property interest, power of appointment or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this State; or

7. Trusts to which rule does not apply. A trust in which the governing instrument provides that the rule against perpetuities does not apply to the trust and under which the trustee or other individual to whom the power is properly granted or delegated has the power under the governing instrument, applicable statute or common law to sell, mortgage or lease property for any period of time beyond the period that is required for an interest created under the governing instrument to vest. This subsection applies to all trusts created by will or inter vivos instrument executed or amended on or after July 1, 2019 and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2019.

Maine Comment: This section does not include subsection 6 of the Uniform Probate Code because a provision similar to that provision can be found at 26 M.R.S. § 841 (Employment Practices: Employee Trusts – Not subject to rule against perpetuities). Subsection 7 of this section retains existing Maine law that allows a trust to opt out of the application of the rule against perpetuities.

§ 115. Application

1. Nonvested property interest or a power of appointment created prior to effective date of this chapter. This subsection governs nonvested property interests and powers of appointment created prior to July 1, 2019.

A. Except as provided in section 116, subsection 1, this chapter may not be construed to invalidate or modify the terms of any limitation that would have been valid prior to August 20, 1955.

B. This chapter applies only to inter vivos instruments taking effect after August 20, 1955, to wills if the testator dies after August 20, 1955 and to appointments made after August 20, 1955, including appointments by inter vivos instruments or wills under powers created before August 20, 1955.

C. Section 114, subsection 7 applies to all trusts created by will or inter vivos instrument executed or amended on or after July 1, 2019 and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 1, 2019.

D. If a nonvested property interest or a power of appointment was created before July 1, 2019 and is determined in a judicial proceeding, commenced on or after July 1, 2019, to violate this State's rule against perpetuities as that rule existed before July 1, 2019, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and so that the reformed disposition is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

2. Nonvested property interest or a power of appointment created on or after July 1, 2019. Except as provided by subsection 1, paragraph D, this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2019.

3. Creation by exercise of a power of appointment. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

§ 116. Contingent interests

1. Specified contingency within 30 years. Except as provided in subsection 2, a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken becomes a fee simple absolute if the specified contingency does not occur within 30 years from the date when the fee simple determinable or the fee simple subject to a right of entry becomes possessory. If the specified contingency occurs within the 30 years, the succeeding interest, which may be an interest in a person other than the individual creating the interest or that individual's heirs, becomes possessory or the right of entry exercisable notwithstanding the rule against perpetuities.

2. Contingency within period. If a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, the interests take effect as limited.

3. Not applicable to public, charitable or religious purposes; grant to State or political subdivision. This section does not apply:

A. If both the fee simple determinable and the succeeding interest or both the fee simple and the right of entry are for public, charitable or religious purposes; or

B. To a deed, gift or grant to the State or any political subdivision of the State.

§ 117. Application of provisions

This chapter applies to both legal and equitable interests.

§ 118. Supersession

This chapter supersedes the rule of the common law known as the rule against perpetuities and it replaces chapter 5.

Sec. B-3. 33 MRSA §1602-103, sub-§(b), as enacted by PL 1981, c. 699, is amended to read:

(b) Neither the rule against perpetuities nor the provisions of section ~~103~~116, as it or its equivalent may be amended from time to time, may be applied to defeat any provision of the

declaration, bylaws or rules and regulations adopted pursuant to section 1603-102, subsection (a), paragraph (1).

ARTICLE 5

UNIFORM GUARDIANSHIP, CONSERVATORSHIP AND PROTECTIVE PROCEEDINGS

Prefatory Comment:
Maine is the first state to adopt the Uniform Law Commission's (ULC) Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (aka "Uniform Probate Code"), which the ULC approved in July 2017. Specifically, Maine has adopted, with some modifications, Articles 1 and 3 through 5 of the Uniform Probate Code. The Maine Legislature did not adopt Article 2 of the Uniform Probate Code, pertaining to minor guardianship. Several provisions in Article 2 of the Uniform Probate Code depart from Maine law and practice or are not consistent with reforms enacted with Title 18-C. Instead, Article 5, Part 2 of Title 18-C includes the minor guardianship provisions of the 2010 version of the Uniform Probate Code, with several modifications, as noted in the Maine Comments herein.

PART 1

GENERAL PROVISIONS

§ 5-101. Short title

Parts 1, 2, 3, 4 and 5 of this Article may be known and cited as "the Maine Uniform Guardianship, Conservatorship and Protective Proceedings Act."

Maine Comment: The Maine Uniform Guardianship and Protective Proceedings Act title is different than the Uniform Probate Code's title of the "Uniform Guardianship, Conservatorship and Other Protective Arrangements Act" because Part 2 is unique to Maine and the Maine statute contains significant differences in content and topic from the Uniform Probate Code

§ 5-102. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Adult. "Adult" means an individual at least 18 years of age or an emancipated individual under 18 years of age.

2. Adult subject to conservatorship. "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under this Act.

3. Adult subject to guardianship. "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this Act.

4. Best interest of the minor. "Best interest of the minor" means the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

5. Claim. "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort or otherwise.

6. Conservator. "Conservator" means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. "Conservator" includes a co-conservator.

7. Conservatorship estate. "Conservatorship estate" means the property subject to conservatorship under this Act.

8. Full conservatorship. "Full conservatorship" means a conservatorship that grants the conservator all powers available under this Act.

9. Full guardianship. "Full guardianship" means a guardianship that grants the guardian all powers available under this Act.

10. Guardian. "Guardian" means a person appointed by a court to make decisions with respect to the personal affairs of an individual. "Guardian" includes a co-guardian but does not include a guardian ad litem.

11. Guardian ad litem. "Guardian ad litem" means a person appointed to inform the court about, and to represent, the needs and best interest of an individual.

12. Individual subject to conservatorship. "Individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed.

13. Individual subject to guardianship. "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed.

14. Less restrictive alternative. "Less restrictive alternative" means an approach to meeting an individual's needs that restricts fewer rights than would the appointment of a guardian or conservator. "Less restrictive alternative" includes supported decision making, appropriate technological assistance, appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances, or appointment of a representative payee.

15. Letters of office. "Letters of office" means judicial certification of guardianship or conservatorship.

16. Limited conservatorship. "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this Act,

grants powers over only certain property or otherwise restricts the powers of the conservator.

17. Limited guardianship. "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this Act or otherwise restricts the powers of the guardian.

18. Minor. "Minor" means an unemancipated individual who is under 18 years of age.

19. Minor subject to conservatorship. "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under this Act.

20. Minor subject to guardianship. "Minor subject to guardianship" means a minor for whom a guardian has been appointed under this Act.

21. Parent. "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61 and whose parental rights have not been terminated.

22. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

23. Property. "Property" means anything that may be the subject of ownership and includes both real and personal property, tangible and intangible, or any interest therein.

24. Protective arrangement instead of conservatorship. "Protective arrangement instead of conservatorship" means a court order entered under section 5-503.

25. Protective arrangement instead of guardianship. "Protective arrangement instead of guardianship" means a court order entered under section 5-502.

26. Protective arrangement instead of guardianship or conservatorship. "Protective arrangement instead of guardianship or conservatorship" means a court order entered under Part 5, including an order authorizing a single transaction or more than one related transaction.

27. Record. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

28. Respondent. "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

29. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or

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

30. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

31. Suitable. "Suitable," with respect to a guardian for a minor, means that the guardian can provide a safe and appropriate residence for the minor, understands and is prepared to follow the terms of the appointment and understands and can address the minor's needs and protect the minor from harm.

32. Supported decision making. "Supported decision making" means assistance from one or more persons of an individual's choosing:

A. In understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and

B. When consistent with the individual's wishes, in communicating a decision once it is made.

Maine Comment: The definitions in this section apply to all of Article 5 and include two definitions, in paragraphs 4 and 31, that are specifically applicable to minor guardianships and are not derived from the Uniform Probate Code or the 2010 version of the Uniform Probate Code.

The definition of "Best interest of the minor" is a change from prior Maine law and cross-references the factors set forth in 19-A M.R.S. § 1653(3) (Rights and Responsibilities – Parental Rights and Responsibilities), which applies in parental rights and responsibilities determinations.

The definition of "Suitable" describes the qualifications for a person to be appointed as a guardian for a minor under Section 5-204(2).

§ 5-103. Facility of transfer

1. Transfer of money or personal property to minor. Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding the annual gift tax exclusion, pursuant to 26 United States Code Section 2503~~$10,000 a year~~, by transferring it to:

A. A person who has the care and custody of the minor and with whom the minor resides;

B. A guardian of the minor;

C. A custodian under the Maine Uniform Transfers to Minors Act;

D. A Qualified State Tuition Program under Section 529 and/or Qualified ABLE Program under Section 529A of the Internal Revenue Code;

E~~D~~. A financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor; or

F~~E~~. The minor, if married or emancipated.

2. Responsibility for proper application. A person who transfers money or property in compliance with this section is not responsible for its proper application.

3. For benefit of minor; no personal financial benefit. A guardian or other person who receives money or property for a minor under subsection 1, paragraph A or B may apply it only to the support, care, education, health and welfare of the minor and may not derive a personal financial benefit, but may be reimbursed for necessary expenses for the benefit of the minor. Any excess must be preserved for the future support, care, education, health and welfare of the minor, and any balance must be transferred to the minor when the minor becomes an adult or is otherwise emancipated.

Maine Comment: This section is the same as section 5-103 of the now-repealed Title 18-A, except that the amount is increased from $5,000 to $10,000 per year. This section provides options, rather than a court-involved conservatorship or single transaction authority, for personal property not exceeding $10,000 per year owed to a minor and sets forth obligations for the person receiving the money on behalf of the minor.

§ 5-104. Subject matter jurisdiction

1. Jurisdiction; minors. Except to the extent that jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and Title 4, section 152, subsection 5-A, the court has jurisdiction over a guardianship for a minor domiciled or present in this State. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled in or having property located in this State.

2. Jurisdiction; adults. The court has jurisdiction over a guardianship, a conservatorship and an order for a protective arrangement instead of guardianship or conservatorship for an adult as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Part 6.

3. Exclusive or concurrent jurisdiction. After service of notice in a proceeding seeking a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

A. Exclusive jurisdiction to determine the need for a guardianship, conservatorship or protective arrangement;

B. Exclusive jurisdiction to determine how property of the respondent that is subject to the law of this State must be managed, expended or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent or other claimant;

C. Concurrent jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

D. If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

4. Exclusive and continuing jurisdiction. A court that appoints a guardian or conservator, or authorizes a protective arrangement instead of guardianship or conservatorship, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

§ 5-105. Transfer of proceeding

1. Guardianship or conservatorship subject to transfer provisions. This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of Part 6, subpart 3.

2. Transfer if serves best interest of individual. After the appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in this State or to another state if transfer will serve the best interest of the individual subject to the guardianship or conservatorship.

3. Proceeding pending in another state or foreign country. If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship is filed in a court in this State, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

4. Petition for appointment in this State. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this State if jurisdiction in this State is or will be established. The appointment may be made on proof of appointment in the other state or foreign country

and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this State.

5. Notice; appointment unless not in best interest of respondent. Notice of hearing on a petition under subsection 4, together with a copy of the petition, must be given to the respondent, if the respondent is 14 years of age or older at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under this Act were applicable. The court shall make the appointment in this State unless it determines that the appointment would not be in the best interest of the respondent.

6. Copy of order of appointment. Not later than 14 days after appointment under subsection 5, the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is 14 years of age or older, and to all persons given notice of the hearing on the petition.

§ 5-106. Venue

1. Guardianship proceeding for minor. Venue for a guardianship proceeding for a minor is in:

A. The county or division of this State in which the minor, the petitioner or a parent or guardian of the child resides or is present at the time the proceeding commences; or

B. The county or division of this State where another proceeding concerning the custody and parental rights of the minor is pending.

2. Guardianship proceeding or protective arrangement for adult. Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:

A. The county of this State in which the respondent resides;

B. If the respondent has been admitted to an institution by order of a court of competent jurisdiction, the county in which the court is located; or

C. In a proceeding for appointment of an emergency guardian of an adult, the county in which the respondent is present.

3. Conservatorship proceeding or protective arrangement. Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

A. The county of this State in which the respondent resides, whether or not a guardian has been appointed in another county or another jurisdiction; or

B. If the respondent does not reside in this State, any county of this State in which property of the respondent is located.

4. Proceedings in more than one county. If proceedings under this Act are brought in more than one county in this State, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

Maine Comment: Subsection 2(A) of this section limits non-emergency guardianships to the county in which the respondent resides, which is narrower than section 5-302 of the now-repealed Title 18-A, which also provided venue for non-emergency guardianships in the county in which the respondent was present.

§ 5-107. Practice in court

1. Rules. Except as otherwise provided in this Act, the Maine Rules of Probate Procedure, the Maine Rules of Civil Procedure and the Maine Rules of Evidence, including rules concerning appellate review, govern a proceeding under this Act.

2. Consolidation. If proceedings under this Act for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

§ 5-108. Letters of office

1. Guardian; letters of office. On a guardian's filing of an acceptance of appointment, the court shall issue appropriate letters of office.

2. Conservator; letters of office. On a conservator's filing of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court, the court shall issue appropriate letters of office.

3. Limitations stated. Limitations on the powers of the guardian or conservator or on the property subject to conservatorship must be stated in the letters of office.

4. Limitations at any time; new letters of office; notice. Upon request or sua sponte, the court at any time may limit the powers conferred on the guardian or conservator. The court shall issue new letters of office to reflect the limitation. The court shall give notice of the limitation to the guardian or conservator, the individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship or conservatorship and any other person as the court determines.

§ 5-109. Effect of acceptance of appointment

A guardian or conservator that accepts appointment submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

§ 5-110. Co-guardian; co-conservator

1. Appointment at any time. The court at any time may appoint a co-guardian or co-conservator to serve immediately or when a designated future event occurs.

2. Acceptance of appointment. A co-guardian or co-conservator appointed to serve immediately may act when the co-guardian or co-conservator files an acceptance of appointment.

3. Service upon designated future event. A co-guardian or co-conservator appointed to serve when a designated future event occurs may act when:

A. The designated event occurs; and

B. The co-guardian or co-conservator files an acceptance of appointment.

4. Joint decisions. Unless an order of appointment under subsection 1 or subsequent order states otherwise, co-guardians or co-conservators shall make decisions jointly.

§ 5-111. Judicial appointment of successor guardian or successor conservator

1. Appointment of successor by court. The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated future event occurs.

2. Petition to appoint successor. A person entitled under section 5-202 or 5-302 to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under section 5-402 to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

3. Service upon designated future event. A successor guardian or successor conservator appointed to serve when a designated future event occurs may act as guardian or conservator if:

A. The designated event occurs; and

B. The successor guardian or successor conservator files an acceptance of appointment.

4. Succeeds to powers. A successor guardian or successor conservator succeeds to the predecessor's powers unless otherwise provided by the court.

§ 5-112. Effect of death, removal or resignation of guardian or conservator

1. Termination. Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator or when the court approves a resignation of the guardian or conservator under subsection 2.

2. Petition to resign; approval. A guardian or conservator must petition the court to resign. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

3. Liability. Death, removal or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for an action taken on behalf of the individual subject to guardianship or conservatorship or to account for the individual's money or other property.

§ 5-113. Notice of hearing

1. Notice by movant. If notice of a hearing under this Act is required, the movant shall give notice of the date, time and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in this Act, notice must be given in compliance with the Maine Rules of Probate Procedure, Rule 4 or the Maine Rules of Civil Procedure, Rule 4 at least 14 days before the hearing.

2. Proof of notice. Proof of notice of a hearing under this Act must be ~~made~~ filed at least 3 days before ~~or at~~ the hearing ~~and filed in the proceeding~~.

3. Type size; plain language. Notice of a hearing under this Act must be in at least 16-point type, in plain language and, to the extent feasible, in a language in which the recipient is proficient.

§ 5-114. Waiver of notice

1. Waiver by person. Except as otherwise provided in subsection 2, a person may waive notice under this Act in a record signed by the person or the person's attorney and filed in the proceeding.

2. Waiver prohibited. Unless represented by an attorney, a~~A~~ respondent, an individual subject to guardianship, an individual subject to conservatorship, an individual subject to a protective arrangement instead of guardianship or conservatorship, an appointed guardian or an appointed conservator may not waive notice under this Act.

Maine Comment: Subsection 2 of this section adds that an appointed guardian and an appointed conservator cannot waive notice under any circumstances.

§ 5-115. Guardian ad litem

At any stage of a proceeding under this Act, the court may appoint a guardian ad litem for an individual to identify and represent the individual's best interest or perform other duties if the court determines the individual's interest otherwise would not be adequately represented. If a conflict of interest or potential conflict of interest does not exist, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state on the record the duties of the guardian ad litem and the reasons for the appointment, as well as responsibility for payment of the guardian ad litem fees.

Maine Comment: This section is derived from Section 1-112 of the now-repealed Title 18-A and includes a cross-reference to the new provision regarding the appointment of guardians *ad litem* in minor guardianship proceedings in Section 5-212. This section broadens the court's discretion to appoint a guardian ad litem to perform other duties in addition to identifying and representing the individual's best interests if the court determines the individual's interest otherwise would not be adequately represented.

§ 5-116. Request for notice

A person that is interested in the welfare of a respondent, individual subject to guardianship or conservatorship or individual subject to a protective arrangement instead of guardianship or conservatorship and that is not otherwise entitled to notice under this Act may file a request with the court for notice. The court shall send or deliver a copy of the request to the guardian, to the conservator~~ustodian~~ if one has been appointed, and to the individual who is subject to the guardianship, conservatorship or protective arrangement. The guardian, conservator, and the individual who is subject to the guardianship, conservatorship, or protective arrangement ~~recipient of the notice~~ may file an objection to the demand for notice within 60 days. If an objection is filed, the court shall hold a hearing on the request. If the court approves the request, the court shall give notice of the approval to the guardian or conservator if one has been appointed or to the respondent if no guardian or conservator has been appointed. The request must include a statement showing the interest of the person making it and the address of the person or an attorney for the person to whom notice is to be given. If the court approves the request, or if no objection is filed within 60 days, then the requesting party shall be entitled to notice.

Maine Comment: This section deviates from the Uniform Probate Code in that it adds the requirement that the court send a copy of the request for notice to the guardian and or conservator if one has been appointed and otherwise to the individual subject to the guardianship, conservatorship or protective arrangement. This section also deviates from the Uniform Probate Code in that it adds a sixty-day period for filing an objection and for a hearing if an objection is filed. These added steps give the parties an opportunity to object and have the court determine the appropriateness of the request by a person who is otherwise not entitled to notice.

§ 5-117. Disclosure of bankruptcy or criminal history

1. Disclosure; petition. As part of the petition to be appointed a guardian or conservator, ~~a person~~ the petitioner shall disclose to the court whether the proposed guardian or conservator~~person~~:

A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or

B. Has been convicted of:

(1) A felony;

(2) A crime involving dishonesty, neglect, violence or use of physical force; or

(3) Any other crime relevant to the functions the individual would assume as guardian or conservator.

2. Agent; convictions; approval. A guardian or conservator may not engage an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence or use of physical force or any other crime relevant to the functions the agent is being engaged to perform ~~promptly~~ without prior approval of the court.

3. Finances manager agent; debtor; disclosure. If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

Maine Comment: Subsection 1 of this section adds that the disclosure be part of the petition for the appointment of a guardian or conservator to enable the court to address the issue in the preliminary part of the proceeding.

Subsection 2 of this section prohibits the guardian or conservator from knowingly engaging an agent who has been convicted of a felony, or convicted of a crime involving dishonesty, neglect, violence or the use of physical force or any other relevant crime without prior court approval. Prior court approval affords more protection as compared to the Uniform Probate Code's more limited requirement of promptly informing the court.

§ 5-118. Multiple appointments or nominations

If a respondent or other person makes more than one appointment or nomination of a guardian or a conservator, the latest in time governs.

§ 5-119. Compensation and expenses; in general

1. Attorney for respondent. ~~Unless otherwise compensated for services rendered,~~ Unless the court has made a finding that the respondent is indigent and has appointed an attorney for the respondent on that basis, A~~a~~n attorney for a respondent in a proceeding under this Act is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the respondent.

2. Attorney or other person. ~~Unless otherwise compensated for services rendered,~~ Unless the court has made a finding that the respondent is indigent A~~a~~n attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or beneficial to an individual for whom a protective arrangement instead of guardianship or conservatorship was ordered is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the individual.

3. Court review. After notice to all interested persons, on petition of an interested person, the propriety of employment of any person by a conservator or guardian, including any attorney, accountant, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of compensation for and the appropriateness of services provided pursuant to subsections (1) and (2) above, may be reviewed by the court. Any person who has received excessive compensation or reimbursement of inappropriate expenses for services rendered may be ordered to make appropriate refunds. The factors set forth in section 3-721, subsection 2 must be considered as guides in determining the reasonableness of compensation under this section.

4. Costs assessed against petitioner. If the court dismisses a petition under this Act and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the petitioner and any attorneys' fees or other costs incurred by ther respondent.

~~**5. Guardian.** A guardian is entitled to reasonable compensation for services as guardian based on the factors set forth in sections 3-721, subsection 2 and to reimbursement for room and board provided to the ward consistent with the plan or revised plan filed with the Court; provided, however, if no conservator has been appointed, then any payments to the guardian for room and board must be approved by the court either before or after the payments are made.~~

Maine Comment: Contrary to the Uniform Probate Code's requirement that compensation be approved by the court before payment, this section contains sufficient protection with an optional court review by a petition of an interested party, which is in addition to the annual accounting requirement found in section 5-423.

§ 5-120. Liability of guardian or conservator for act of individual subject to guardianship or conservatorship

A guardian or conservator is not personally liable to a 3rd person for the act of an individual subject to guardianship or conservatorship solely by reason of the guardianship or conservatorship.

Maine Comment: This section purposefully is not intended to incorporate the Uniform Probate Code's comment in regard to the personal liability of a guardian or conservator for acts of the individual subject to guardianship or conservatorship based on a negligence or breach of fiduciary duty standard because this provision is not intended to address the standard of care for liability of a guardian or conservator.

§ 5-121. Petition after appointment for instructions or ratification

1. Petition. A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act.

2. Instruction or order. On notice and hearing on a petition under subsection 1, the court may give an appropriate instruction and enter any appropriate order.

§ 5-122. Third-party acceptance of authority of guardian or conservator

1. Refusal to recognize authority required. A person must refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The person has actual knowledge or a reasonable belief that the guardian's or conservator's letters of office are invalid or that the guardian or conservator is exceeding or improperly exercising authority granted by the court; or

B. The person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

2. Refusal to recognize authority discretionary. A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The guardian's or conservator's proposed action would be inconsistent with this Act; or

B. The person makes, or has actual knowledge that another person has made, a report to adult protective services or child protective services stating a good faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

3. Report refusal to court. A person that refuses to accept the authority of a guardian or conservator in accordance with subsection 2 shall report the refusal and the reason for refusal to the court. The court on receiving a report shall consider whether removal of the guardian or conservator or other action is appropriate.

4. Petition to require recognition or acceptance. A guardian or conservator may petition the court to require a 3rd party to recognize the authority of a guardian or conservator or accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship, and if the court finds that the refusal of a 3rd party to recognize the authority of a guardian or conservator or accept the decision made by the guardian or conservator was made in bad faith and without adequate justification, the court may surcharge the person who refuses to recognize the authority of a guardian or conservator or accept the authority of the guardian or conservator for attorneys' fees and costs. Notice of the petition shall given to the adult subject to guardianship or conservatorship and to all persons entitled to notice under section 5-310, subsection 5 or section 5-411, subsection 5, or a subsequent order.

Maine Comment: Subsection 3 of this section modifies the Uniform Probate Code's optional reporting requirement for a person who refuses to accept the authority of a guardian or conservator to a mandatory report for a person who has refused to accept the authority of a guardian and conservator.

§ 5-123. Use of agent by guardian or conservator

1. Delegation consistent with plan and fiduciary duty. Except as otherwise provided in subsection 3, a guardian or conservator may delegate a power to an agent that a prudent guardian or conservator of comparable skills could prudently delegate under the circumstances if the delegation is consistent with the guardian's or conservator's plan and fiduciary duty.

2. Delegating a power. In delegating a power under subsection 1, the guardian or conservator shall exercise reasonable care, skill and caution in:

A. Selecting the agent;

B. Establishing the scope and terms of the agent's work in accordance with the guardian's or conservator's plan;

C. Monitoring the agent's performance and compliance with the delegation; and

D. Redressing action or inaction of the agent that would constitute a breach of the guardian's or conservator's duties if performed by the guardian or conservator.

3. Delegation limitation. A guardian or conservator may not delegate all powers to an agent.

4. Agent performing a delegated power. In performing a power delegated under this section, an agent shall:

A. Exercise reasonable care to comply with the terms of the delegation and use reasonable care in the performance of the delegated power; and

B. If the agent has been delegated the power to make a decision on behalf of the individual subject to guardianship or conservatorship, in making the decision use the same decision-making standard the guardian or conservator would be required to use in making the decision.

5. Jurisdiction of court. By accepting a delegation of a power from a guardian or conservator under this section, an agent submits to the jurisdiction of the courts of this State in an action involving the agent's performance as agent.

6. Liability. A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decisions or actions of the agent.

§ 5-124. Temporary substitute guardian or conservator

1. Temporary substitute guardian. The court may appoint a temporary substitute guardian for a period not longer than 6 months for an individual subject to guardianship if:

A. A proceeding to remove an existing guardian is pending; or

B. The court finds an existing guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.

2. Temporary substitute conservator. The court may appoint a temporary substitute conservator for a period not longer than 6 months for an individual subject to conservatorship if:

A. A proceeding to remove an existing conservator is pending; or

B. The court finds that an existing conservator is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.

3. Powers. Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator. The authority of an

existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.

4. Notice. The court shall give notice of appointment of a temporary substitute guardian or temporary substitute conservator under this section not later than 5 days after the appointment to:

A. The individual subject to guardianship or conservatorship;

B. The affected guardian or conservator; and

C. In the case of a minor, each parent of the minor and any person currently having custody or care of the minor.

5. Removal. The court may remove a temporary substitute guardian or temporary substitute conservator appointed under this section at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.

6. Application. Except as otherwise provided in this section, the provisions of this Act:

A. Concerning a guardian for a minor apply to a temporary substitute guardian for a minor;

B. Concerning a guardian for an adult apply to a temporary substitute guardian for an adult; and

C. Concerning a conservator apply to a temporary substitute conservator.

Maine Comment: Subsection 6 of this section clarifies that except as otherwise provided within this section, all provisions for guardians and conservators under this Title apply to temporary substitute guardians and temporary substitute conservators as well.

§ 5-125. Registration of order; effect

1. Registration of guardianship order. If a guardian has been appointed for an individual in another state and a petition for guardianship of the individual is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this State by filing as a foreign judgment, in a court of an appropriate county of this State, certified copies of the order and letters of office.

2. Registration of conservatorship order. If a conservator is appointed in another state and a petition for conservatorship is not pending in this State, the

conservator appointed in the other state, after giving notice to the appointing court, may register the conservatorship in this State by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.

3. Exercise of powers. On registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this State all powers authorized in the order except as prohibited by the law of this State other than this Act. If the guardian or conservator is not a resident of this State, the guardian or conservator may maintain an action or proceeding in this State subject to any condition imposed by this State on a nonresident party.

4. Enforcement of registered order. The court may grant any relief available under this Act and law of this State other than this Act to enforce a registered order.

§ 5-126. Grievance against guardian or conservator

1. File a grievance with the court. An individual who is subject to guardianship or conservatorship, or a person interested in the welfare of an individual subject to guardianship or conservatorship, who reasonably believes a guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this Act may file a grievance with the court. The grievance must be in writing or another record.

2. Procedure upon receiving grievance. Subject to subsection 3, after receiving a grievance under subsection 1, the court:

A. Shall review the grievance and, if necessary to determine the appropriate response to the grievance, court records related to the guardianship or conservatorship;

B. Shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(1) Removal of the guardian and appointment of a successor may be appropriate in accordance with section 5-318;

(2) Termination or modification of the guardianship may be appropriate under section 5-319;

(3) Removal of the conservator and appointment of a successor may be appropriate under section 5-430;

(4) Termination or modification of the conservatorship may be appropriate under section 5-431; and

C. May take any action supported by the grievance and record, including:

(1) Ordering the guardian or conservator to provide to the court a report, accounting, inventory, updated plan or other information;

(2) Appointing a guardian ad litem;

(3) Appointing an attorney for the individual subject to guardianship or conservatorship; or

(4) Scheduling a hearing.

3. Similar grievance filed within 6 months. The court may decline to proceed under subsection 2 if a similar grievance was made within the preceding 6 months and the court followed the procedures of subsection 2 in considering the grievance.

§ 5-127. Delegation by parent or guardian

1. Delegation; power of attorney. A parent or a guardian of a minor or individual subject to guardianship, by a power of attorney, may delegate to another person, for a period not exceeding 12 months, any power regarding care, custody or property of the minor or individual subject to guardianship, except the power to consent to marriage, adoption or termination of parental rights to the minor. A delegation of powers by a court-appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or individual subject to guardianship. A delegation of powers under this section is subject to the same court supervision that applies to temporary substitute guardians as described in section 5-124, subsection 5. Any delegation under this section may be revoked or amended by the appointing parent or guardian in writing and delivered to the person to whom the powers were delegated and to other interested persons.

2. National Guard or Reserves; extension. Notwithstanding subsection 1, unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under that active duty order or until an order of the court so provides.

This subsection applies only if the parent's or guardian's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress.

3. Temporary care of minor. This subsection applies when a parent or guardian executes a power of attorney under subsection 1 for the purpose of providing for the temporary care of a minor.

A. The execution of a power of attorney under subsection 1, without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court.

B. Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection 1. Nothing in this subsection disqualifies the agent from applying for and receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent.

C. A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1. The agent named in the power of attorney may not be considered a family foster home by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1 and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody.

4. Background check. An organization, other than an organization whose primary purpose is to provide free legal services or to provide hospital services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

A. A screening for child and adult abuse, neglect or exploitation cases in the records of the Department of Health and Human Services; and

B. A criminal history record check that includes information obtained from the Federal Bureau of Investigation.

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this section and to the ombudsman under Title 22, section 4087-A and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor.

Without regard to whether an organization is included or excluded by the terms of this subsection, nothing in this section changes the restrictions on the unauthorized practice of law as provided in Title 4, section 807 with regard to the preparation of powers of attorney.

5. Disqualification of agent. An employee or volunteer for an organization described in subsection 4 may not further assist with a process that results in the completion of a power of attorney for the temporary care of a minor if the background checks conducted pursuant to subsection 4, paragraphs A and B disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home in the State.

6. Penalties. The following penalties apply to violations of this section.

A. An organization that knowingly fails to perform or verify the background checks or fails to share the background check information as required by subsection 4 is subject to a civil penalty not to exceed $5,000, payable to the State and recoverable in a civil action.

B. An organization or an employee or volunteer of an organization that continues to assist a parent, guardian or agent in completing a power of attorney under subsection 4 if the background checks conducted pursuant to subsection 4 disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home is subject to a civil penalty not to exceed $5,000, payable to the State and recoverable in a civil action.

C. An organization or an employee or volunteer of an organization that knowingly fails to maintain records or to disclose information as required by subsection 4 is subject to a civil penalty not to exceed $5,000, payable to the State and recoverable in a civil action.

Maine Comment: This section is the same as section 5-104 of the now-repealed Title 18-A, which was initially passed in 1979 and amended several times, and includes new language in subsection 1 expressly recognizing a parent's or guardian's right to revoke or amend the delegation of rights before the expiration of such delegation. Contrary to the Uniform Probate Code's proposed comparable section which limits delegation only to parents of minor children, Maine has chosen to continue to permit guardians to delegate powers by a power of attorney to be effective only when the power of attorney is filed with the court. The delegation of powers is subject to the same court supervision that applies to temporary substitute guardians described in section 5-124. Delegation by a parent and guardian is permitted for a period not exceeding twelve months, three months longer than the Uniform Probate Code's comparable provision limited to parental delegation.

PART 3

GUARDIANSHIP OF ADULT

§ 5-301. Basis for appointment of guardian for adult

1. Appointment. On petition and after notice and hearing, the court may:

A. Appoint a guardian for a respondent who is an adult if it finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

(1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provide adequate protection for the respondent;

(2) The respondent's identified needs cannot be met by ~~an appropriate~~ a protective arrangement instead of guardianship or other less restrictive alternatives; and

(3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or

B. With appropriate findings, and additional notices to persons the court determines are entitled to notice, treat the petition as one for a conservatorship under Part 4 or a protective arrangement instead of guardianship or conservatorship under Part 5, enter any other appropriate order or dismiss the proceeding.

2. Powers. The court shall grant to a guardian appointed under subsection 1 only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of and provide adequate protection for the respondent.

Maine Comment

The Uniform Act was revised in Section 5-301 (1)(A)(1) to require the court to find that any appropriate supportive services, technological assistance or supported decision making provide adequate protection for the particular respondent. Section 5-302(2) of the Uniform Act is also revised by adding that a less restrictive alternative to guardianship provide adequate protection for the respondent.

Consistent with the Uniform Act, Section 5-301 sets forth the only grounds for appointment of a guardian for an adult. Prior Maine law allowed for testamentary appointment by a parent or spouse.

§ 5-302. Petition for appointment of guardian for adult

1. Petition for appointment. A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for the appointment of a guardian for the adult.

2. Contents of petition. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian by the respondent;

(10) A person nominated as guardian by the respondent's parent, spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected; and

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

D. The reason a guardianship is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) Any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;

(3) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(4) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's alleged need;

E. Whether the petitioner seeks a limited guardianship or full guardianship;

F. If the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate;

G. If a limited guardianship is requested, the powers to be granted to the guardian;

H. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

I. If the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

J. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

§ 5-303. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-302 for appointment of a guardian for a respondent who is an adult, the court shall set a date, time and place for hearing the petition.

2. Notice to respondent. A copy of a petition under section 5-302 and notice of a hearing on the petition must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to other persons. In a proceeding on a petition under section 5-302, notice of the hearing also must be given to any person required to be listed in the petition under section 5-302, subsection 2, paragraphs A to C and any other person the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

4. Notice of petition after appointment. Notice of a hearing on a petition that is filed after the appointment of a guardian and that seeks an order under this Part, together with a copy of the petition, must be given to the adult subject to guardianship, the guardian and any other person as the court determines.

Maine Comment

The notice and hearing provision of the Uniform Law was adopted in § 5-303. Notice must include a description of the nature, purpose and consequences of granting the petition. Said required description did not exist under prior Maine law. The Court must review the notice to

confirm that the respondent was served with a notice substantially complying with the requirements of §5-303(2).

§ 5-304. Appointment of visitor

1. Appointment of visitor. On receipt of a petition for appointment of a guardian for a respondent who is an adult under section 5-302, the court shall appoint a visitor. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Interview with respondent. A visitor appointed under subsection 1 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a guardian;

B. Determine the respondent's views about the appointment, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship, and general preferences and values;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; ~~and~~

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets; and

~~E. Determine the respondent's medical conditions, cognitive functioning, every day functioning, preferences, values, and levels of supervision needed.~~

3. Additional duties. In addition to the duties imposed by subsection 2, the visitor shall perform any duties that the court directs, which may include:

A. Interviewing the petitioner and proposed guardian, if any;

B. Visiting the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made;

C. Obtaining information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; and

D. Investigatinge the allegations in the petition and any other matter relating to the petition as the court directs.

4. Report of visitor. A visitor under this section shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:

A. Whether or not the respondent wishes to contest any aspect of the proceedings or to seek any limitation on the proposed guardian's powers;

B. A recommendation whether an attorney should be appointed to represent the respondent;

C. A summary of the respondent's medical conditions, cognitive functioning, every day functioning, preferences, values, ~~and levels of supervision needed,~~ and a~~A~~ summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making ~~and cannot manage~~;

D. Recommendations regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's needs are available and, if a guardianship is recommended, whether it should be full or limited and, if a limited guardianship, the powers to be granted to the guardian;

E. A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;

F. A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;

G. A recommendation whether a further professional evaluation under section 5-306 is necessary;

H. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

I. A statement whether the respondent wishes to attend the hearing after being informed of the right to attend the hearing, the purposes of the hearing and the potential consequences of failing to attend;

J~~I~~. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

K~~J~~. Any other matter as the court directs.

Maine Comment

In contrast to the Uniform Act, Section 5-304 sets out required visitor's duties in § 5-304(2) and additional duties in subsection (3) which may often be required, but which the Court has the discretion to tailor. Additional duties under subsection (3), such as visiting a potential future dwelling, or obtaining additional medical or mental health information could be problematic or impossible in some cases and are left to the discretion of the Court.

Because subsequent section 5-305 continues current Maine practice of determining whether

an attorney will be appointed for a respondent on a case by case basis, the visitor under §5-304 must address the issue under subsections (4)(A) and (B). Also in contrast to the Uniform Act, §5-304(I) provides for the visitor to report on whether or not the respondent wishes to attend the hearing, after being fully informed by the visitor.

§ 5-305. Appointment and role of attorney for adult

1. Appointment of attorney required. The court shall appoint an attorney to represent the respondent in a proceeding on a petition under section 5-302 if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed guardian's powers.

2. Duties of attorney. An attorney representing the respondent in a proceeding on a petition under section 5-302 shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

Maine Comment

Maine rejected the Uniform Act's preferred alternative of appointing an attorney in all situations and, instead, preserved current practice of appointing an attorney if requested by the respondent, recommended by the visitor, deemed necessary by the Court, or when the respondent is reported to contest any aspect of the proposed guardianship.

§ 5-306. Professional evaluation

1. Evaluation; report. In every adult guardianship matter, the respondent must be examined by a licensed physician or psychologist who is acceptable to the court and who is qualified to evaluate the respondent's alleged cognitive and functional abilities. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement and recommendation for the appropriate treatment, support or habilitation plan; and

D. The date of the examination on which the report is based.

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation pursuant to subsection 1 or the respondent refuses to provide medical reports, the court may enter an order of guardianship or other protective arrangement without the report of a licensed physician or psychologist or supporting medical reports, if the court otherwise finds that there is a basis for such an order in accordance with section 5-301.

Maine Comment

The Uniform Act provided for an evaluation by a broad list of professionals upon order of the court after the the petition is filed. Maine drafters elected to retain the current practice of requiring a professional evaluation in every case with the report to be filed at least 10 days before hearing. Also in contrast to the Uniform Act, Section 5-306 continues the current requirement that the professional be either a licensed physician or psychologist.

Section 5-306(2) confirms that if the respondent declines to participate in an evaluation, the court may still enter an order for a protective arrangement if the court otherwise finds that there is a basis for such an order in accordance with section 5-301.

§ 5-307. Attendance and rights at hearing

1. Attendance by respondent. Except as otherwise provided in subsection 2, a hearing under section 5-303 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent, or allow the respondent to attend the hearing using real-time audiovisual technology or telephone if real-time audiovisual is not available.

2. Hearing without respondent in attendance. A hearing under section 5-303 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so; or

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-303 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-303.

5. Rights of respondent at hearing. For or at a hearing under section 5-303, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Attendance by proposed guardian required. Unless excused by the court for good cause, the proposed guardian~~, or counsel on behalf of the proposed guardian,~~ shall attend a hearing under section 5-303 either in person, using real-time audiovisual technology, or by telephone if real-time audiovisual technology is unavailable.

7. Closed upon request; good cause. A hearing under section 5-303 must be closed on request of the respondent and a showing of good cause.

8. Participation; best interest of respondent. Any person may request to participate in a hearing under section 5-303. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

Maine Comment

Consistent with the Uniform Act, section 5-307 expresses a strong preference for the respondent's presence in Court and sets forth the process and standards for proceeding to hearing in the absence of the respondent. The new Maine law adds attendance of the respondent by real-time audiovisual technology and if unavailable by telephone, with court approval.

Also consistent with the Uniform Act, Section 5-307(6) requires the proposed guardian to be present at hearing, unless excused for good cause, but adds authority for the guardian to be present with the use of real- time audiovisual technology and if unavailable by telephone.

§ 5-308. Confidentiality of records

1. Matter of public record; exception. Only t~~T~~he existence of a proceeding for guardianship for an adult and ~~or~~ the existence or termination of a guardianship for an adult, and the name and contact information of the proposed guardian or guardian and their counsel, is a matter of public record. ~~unless the court seals the records after :~~

~~A. tThe respondent or individual subject to guardianship requests the records be sealed; and or~~

~~B. Either:~~

~~(1) The petition for guardianship is dismissed; or~~

~~(2) B. The guardianship is terminated~~.

2. Access to court records. An adult subject of a proceeding for a guardianship, whether or not a guardian is appointed~~,~~; any attorney designated by the adult and a person entitled to notice under section 5-310, subsection 5; the petitioner on a petition for guardianship, for conservatorship or for a protective arrangement; the proposed guardian or conservator; the court appointed visitor; all parties listed in the petition under section 5-302, subsection 2, and the personal representative of a deceased adult's estate; and counsel for any of the foregoing, ~~-~~are entitled to access to all of the court records of the proceeding and resulting guardianship, including a guardian's report or plan. In addition, a person for good cause may petition the court for access to court records of the guardianship, including an annual report or guardian's plan. The court may~~shall~~ grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interest of the adult.

~~**3. Reports confidential; availability.** The information provided in the petition under section 5-302, subsection 2, paragraph I, aA report under section 5-304 of a visitor andor a professional evaluation under section 5-306 is confidential and must be sealed on filing but is available to:~~

~~A. The court;~~

~~B. The individual who is the subject of the report or evaluation, without limitation as to use;~~

~~C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;~~

~~D. An agent appointed under a power of attorney for health care or advance health care directive, or power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and~~

~~E. Other persons when it is in the public interest or for a purpose the court orders for good cause.~~

Maine Comment

The Uniform Act's comments recognize that States are struggling with how to protect privacy of respondents and adults under guardianship, conservatorship and protective arrangements. Section 5-308 errs on the side of privacy.

§ 5-309. Who may be guardian of adult; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a guardian for an adult shall consider persons otherwise qualified in the following order of priority:

A. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;

B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;

C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive;

D. A spouse or domestic partner of the respondent; ~~and~~

E. An adult child of the respondent;

F. A parent of the respondent, including a person nominated by will or other writing signed by a deceased parent;

G. Any relative of the respondent with whom the respondent resided for more than 6 months within 12 months prior to the filing of the petition; and

E. A family member or other individual who has exhibited special care and concern for the respondent.

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential guardian's relationship with the respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to which the potential guardian and the respondent have similar values and preferences and the likelihood the potential guardian will be able to satisfy the duties of a guardian successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential guardian who has a lower or no priority: relationships with the respondent, the higher priority persons and the potential guardian's skills, the expressed wishes of the respondent, and the extent to which the person with highter priority and the person with lower or no priority have similar values and preferences with

the respondent and the likelihood that the potential guardian will be able to satisfy the duties of a guardian successfully.

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

A. The individual is related to the respondent by blood, marriage or adoption; or

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

5. Long-term care institution; exceptions. An owner, operator or employee of a long-term care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

Maine Comment

In contrast to the Uniform Act, and consistent with prior Maine law, section 5-309 adds to the order of priority for appointment (E) an adult child, (F) a parent of the respondent or written nominee of a deceased parent, and (G) any relative with whom the respondent resided for more than 6 months within 12 months of the filing of the petition.

In an expansion of the Uniform Act, section 5-309(2) sets forth factors for the court to consider when appointing a person with a lower priority or no priority.

§ 5-310. Order of appointment

1. Order contents. A court order appointing a guardian for an adult must ~~clearly~~:

A. Include a finding that clear and convincing evidence has established that the basis for an appointment of guardianship, as required under section 5-301, has been met; and

B. Include a finding that clear and convincing evidence established that the respondent was given proper notice of the hearing on the petition.~~;~~

~~C. State whether the adult subject to guardianship retains the right to vote and, if the adult does not retain the right to vote, include findings that support removing that right, which must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process; and~~

~~D. State whether the adult subject to guardianship retains the right to marry and, if the adult's right to marry is subject to conditions or if the adult does not retain the right to marry, include findings that support the conditions on that right or the removal of that right.~~

2. Rights retained. An adult subject to guardianship retains the right to vote and the right to marry unless the court orders otherwise. ~~-~~ A court order removing the right to vote shall include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process. A court order removing the right to marry or placing conditions on the right to marry shall include findings that support the removal of the right to marry or support conditions on the right to marry. ~~under subsection 1 includes the findings required by subsection 1, paragraph C. An adult subject to guardianship retains the right to marry unless the order under subsection 1 includes the findings required by subsection 1, paragraph D.~~

3. Basis for full guardianship. A court order establishing a full guardianship for an adult clearly must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.

4. Limited guardianship; powers granted to guardian. A court order establishing a limited guardianship for an adult must state clearly the powers granted to the guardian.

5. Notice; access to reports and plans. The court shall, as part of any order establishing a guardianship for an adult, identify any person that subsequently is entitled to:

A. Notice of the rights of the adult subject to guardianship;

B. Notice of a change in the primary dwelling of the adult subject to guardianship;

C. Notice that the guardian has delegated:

(1) The power to manage the care of the adult subject to guardianship;

(2) The power to make decisions about where the adult subject to guardianship lives;

(3) The power to make major medical decisions on behalf of the adult subject to guardianship;

(4) Any power that requires court approval under section 5-315; or

(5) Substantially all powers of the guardian.

D. Notice that the guardian will be ~~unavailable to visit the adult subject to guardianship for more than 2 months or~~ unable to perform the guardian's duties for more than one month;

E. A copy of the guardian's report and plan;

F. Access to court records pertaining to the guardianship;

G. Notice of the death or significant change in the condition of the adult subject to guardianship;

H. Notice that the court has limited or modified the powers of the guardian; and

I. Notice of the guardian's removal.

6. Entitled to notice; exceptions. A spouse, a domestic partner and the adult children of the adult subject to guardianship are entitled to notice under subsection 5 unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.

Maine Comment

In contrast to the Uniform Act, section 5-310 refers back to the required findings in section 5-301, rather than repeating them. The actual court order shall state verbatim the required findings of section 5-301 to articulate the findings.

Also, subsection (2) confirms that the right to vote and the right to marry are automatically preserved unless the Court orders otherwise.

Section 5-310 (5)(D) retained the Uniform Act provision for notice when a guardian will be unable to perform the guardian's duties for more than one month, but rejected requiring notice of unavailability to visit for more than two months. There are numerous out of state guardians who provide appropriate supervision and oversite, but who may be unable to visit every two months.

§ 5-311. Notice of order of appointment; rights

A guardian appointed under section 5-309 shall give to the adult subject to guardianship and to all other persons given notice under section 5-303 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

Maine Comment

The extensive post-hearing notice of rights process set forth in the Uniform Act was rejected as likely ineffective and otherwise satisfied by the hearing process and final court order. Section 5-311 does require the guardian to provide the respondent and other appropriate persons with the order of appointment and a notice of the right to terminate or modify the guardianship within 14 days of the appointment. Since actual delivery to the respondent is required, a process for confirming delivery may have to be established by the court.

§ 5-312. Emergency guardian

1. Basis for emergency guardianship. On petition by a person interested in an adult's welfare or on its own after a petition has been filed under section 5-302, the court may appoint an emergency guardian for the adult if the court finds:

A. Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a guardian under section 5-301 may exist.

2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the

petitioner complied with the notice requirements of this subsection. The requirements of section 5-3039 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing. The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and any other person as the court determines of the appointment. If the respondent objects to the appointment, the court shall hold a hearing within 14 days of the appointment.

5. Not a determination. Appointment of an emergency guardian under this section is not a determination that the conditions required for appointment of a guardian under section 5-301 have been satisfied.

6. Removal; report; application. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires. In other respects, the provisions of this Act concerning guardians apply to an emergency guardian appointed under this section.

Maine Comment

Although section 5-312 adopts the Uniform Act's term of 'emergency guardian', Maine's former temporary guardianship process is essentially incorporated into the new statute. The initial appointment may be for 60 days and may be extended for up to 120 additional days. Upon appropriate findings, contrary to the Uniform Act, section 5-312 does not provide for the automatic appointment of an attorney for the respondent. The basis for an emergency appointment, the notice requirements prior to the petition, and the required affidavit regarding notice to the respondent and other interested persons are consistent with prior Maine law. The prior exception to the requirement of notice is preserved in section 5-312(D).

§ 5-313. Duties of guardian for adult

1. Fiduciary. A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.

2. Promote self-determination. A guardian for an adult shall promote the self-determination of the adult subject to guardianship and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

A. Become or remain personally acquainted with the adult subject to guardianship and maintain sufficient contact with the adult, including through regular visitation, to know of the adult's abilities, limitations, needs, opportunities and physical and mental health;

B. To the extent reasonably feasible, identify the values and preferences of the adult subject to guardianship and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities and social interactions; and

C. Make reasonable efforts to identify and facilitate supportive relationships and services for the adult subject to guardianship.

3. Reasonable care, diligence and prudence. A guardian for an adult at all times shall exercise reasonable care, diligence and prudence when acting on behalf of or making decisions for the adult subject to guardianship. In furtherance of this duty, the guardian shall:

A. Take reasonable care of the personal effects, pets and service or support animals of the adult subject to guardianship and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property;

B. Expend money of the adult subject to guardianship that has been received by the guardian for the adult's current needs for support, care, education, health and welfare;

C. Administer assets of the adult subject to guardianship having a value of $~~5~~10,000 or less;

D. Conserve any excess money of the adult subject to guardianship for the adult's future needs, but if a conservator has been appointed for the adult, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the adult's future needs; and

E. Monitor the quality of services, including long-term care services, provided to the adult subject to guardianship.

4. Decision of the adult. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to

guardianship would make if able, the guardian shall consider the adult's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.

5. Decision in best interest of the adult. If a guardian for an adult cannot make a decision under subsection 4 because the guardian does not know and cannot reasonably determine the decision that the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

B. Other information the guardian believes the adult would have considered if the adult were able to act; and

C. Other factors that a reasonable person in the circumstances of the adult would consider, including consequences for others.

6. Notice to court. A guardian for an adult immediately shall notify the court if the condition of the adult subject to guardianship has changed so that the adult is capable of exercising rights previously removed.

Maine Comment

The new section 5-313 adopts the Uniform law regarding the duties of a guardian for an adult. However, it should be notied that section 5-313 (3)(1)(C) was added to give a guardian specific statutory authority to administer assets having a value of $10,000 or less. The $10,000 amount is consistent with the MaineCare limit for countable assets.

§ 5-314. Powers of guardian for adult

1. Powers. Except as otherwise limited by the court, a guardian for an adult may:

A. Apply for or receive money, personal effects or benefits for the support of the adult, and apply the money for support, care and education of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator, but the guardian may not use funds from the adult's estate for room and board which the guardian, the guardians's spouse, parent or child have furnished the adult unless a charge for the services is approved by order of the court;

B. If otherwise consistent with an order by a court with jurisdiction relating to the dwelling of the adult, establish the adult's place of dwelling;

C. Consent to medical or other care, treatment or service for the adult;

D. If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit;

E. To the extent reasonable, delegate to the adult certain responsibility for decisions affecting the adult's well-being; and

F. Receive personally identifiable health care information concerning the adult.

2. Adoption. The court may by specific order authorize a guardian for an adult to consent to the adoption of the adult.

3. Specific order of court required. The court may by specific order authorize a guardian for an adult to:

A. Consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed or made subject to conditions under section 5-310;

B. Petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage; or

C. Support or oppose a petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage.

4. Court's consideration. In determining whether to authorize a power under subsection 2 or 3, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values and prior directions and whether the underlying act would be in the best interest of the adult.

5. Duties with respect to dwelling. In exercising the guardian's power under subsection 1, paragraph B to establish the dwelling of the adult subject to guardianship, a guardian shall:

A. Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in section 5-313, subsections 4 and 5. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with section 5-313, subsection 5 a residential setting that is consistent with the best interest of the adult;

B. In selecting among residential settings, give priority to a residential setting that is in a location that will allow the adult subject to guardianship to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless doing so would be inconsistent with the decision-making standard in section 5-313, subsections 4 and 5;

C. Not later than 30 days after a change in the dwelling of the adult subject to guardianship, give notice of the change to the court, the adult subject to guardianship and any person

identified as entitled to the notice in the court order appointing the guardian or a subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardianship received advance notice of the change and whether the adult objected to the change;

D. Establish or move the permanent place of dwelling of an adult subject to guardianship to a nursing home, mental health facility or other facility that places restrictions on the individual's ability to leave or have visitors only if:

(1) The establishment or move is generally set forth in the guardian's plan;

(2) The court authorizes the establishment or move; or

(3) ~~Unless time sensitive~~Absent a compelling reason, n~~N~~otice of the establishment or move is given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent ~~–~~order. ~~and no objection has been filed;~~ The notice shall be given ~~either~~ orally and~~or~~ in writing to the adult subject to guardianship, and in writing to all persons entitled to notice under section 5-310 and shall include the address of the current dwelling, the address and type of new permanent place of dwelling, the reason for the move to the new permanent place of dwelling, and the right to object to the new dwelling.

E. Establish or move the place of dwelling of an adult subject to guardianship outside this State only if consistent with the guardian's plan and authorized by the court by specific order; and

F. Take action that would result in the sale of or surrender the lease to the primary dwelling of the adult subject to guardianship only if:

(1) The action is generally~~specifically~~ set forth in the guardian's plan;

(2) The court authorizes the action by specific order; or

(3) Notice of the action is given at least 14 days before the action to the adult subject to guardianship, orally and ~~or~~ in writing, and in writing to all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed within the 14 days of the notice.

6. Duties with respect to health care. In exercising the guardian's power under subsection 1, paragraph C to make health care decisions, a guardian shall:

A. Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options;

B. Defer to a decision by an agent under a power of attorney for health care or an advance health care directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and

C. Take into account:

(1) The risks and benefits of treatment options; and

(2) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

7. Application to existing guardianships. For guardianships established prior to July 1, 2019, the guardian shall not be subject to the duties of notice and restrictions of power set forth in subsection 5, paragraphs C, D and F, until so ordered by the court.

Maine Comment

The new section 5-314 is generally consistent with the Uniform Act's powers of guardian of adult. The authority of a guardian to receive personal effects was added in section 5-314(1)(A). The authority of a guardian to establish or move the permanent dwelling of the respondent under section 5-314(5)(D) was expanded to permit such a move if it is 'generally' set forth in the guardian's plan [section 5-314 (5)(D)(1)], in recognition that specific details of a planned move may not be known until immediately before a move. Section 5-314(5)(D)(3) also gives a guardian the authority to establish or move the permanent place of dwelling without the otherwise required advance notice if the guardian has a compelling reason and subsequent prompt notice is provided to the adult and persons entitled to notice.

The authority of a guardian to sell or surrender the lease to the primary dwelling is expanded in section 5-314 (5)(F) to permit such action if it is 'generally' set forth in the guardian's plan or if notice of the proposed action is given as specified in section 5-314(5)(F)(3) and no objection is filed within 14 days of such notice.

Subsection 7 creates an exception, for guardianships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain duties and restrictions of powers until an express order of the court directed to the guardian.

§ 5-315. Special limitations on guardian's power

1. Limitations; health care; finances. Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the adult. If a power of attorney for health care or an advance health care directive is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If

a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

2. Commitment to mental health facility. A guardian for an adult may not initiate the commitment of the adult to a mental health facility except in accordance with the State's procedure for involuntary civil commitment under Title 34-B, chapter 3, subchapter 4, article 3.

3. Restrictions on contact. A guardian for an adult may not restrict the ability of the adult to communicate, visit or interact with others, including receiving visitors or making or receiving telephone calls, personal mail or electronic communications, including through social media, or participating in social activities, unless~~:~~

A. Authorized by the court by specific order;

B. A protective order or a protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or

C. The guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological or financial harm to the adult. The guardian shall provide a notice, orally and ~~or~~ in writing, of the restriction to the adult subject to guardianship immediately upon imposition of the restriction and shall provide written notice of the restriction to all other persons entitled to notice under section 5-310, subsection 5 within 7 days of imposition of the restriction. Notice shall include a description of the restriction, the rationale supporting the restriction, contact information of the court, and the right to object to the restriction.~~and the restriction is:~~

~~(1) For a period of not more than 7 business days if the person has a family or preexisting social relationship with the adult; or~~

~~(2) For a period of not more than 60 days if the person does not have a family or preexisting social relationship with the adult~~.

4. Application to existing guardianships. For guardianships established prior to July 1, 2019, the guardian shall not be subject to the duties of notice and restrictions of power set forth in subsection 3 until so ordered by the court.

Maine Comment

The Uniform Act's provision on special limitations on a guardian's power was adopted in section 5-315, except for some aspects of restrictions on contact. In contrast to specification of separate time frames for different categories of people, section 5-315 authorizes a guardian to restrict the access of any peson upon good cause, with immediate

oral and written notice to the respondent and notice to all others entitled to notice within 7 days of the imposition of the restriction. The contents of the notice is described.

Subsection 4 creates an exception, for guardianships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain duties and restrictions of powers until an express order of the court directed to the guardian.

§ 5-316. Guardian's plan

1. Plan; revision. The petitioner for appointment of a guardian for an adult shall file with the petition a plan for the care of the adult. When there is a subsequent change in circumstances, or the guardian seeks to deviate significantly from the plan previously filed, the guardian shall file with the court a revised plan for the care of the adult. The plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the guardian. The plan must identify:

A. The adult's medical conditions, cognitive functioning, every day functioning, and levels of supervision needed;

A-1 The living arrangement, services and supports the guardian expects to arrange, facilitate or continue for the adult;

B. Social and educational activities the guardian expects to facilitate on behalf of the adult;

C. Any person with whom the adult has a relationship and any plan the guardian has for facilitating visits with the person;

D. The anticipated nature and frequency of the guardian's visits and communication with the adult;

E. Goals for the adult including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals;

F. Whether the adult already has a plan in place and, if so, whether the guardian's plan is consistent with the adult's plan; and

G. A statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

2. Notice of revised plan. A guardian shall give notice of the filing of a revised plan under subsection 1, along with a copy of the plan, to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines. The notice must include a statement of the right to object to the revised plan and be given not later than 14 days after the filing.

3. Objection to revised plan. An adult subject to guardianship and any person entitled under subsection 2 to receive notice and a copy of the guardian's plan may object to the revised plan within 14 days of receipt of notice of the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a guardian's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or the revised plan the court shall consider an objection under subsection 3 and whether the plan or revised plan is consistent with the guardian's duties and powers under sections 5-313 and 5-314. The court may schedule a hearing on any revised plan submitted and may not approve any revised plan until 30 days after its filing. The guardian may implement the revised plan 30 days after filing unless the court orders otherwise.

5. Copy of approved plan. After a guardian's plan under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines.

6. Application to existing guardianships. For guardianships established prior to July 1, 2019, the guardian shall not be subject to the requirement for filing a revised plan until so ordered by the court.

Maine Comment

Section 5-316 (1)(A) adds a requirement that the plan identify the adult's medical conditions, cognitive functioning, everyday functioning and levels of supervision needed. With regard to revised plans, section 5-316(3) creates a right to object for all appropriate parties within 14 days of receipt of notice of the revised plan. Although the court may elect to schedule a hearing on a revised plan under section 5-316(4), a revised plan may be implemented without hearing 30 days after filing unless the court orders otherwise.

Subsection 6 creates an exception, for guardianships established to the July 1, 2019 effective date of Title 18-C, to the requirement to file a revised plan until an express order of the court directed to the guardian.

§ 5-317. Guardian's report; monitoring of guardianship

1. Report; contents. A guardian for an adult at least annually shall submit to the court a report in a record regarding the condition of the adult and accounting for money and other property in the guardian's possession or subject to the guardian's control. Each report must state or contain:

A. The mental, physical and social condition of the adult;

B. The living arrangements of the adult during the reporting period;

C. A summary of the supported decision making, technological assistance, medical services, educational and vocational services and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

D. A summary of the guardian's visits with the adult, including the dates of the visits; and/or the visits of ~~professionals~~ agents hired by the guardian to visit on behalf of the guardian;

E. Action taken on behalf of the adult;

F. The extent to which the adult has participated in decision making;

G. If the adult is living in a mental health facility or living in a facility that provides the adult with health care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment or habilitation consistent with the adult's preferences, values, prior directions and best interest;

H. Anything of more than de minimis value that the guardian, any individual who resides with the guardian or the spouse, domestic partner, parent, child or sibling of the guardian has received from an individual providing goods or services to the adult;

I. If the guardian has delegated powers to an agent, the powers delegated and the reason for the delegation;

J. Any business relation the guardian has with a person the guardian has paid or a person that has benefited from the property of the adult;

K. A copy of the guardian's most recent plan and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

L. Plans for future care and support;

M. A recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship;

N. The fees paid to the guardian for the year, and/or still outstanding; and

O~~N~~. Whether any coguardian or successor guardian appointed to serve when a designated future event occurs is alive and able to serve.

2. Appointment of visitor. The court may appoint a visitor to review a report submitted under this section, interview the guardian or adult subject to guardianship or investigate any other matter involving the guardianship.

3. Notice of filing of report; copy. Notice of the filing of a guardian's report under this section, together with a copy of the report, must be given to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and any other person as the court determines. The notice and report must be given not later than 14 days after the filing of the report.

4. System to monitor reports. The court shall establish a system for monitoring reports submitted under this section and review each report at least annually to determine whether:

A. The report provides sufficient information to establish the guardian has complied with the guardian's duties;

B. The guardianship should continue; and

C. The guardian's requested fees, if any, should be approved.

5. Noncompliance; modification or termination. If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

A. Shall notify the adult, the guardian and all persons entitled to notice under section 5-310, subsection 5 or a subsequent order;

B. May require additional information from the guardian;

C. May appoint a visitor to interview the adult or guardian or investigate any matter involving the guardianship; and

D. May consider removing the guardian under section 5-318 or terminating the guardianship or changing the powers of the guardian or other terms of the guardianship under section 5-319.

6. Fees not reasonable. If the court has reason to believe that fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

7. Approval of report. A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If, after notice and hearing, the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

8. Application to existing guardianships. For guardianships established prior to July 1, 2019 in which there is no existing order to file annual reports, the guardian shall not be subject to the requirement for filing an annual report until so ordered by the court.

Maine Comment

Section 5-317(1)(D) gives statutory recognition of the guardian's authority to hire an agent to visit on behalf of the guardian. Section 5-317 (1)(N) adds a requirement that the guardian's report include a statement of fees paid to the guardian during the report year and/or fees still outstanding for the report year.

Unless there is an existing order to file annual reports, Subsection 8 creates an exception, for guardianships established prior to the July 1, 2019 effective date of Title 18-C, to the requirement to file an annual report, until an express order of the court directed to the guardian.

§ 5-318. Removal of guardian for adult; appointment of successor

1. Removal; successor. The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

2. Hearing. The court shall conduct a hearing to determine whether to remove a guardian for an adult and appoint a successor on:

A. Petition of the adult, the guardian or a person interested in the welfare of the adult that contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that removal of the guardian and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the adult.

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

4. Attorney for the adult. An adult subject to guardianship who seeks to remove the guardian and have a successor appointed has a right to choose an attorney to represent the adult. If the adult subject to guardianship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

5. Procedure to select successor. In selecting a successor guardian of an adult subject to guardianship, the court shall follow the procedures under section 5-309.

6. Notice of appointment of successor. Not later than 30 days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order.

§ 5-319. Termination or modification of guardianship for adult

1. Petition for termination or modification. An adult subject to guardianship, the guardian for the adult or a person interested in the welfare of the adult may petition for:

A. Termination of the guardianship on the ground that a basis for appointment under section 5-301 does not exist or termination would be in the best interest of the adult, or for other good cause; or

B. Modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

2. Hearing. The court shall conduct a hearing to determine whether termination or modification of a guardianship of an adult is appropriate on:

A. Petition under subsection 1 that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because of a change in the functional needs of the adult or supports or services available to the adult;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the adult's needs are available; or

D. A determination by the court that a hearing would be in the best interest of the adult.

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

4. Termination. On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that the basis for appointment of a guardian under section 5-301 is satisfied.

5. Modification. The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports or services or other circumstances.

6. Procedure. Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult that apply to a petition for guardianship.

7. Attorney for the adult. An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has a right to choose an attorney to represent the adult in this matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

PART 4

CONSERVATORSHIP

§ 5-401. Basis for appointment of conservator

1. Conservator for minor; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor, if the court finds by a preponderance of evidence that:

A. The minor owns money or property requiring management or protection that otherwise cannot be provided; or

B. Appointment of a conservator is in the best interest of the minor and:

(1) If the minor has a parent, the court gives weight to any recommendation of the minor's parent whether an appointment is in the best interest of the minor; and

(2) Either:

(a) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(b) Appointment is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

2. Conservator for adult; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court determines by clear and convincing evidence that:

A. The adult is unable to manage property or financial affairs because:

(1) Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance and supported decision making that provide adequate protection for the respondent; or

(2) The adult is missing, detained or unable to return to the United States;

B. Appointment is necessary to:

(1) Avoid harm to the adult or significant dissipation of the property of the adult; or

(2) Obtain or provide money needed for the support, care, education, health or welfare of the adult, or of an individual entitled to the adult's support, and protection is necessary or desirable to obtain or provide money for the purpose; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

3. Powers. The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and enter orders that encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship or other less restrictive alternatives would meet the needs of and provide adequate protection for the respondent.

Maine Comment

Consistent with the new Maine guardianship statute, in § 5-401(2)(A)(1) and § 5-401(3) the Uniform Act was revised to require the Court to find that any appropriate supportive services, technological assistance or supported decision making provide adequate protection for the particular respondent and a less restrictive alternative to conservatorship provide adequate protection for the respondent.

§ 5-402. Petition for appointment of conservator

1. Petitioner. The following may petition for the appointment of a conservator:

A. The individual for whom the order is sought;

B. A person interested in the estate, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property and financial affairs of the individual; or

C. The guardian of the individual.

2. Contents. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner; or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for the care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for a respondent in this State or another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care or an advance health directive in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

(10) Any proposed conservator, including a person nominated by the respondent if the respondent is 14 years of age or older; and

(11) If the individual for whom a conservator is sought is a minor:

(a) An adult with whom the minor resides if not otherwise listed; and

(b) Any person not otherwise listed that had the care or custody of the minor for 60 or more days during the 2 years preceding the filing of the petition or any person that had the primary care or custody of the minor for at least 730 days during the 5 years preceding the filing of the petition;

D. A general statement of the respondent's property with an estimate of its value, and the source and amount of other anticipated income or receipts;

E. The reason conservatorship is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need based on the respondent's medical conditions, cognitive functioning, every day financial functioning, and levels of supervision needed;

(2) If the petition alleges the respondent is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;

(3) Any protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's alleged need which have been considered or implemented;

(4) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(5) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's need;

F. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

G. Whether the petitioner seeks a limited conservatorship or a full conservatorship;

H. If the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

I. If the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed; and

J. If the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any other requested limitation on the authority of the conservator.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

Maine Comment

The structure of the Petition for Appoinment proposed in the Uniform Act was adopted in full in section 5-402. The information required is far more comprehensive than previously required

under Maine law; and section 5-402(2)(E) was revised to require a brief description of the respondent's needs based on medical condition, cognitive functioning, every day financial functioning and needed levels of supervision.

§ 5-403. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition for appointment of a conservator under section 5-402, the court shall set a date, time and place for hearing the petition.

2. Notice to respondent. A copy of a petition under section 5-402 and notice of a hearing on the petition must be served personally on the respondent at least 14 days before the hearing. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to others. In a proceeding on a petition under section 5-402, notice of the hearing also must be given to the persons required to be listed in the petition under section 5-402, subsection 3, paragraphs A to C and any other person interested in the respondent's welfare as the court determines at least 14 days prior to the hearing. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

4. Notice of petition after order. Notice of a hearing on a petition that is filed after the appointment of a conservator and that seeks an order under this Part, together with a copy of the petition, must be given to the individual subject to conservatorship if the individual is 14 years of age or older and is not missing, detained or unable to return to the United States, the conservator and any other person as the court determines.

§ 5-404~~. Petition for protective order~~Order to Preserve or Apply Property While Proceeding Pending.

While a petition under Section 402 is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent.

Maine Comment

The Uniform Act version was adopted, except for the provision authorizing the appointment of a master. The position of master is not otherwise utilized in the Probate Code.

~~**1. Petition.** The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected, including the parent, guardian,~~

~~conservatorcustodian or domestic partner of the person to be protected, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for a protective order.~~

~~2.~~ ~~Contents of petition.~~ ~~A petition under subsection 1 must contain such information and be in such form as the Supreme Judicial Court by rule provides.~~

~~3.~~ ~~Purpose; priority scheduling.~~ ~~A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.~~

~~A. The petition must include the following information and may include other information required by rule:~~

~~(1) Name, address and telephone number of the petitioner;~~

~~(2) Name, address and telephone number of the principal;~~

~~(3) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;~~

~~(4) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs effectively and any facts supporting an allegation that an emergency exists;~~

~~(5) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and~~

~~(6) Names, addresses and relationships of all persons who are required to receive notice of the petition.~~

~~B. This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court.~~

§ 5-405. Appointment and role of visitor

1. Visitor for minor respondent. If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a visitor to investigate a matter related to the petition or to inform the minor or a parent of the minor about the petition or a related matter.

2. Visitor for adult respondent. If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor unless the adult is represented by an attorney. The duties and reporting requirements of the visitor are limited to the relief requested in

the petition. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

3. Interview with ~~Duties of visitor for~~ adult respondent. A visitor appointed for an adult under subsection 2 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a conservator;

B. Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties and the scope and duration of the proposed conservatorship, and general financial preferences and values;

~~C. Determine the respondent's financial functioning, financial preferences, levels of supervision needed, and independent financial tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making;~~

C~~D~~C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

D~~E~~D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.

4. Additional duties. In addition to the duties imposed by subsection 3, the visitor appointed for an adult under subsection 2 shall perform any duties that the court directs, which may include:

A. Interviewing the petitioner and proposed conservator, if any;

B. Reviewing financial records of the respondent, if relevant to the visitor's recommendation under subsection 5, paragraph B;

C. Statinge whether the respondent's needs could be met by a less restrictive alternative, including a protective arrangement instead of conservatorship and, if so, identify the less restrictive alternative; and

D. Investigatinge the allegations in the petition and any other matter relating to the petition as the court directs.

5. Report. A visitor appointed for an adult under subsection 2 shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:

A. A summary of the respondent's financial functioning, financial preferences, ~~levels of supervision needed~~, and independent financial tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making;

B. Whether or not the respondent wants to challenge any aspect of the proceeding or to seek any limitation on the conservator's powers;

C~~B~~. A recommendation whether an attorney should be appointed to represent the respondent;

D~~C~~. A recommendation:

(1) Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's needs are available;

(2) If a conservatorship is recommended, whether it should be full or limited; and

(3) If a limited conservatorship is recommended, the powers to be granted to the conservator and the property that should be placed under the conservator's control;

E~~D~~. A statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

F~~E~~. A recommendation whether a further professional evaluation under section 5-407 is necessary;

G~~F~~. A statement whether the respondent is able to attend a hearing at the location court proceedings are typically conducted;

H~~G~~. A statement whether the respondent wishes to attend the hearing after being informed of the right to attend the hearing, the purposes of the hearing, and the potential consequences of failing to attend;

I~~HG~~. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

K~~IH~~. Any other matter as the court directs.

Maine Comment

In contrast to the Uniform Act, section 5-405 sets out required visitor's duties in section 5-405(3) and additional duties in subsection (4) which may often be required, but which the court has the discretion to tailor. Because section 5-406 continues current Maine practice of determining whether or not an attorney will be appointed for a respondent on a case by case basis, the visitor under section 5-405 must address the issue under subsections (5)(B) and (C). Also in contrast to the Uniform Act, section 5-405 (H) provides for the visitor to report on whether or not the responsent wishes to attend the hearing, after being fully informed by the visitor.

§ 5-406. Appointment and role of attorney

1. Attorney for respondent. The court shall appoint an attorney to represent a respondent in a proceeding on a petition under section 5-402 if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed conservator's powers.

2. Duties of attorney. The attorney representing the respondent in a proceeding on a petition under section 5-402 shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court may appoint an attorney to represent a parent of a minor who is the subject of a proceeding on a petition under section 5-402 if:

A. The parent objects to appointment of a conservator;

B. The court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or

C. The court otherwise determines the parent needs representation.

Maine Comment

Maine rejected the Uniform Act's preferred alternative of appointing an attorney in all situations and, instead, preserved current practice of appointing an attorney if requested by the respondent, recommended by the visitor, deemed necessary by the Court, or when the respondent is reported to contest any aspect of the proposed guardianship.

§ 5-407. Professional evaluation

1. Evaluation; report. The respondent must be examined by a licensed physician or psychologist who is acceptable to the court, who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and who will not be advantaged or

disadvantaged by a decision to grant the petition and does not otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs; and

D. The date of the examination on which the report is based.

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation pursuant to subsection 1 or the respondent refuses to provide medical reports, the court may enter an order of conservatorship or other protective arrangement without the report of a licensed physician or psychologist or supporting medical reports, if the court otherwise finds that there is a basis for such an order in accordance with section 5-401.

Maine Comment

The Uniform Act provided for an evaluation by a broad list of professionals upon order of the court after the the petition is filed. Maine drafters elected to retain the current practice of requiring a professional evaluation in every case with the report to be filed at least 10 days before hearing. Also in contrast to the Uniform Act, Section 5-407 continues the current requirement that the professional be either a licensed physician or psychologist.

Section 5-407(2) confirms that if the respondent declines to participate in an evaluation, the court may still enter an order for a protective arrangement if the court otherwise finds that there is a basis for such an order in accordance with section 5-301.

§ 5-408. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under section 5-403 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology or telephone if real-time audiovisual is not available.

2. Hearing without respondent; findings. A hearing under section 5-403 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so;

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

C. The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-403 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-403.

5. Rights of respondent at hearing. At a hearing under section 5-403, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Attendance by proposed conservator required. Unless excused by the court for good cause, the proposed conservator, ~~or counsel on behalf of the proposed conservator~~, shall attend a hearing under section 5-403 either in person, using real-time audiovisual technology, or by telephone if real-time audiovisual technology is unavailable.

7. Closed upon request; good cause. A hearing under section 5-403 must be closed on request of the respondent and a showing of good cause.

8. Participation; best interest of respondent. Any person may request to participate in a hearing under section 5-403. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

Maine Comment

Consistent with the Uniform Act, § 5-408 expresses a strong preference for the respondent's presence in court and sets forth the process and standards for proceeding to hearing in the

absence of the respondent. The new Maine law adds attendance of the respondent by real-time audiovisual technology and if unavailable by telephone, with court approval.

Also consistent with the Uniform Act, section 5-408(6) requires the proposed conservator to be present at hearing, unless excused for good cause, but adds authority for the conservator to be present with the use of real- time audiovisual technology and if unavailable by telephone.

§ 5-409. Confidentiality of records

1. Matter of public record; exceptions. Only ~~T~~the existence of a proceeding for conservatorship and ~~or~~ the existence or termination of conservatorship, and the name and contact information of the proposed conservator or conservator and their counsel, ~~-~~is a matter of public record. ~~unless the court seals the record after:~~

~~A. The respondent, the individual subject to conservatorship or the parent of a minor subject to conservatorship requests the record be sealed; and~~

~~B. Either:~~

~~(1) The petition for conservatorship is dismissed; or~~

~~(2) The conservatorship is terminated.~~

2. Access to records. An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed~~.~~; an attorney designated by the individual and a person entitled to notice under section 5-411 or a subsequent order; the petitioner on a petition for guardianship, for conservatorship or for a protective arrangement; the proposed guardian or conservator; the court appointed visitor; all persons required to be listed in the petition under section 5-402, subsection 2, paragraphs A to C, the personal representative of a deceased adult's estate and any other person interested in the respondent's welfare as the court determines; and counsel for any of the foregoing, are entitled to access ~~confidential or sealed~~ all court records of the proceeding and resulting conservatorship, including the conservator's plan and report. In addition, a person for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court may ~~shall~~ grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

~~**3. Reports; availability.** The information provided in the petition under section 5-402, subsection 2, paragraph D, A a report under section 5-405 of a visitor or professional evaluation under section 5-407, plans and revised plans under section 5-419, an inventory under section 5-420, and reports and accountings under section 5-423 are is confidential and must be sealed on filing but is available to:~~

~~A. The court;~~

~~B. The individual who is the subject of the report or evaluation, without limitation as to use;~~

~~C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;~~

~~D. An agent appointed under a power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and~~

~~E. Other persons when it is in the public interest or for a purpose the court orders for good cause.~~

Maine Comment

The Uniform Act's comments recognize that States are struggling with how to protect privacy of respondents and adults under guardianship, conservatorship and protective arrangements. Section 5-409 errs on the side of privacy.

§ 5-410. Who may be conservator; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a conservator shall consider persons otherwise qualified in the following order of priority:

A. A conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction;

B. A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances;

C. An agent appointed by the respondent to manage the respondent's property under a power of attorney for finances;

D. A spouse or domestic partner of the respondent;

E. An adult child of the respondent;

F. A parent of the respondent, or a person nominated in the will of a deceased parent; and

G. ~~and~~

~~E.~~ A family member or other individual who has exhibited special care and concern for the respondent.

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential conservator's relationship with the respondent, the potential conservator's skills, the expressed wishes of the respondent, the extent

to which the potential conservator and the respondent have similar values and preferences and the likelihood that the potential conservator will be able to satisfy the duties of a conservator successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential conservator who has a lower or no priority: relationships with the respondent, the higher priority person's and the potential conservator's skills, the expressed wishes of the respondent, and the extent to which the person with highter priority and the person with lower or no priority have similar values and preferences with the respondent and the likelihood that the potential ~~guardian~~conservator will be able to satisfy the duties of a ~~guardian~~conservator successfully.

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

A. The individual is related to the respondent by blood, marriage or adoption; or

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

5. Long-term health care institution; exceptions. An owner, operator or employee of a long-term health care institution at which the respondent is receiving care may not be appointed as conservator unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

Maine Comment

In contrast to the Uniform Act, and consistent with prior Maine law, section 5-410 added to the order of priority for appointment an adult child, and a parent of the respondent or written nominee of a deceased parent.

In an expansion of the Uniform Act, section 5-410(3) sets forth factors for the court to consider when appointing a person with a lower priority or no priority.

§ 5-411. Order of appointment

1. Conservator for minor; findings. A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

2. Conservator for adult; findings. A court order appointing a conservator for an adult must include a ~~clear~~ finding by clear and convincing evidence that:

A. The basis for appointment of a conservatorship as required under Section 5-401 has been met; ~~The identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance or supported decision making;~~ and

B. ~~Clear and convincing evidence established T~~the respondent was given proper notice of the hearing on the petition.

3. Basis for full conservatorship. A court order establishing a full conservatorship for an adult ~~clearly~~ must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

4. Limited conservatorship; powers granted to conservator. A court order establishing a limited conservatorship must identify ~~state clearly~~ the property placed under the control of the conservator and the powers granted to the conservator.

5. Notice; access to reports and plans. The court shall, as part of an order establishing a conservatorship, identify any person that subsequently is entitled to:

A. Notice of the rights of the individual subject to conservatorship;

B. Notice of a sale of or surrender of a lease to the primary dwelling of the individual subject to conservatorship;

C. Notice that the conservator has delegated any power that requires court approval under section 5-414 or substantially all powers of the conservator;

D. Notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

E. Copies of the conservator's plan and report;

F. Access to court records pertaining to the conservatorship;

G. A transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

H. Notice of the death or significant change in the condition of the individual subject to conservatorship;

I. Notice that the court has limited or modified the powers of the conservator; and

J. Notice of the conservator's removal.

6. Entitled to notice; exceptions. If an individual subject to conservatorship is an adult, the spouse, domestic partner and adult children of the adult subject to conservatorship are entitled under subsection 5 to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest of the adult subject to conservatorship.

7. Notice when minor is subject to conservatorship. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection 5 to notice unless the court determines notice would not be in the best interest of the minor.

Maine Comment

In contrast to the Uniform Act, section 5-411 refers back to the required findings in section 5-401, rather than repeating them. The actual court order shall state verbatim the required findings of section 5-301 to articulate the findings.

§ 5-412. Notice of order of appointment; rights

1. Notice of appointment, order; rights. A conservator appointed under section 5-401 shall give to the individual subject to conservatorship and to all other persons given notice under section 5-403 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

2. Notice if person missing. If a conservator is appointed under section 5-401, subsection 2, paragraph A, subparagraph (2) and the individual subject to conservatorship is missing, notice under subsection 1 to the individual is not required.

Maine Comment

The extensive post-hearing notice of rights process set forth in the Uniform Act was rejected as likely ineffective and otherwise satisfied by the hearing process and final order. Section 5-412 does require the conservator to provide the respondent and other appropriate persons with the order of appointment and a notice of the right to terminate or modify the conservatorship within 14 days of the appointment. Since actual delivery to the respondent is required, a process for confirming delivery may have to be established by the court.

§ 5-413. Emergency conservator

1. Appointment; findings. On petition by a person interested in an individual's welfare or on its own after a petition has been filed under section 5-402, the court may appoint an emergency conservator for the individual if the court finds:

A. Appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the respondent's property or financial interests;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a conservator under section 5-401 may exist.

2. Duration of emergency conservatorship. The duration of authority of an emergency conservator may not exceed 60 daysand the emergency conservator may exercise only the powers specified in the order. The emergency conservator's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency conservator in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the

petitioner complied with the notice requirements of this subsection. The requirements of section 5-4120 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing. The court may appoint an emergency conservator without notice and a hearing only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and other persons as the court determines of the appointment. If a person objects to the appointment, the court shall hold a hearing within 14 days.

5. Not a determination. Appointment of an emergency conservator under this section is not a determination that the conditions required for appointment of a conservator under section 5-401 have been satisfied.

6. Removal; report; application. The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires. In other respects, the provisions of this Part concerning conservators apply to an emergency conservator appointed under this section.

Maine Comment

Although section 5-413 adopts the Uniform Act's term of "emergency conservator", Maine's former temporary conservatorship process is essentially incorporated into the new statute. The initial appointment may be for 60 days and may be extended for up to 120 additional days upon appropriate findings. Contrary to the Uniform Act, section 5-413 does not provide for the automatic appointment of an attorney for the respondent. The basis for an emergency appointment, the notice requirements prior to the petitioin, and the required affidavit regarding notice to the respondent and other interested persons are consistent with prior Maine law. The prior exception to the requirement of notice is preserved in section 5-413(D).

§ 5-414. Powers of conservator requiring court approval

1. Powers requiring specific authorization; notice. Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under section 5-403, subsection 4 and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

A. Except as provided in Section 5-421(2)(Y), m~~M~~ake gifts, except those of de minimis value;

B. Sell, encumber an interest in or surrender a lease to the primary dwelling of the individual subject to conservatorship;

C. Convey, release or disclaim contingent or expectant interests in property, including marital property and any right of survivorship incident to joint tenancy;

D. Exercise or release a power of appointment;

E. Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;

F. Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

G. Exercise a right to an elective share in the estate of a deceased spouse or domestic partner of the individual subject to conservatorship or to renounce or disclaim a property interest;

H. Grant a creditor a priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under section 5-428, subsection 5; and

I. Make, modify, amend or revoke the will of the individual subject to conservatorship, with the conservator treated as the individual making, modifying, amending or revoking the will~~in compliance with the laws of the State governing executing wills~~.

2. Approval based on decision of individual. In approving a conservator's exercise of the powers listed in subsection 1, the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained.

3. To determine decision of individual. To determine under subsection 2 the decision the individual subject to conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable. The court also shall consider:

A. The financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support, and the interest of creditors;

B. Possible reduction of income, estate, inheritance or other tax liabilities;

C. Eligibility for governmental assistance;

D. The previous pattern of giving or level of support provided by the individual subject to conservatorship;

E. Any existing estate plan or lack of estate plan of the individual subject to conservatorship;

F. The life expectancy of the individual subject to conservatorship and the probability that the conservatorship will terminate before the individual's death; and

G. Any other relevant factors.

4. Power of attorney for finances. A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes precedence over that of the conservator, unless there is a court order to the contrary.

5. Application to existing conservatorships. For conservatorships established prior to July 1, 2019, the conservator shall not be subject to the notice and court authorization requirements under subsection 1, paragraph b, until so ordered by the court.

Maine Comment

Section 5-414, consistent with the provisions of the Uniform Act, includes the new authority of a conservator to make or modify a will of the individual subject to conservatorship.

Subsection 5 creates an exception, for conservatorships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain notice and court authorization requirements until an express order of the court directed to the conservator.

§ 5-415. Petition for order subsequent to appointment

An individual subject to conservatorship or a person interested in the welfare of the individual may file a petition in the court for an order:

1. Bond or collateral. Requiring the conservator to furnish bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;

2. Accounting. Requiring an accounting for the administration of the conservatorship estate;

3. Distribution. Directing distribution;

4. Removal; temporary or successor. Removing the conservator and appointing a temporary or successor conservator;

5. Modification. Modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is currently excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;

6. Inventory, plan or report. Rejecting or modifying the conservator's inventory, plan or report; or

7. Other relief. Granting other appropriate relief.

§ 5-416. Bond or alternative asset-protection arrangement

1. Bond or alternative asset-protection arrangement required. The court shall require a conservator of an estate of $50,000 or more to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. The court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service except as provided by subsection 3. With respect to an estate of less than $50,000, the court in its discretion may require a bond or other surety.

2. Amount of bond; collateral. Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

3. Bond not required. A regulated financial service institution qualified to do trust business in this State need not give a bond.

4. Spouse as Conservator. The court, in its discretion, may waive the requirement of a bond or other surety for a spouse wishing to serve as conservator.

Maine Comment

Contrary to the Uniform Act, section 5-416 preserves Maine's prior preference for requiring a bond only for estates over a certain value and sets that value at $50,000 or more. Section 5-416(4) also preserves Maine's prior discretionary waiver of the bond requirement for a spouse.

§ 5-417. Terms and requirements of bond

1. Bond requirements. The following rules apply to the bond required under section 5-416.

A. Except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable.

B. By executing a bond provided by a conservator, a surety submits to the jurisdiction of the court that issued letters of office to the conservator in a proceeding pertaining to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the court records at the place where the bond is filed and any other address of the surety then known to the person required to provide the notice.

C. On petition of a successor conservator or any person affected by a breach of the obligation of the bond, a proceeding may be brought against a surety for breach of the obligation of the bond.

D. A proceeding against the bond may be brought until liability under the bond is exhausted.

2. Proceeding against surety. A proceeding may not be brought against a surety of a bond under this section on a matter as to which a proceeding against the conservator is barred.

3. Notice of nonrenewal. The surety or sureties of the bond must immediately serve notice to the court and to the individual under conservatorship if the bond is not renewed by the conservator.

§ 5-418. Duties of conservator

1. Duties as fiduciary. A conservator is a fiduciary and has a duty of prudence and duty of loyalty to the individual subject to conservatorship.

2. Promote self-determination. A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf and develop or regain the capacity to manage the individual's personal affairs.

3. Decision of individual. In making a decision on behalf of the individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current

directions, preferences, opinions, values and actions to the extent actually known or reasonably ascertainable by the conservator.

4. Best interest of individual. If a conservator cannot make a decision under subsection 3 because the conservator does not know and cannot reasonably determine the decision that the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the conservator believes the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the individual, the conservator shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

B. Other information the conservator believes the individual would have considered if the individual were able to act; and

C. Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

5. Prudent investor standard. Except when inconsistent with the conservator's duties under subsections 1 to 4, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

A. The circumstances of the individual subject to conservatorship and the conservatorship estate;

B. General economic conditions;

C. The possible effect of inflation or deflation;

D. The expected tax consequences of an investment decision or strategy;

E. The role of each investment or course of action in relation to the conservatorship estate as a whole;

F. The expected total return from income and appreciation of capital;

G. The need for liquidity, regularity of income and preservation or appreciation of capital; and

H. The special relationship or value, if any, of specific property to the individual subject to conservatorship.

6. Propriety of investment and management. The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

7. Reasonable effort to verify facts. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

8. Special skills or expertise. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

9. Consistent with estate plan and other instrument. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative or other appointive instrument of the individual.

10. Insurance. A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or a court issues an order finding:

A. The property lacks sufficient equity; or

B. Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual subject to conservatorship.

11. Cooperation, power of attorney for finances. If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

12. Digital assets. A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by court order.

13. Adult becomes capable. A conservator of an adult shall notify the court if the condition of the adult subject to conservatorship has changed so that the adult is capable of exercising rights previously removed immediately upon learning of the change.

§ 5-419. Conservator's plan

1. Plan; revision. The petitioner for appointment as conservator for an adult shall file with the petition a plan for protecting, managing, expending and distributing the assets of the conservatorship estate. When there is a change in circumstances or when the conservator seeks to deviate significantly from the conservator's plan previously filed, the conservator shall file with the court a revised plan for protecting, managing, expending and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

A. A budget setting forth projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual subject to conservatorship;

B. How the conservator will involve the individual subject to conservatorship in decisions about management of the conservatorship estate;

C. Any step the conservator plans to take to develop or restore the ability of the individual subject to conservatorship to manage the conservatorship estate; and

D. An estimate of the duration of the conservatorship.

2. Notice of revised plan. A conservator shall give notice of the filing of a revised plan under subsection 1, along with a copy of the revised plan, to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must include a statement of the right to object to the revised plan and be given not later than 14 days after the filing.

3. Objection to revised plan. An individual subject to conservatorship and any person entitled under subsection 2 to receive notice and a copy of the conservator's revised plan may object to the revised plan within 14 days of receipt of notice of the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a conservator's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or revised plan, the court shall consider any objection under subsection 3 and whether the plan or revised plan is consistent with the conservator's duties and powers. The court may schedule a hearing on any revised plan submitted and may not approve any ~~the plan or~~ revised plan until 30 days after its filing. The conservator may implement the revised plan 30 days after filing unless the court orders otherwise.

5. Copy of approved plan. After a conservator's plan or revised plan under this section is approved by the court, the conservator shall provide a copy of the plan or revised plan to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines.

6. Application to existing conservatorships. For conservatorships established prior to July 1, 2019, the conservator shall not be subject to the requirement for the filing of a revised plan until so ordered by the court.

Maine Comment

Contrary to the Uniform Act, section 5-419 requires that the conservator's plan be filed with the petition. Notice of any subsequently filed revised plan must be served on the person subject to conservatorship and other appropriate parties within 14 days of filing and said notice must include a statement of the right of any party to object within 14 days of the receipt of notice. Section 5-419(4) gives the court discretion to approve a revised plan with or without a hearing 30 days after filing and authorizes a conservator to implement the revised plan 30 days after filing unless the court orders otherwise.

Subsection 6 creates an exception, for conservatorships established prior to the July 1, 2019 effective date of Title 18-C, to the requirement to file a revised plan until an express order of the court directed to the conservator.

§ 5-420. Inventory; records

1. Inventory. Not later than 960 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

2. Notice of filing of inventory. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

3. Records. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian of the individual or any person as the conservator or the court determines.

Maine Comment

Section 5-420 adopts the Uniform Act's Inventory provisions, except for establishing a 90 day filing requirement in place of the shorter deadline in the Uniform Act.

§ 5-421. Administrative powers of conservator not requiring court approval

1. Powers unless limited; powers of trustee. Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional powers granted to a trustee by law of this State other than this Part.

2. Powers of conservator. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the appointment, without specific court authorization or confirmation, may:

A. Collect, hold and retain property included in the conservatorship estate, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

B. Receive additions to the conservatorship estate;

C. Continue or participate in the operation of a business or other enterprise;

D. Acquire an undivided interest in property included in the conservatorship estate in which the conservator, in a fiduciary capacity, holds an undivided interest;

E. Invest assets of the conservatorship estate;

F. Deposit money of the conservatorship estate in a financial institution, including one operated by the conservator;

G. Acquire or dispose of property of the conservatorship estate, including real property in this state or another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of or abandon property included in the conservatorship estate;

H. Make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze existing or erect a new party wall or building;

I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation, exchange or partition land by giving or receiving consideration and dedicate an easement to public use without consideration;

J. Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

K. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

L. Grant an option involving disposition of property included in the conservatorship estate or accept or exercise an option for the acquisition of property;

M. Vote a security, in person or by general or limited proxy;

N. Pay a call, assessment or other sum chargeable or accruing against or on account of a security;

O. Sell or exercise a stock subscription or conversion right;

P. Consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

Q. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

R. Insure the conservatorship estate against damage or loss in accordance with section 5-418, subsection 10 and the conservator against liability with respect to a 3rd party;

S. Borrow money, with or without security, to be repaid from the conservatorship estate or otherwise;

T. Advance money for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses and liability sustained in the administration of

the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate as against the individual subject to conservatorship for the advances;

U. Pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

V. Pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration and protection of the conservatorship estate;

W. Pay a sum distributable to an individual subject to conservatorship or individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:

(1) To the guardian of the distributee;

(2) To a distributee's custodian under the Maine Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act of any state; or

(3) If there is no guardian, custodian or custodial trustee, to a relative or other person having physical custody of the distributee;

X. Prosecute or defend an action, claim or proceeding in any jurisdiction for the protection of the conservatorship estate or of the conservator in the performance of the conservator's duties;

Y. Structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

Z. Execute and deliver any instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

§ 5-422. Distribution from conservatorship estate

Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan filed under section 5-419, a conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules.

1. Appropriate standard. A conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health or welfare for the individual subject to conservatorship, or an individual who is in fact dependent on the individual subject to conservatorship, made by a guardian of the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a guardian or parent of the minor.

2. Liability for distribution. A conservator acting in compliance with the conservator's duties under section 5-418 is not liable for a distribution made based on a recommendation under subsection 1 unless the conservator knows the distribution is not in the best interest of the individual subject to conservatorship.

3. Considerations for expenditure, distribution. In making an expenditure or distribution under this subsection, the conservator shall consider:

A. The size of the conservatorship estate, the estimated duration of the conservatorship and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

B. The accustomed standard of living of the individual subject to conservatorship and an individual who is in fact dependent on the individual subject to conservatorship;

C. Other money or source used for the support of the individual subject to conservatorship; and

D. The preferences, values and prior directions of the individual subject to conservatorship.

4. Compensation or reimbursement. Money expended or distributed under this subsection may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be rendered to the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

§ 5-423. Conservator's report and accounting; monitoring

1. Report. A conservator shall file a report in a record with the court regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time as the court directs.

2. Contents. A report under subsection 1 must state or contain:

A. An accounting that contains a list of property included in the conservatorship estate and of the receipts, disbursements, liabilities and distributions during the period for which the report is made;

B. A list of the services provided to the individual subject to conservatorship;

C. A copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how and why the conservator has deviated;

D. Any recommended change in the conservatorship, including its scope and whether the conservatorship needs to continue;

E. Annual credit report of the individual subject to conservatorship and to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship, along with, with all but the last 4 digits of the account numbers and the individual's social security number redacted;

F. Anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, domestic partner, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

G. Any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship;

H. Any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and

I. Whether any coconservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve.

3. Visitor. The court may appoint a visitor to review a report under this section or conservator's plan under section 5-419, interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

4. Notice of report; copy. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order, and a person the court determines is entitled to the report. Notwithstanding section 5-409, the credit report provided pursuant to subsection 2, paragraph E is confidential and may not be provided with the rest of the conservator's report except to the individual subject to conservatorship. The notice and report must be given not later than 14 days after filing.

5. Monitoring; frequency of report. The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

A. The plan and report provide sufficient information to establish the conservator has complied with the conservator's duties;

B. The conservatorship should continue; and

C. The conservator's requested fees, if any, should be approved.

6. Noncompliance. If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

A. Shall notify the conservator, the individual subject to conservatorship and all persons entitled to notice under section 5-411, subsection 5 or a subsequent order;

B. May require additional information from the conservator;

C. May appoint a visitor to interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs; and

D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.

7. Unreasonable fees. If the court determines there is reason to believe a conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the fees.

8. Approval of report or accounting. A conservator may petition the court for approval of a report or accounting filed under this section. The court after review may approve the report or accounting. An order, after notice and hearing, approving a final report or accounting discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report or accounting and the hearing as to a matter adequately disclosed in the report or accounting.

9. Application to existing conservatorships. For conservatorships established prior to January 1, 2008, the conservator shall not be subject to the requirement for an annual report and account until so ordered by the court.

Maine Comment

Subsection 9 creates an exception, for conservatorships established prior to January 1, 2008, to the requirement to file an annual report until an express order of the court directed to the conservator. The January 1, 2008 date is consistent with the provisions of Title 18-A, Section 419, which required a private conservator appointeed after January 1, 2008 to file an annual account with the court.

§ 5-424. Attempted transfer of property by individual subject to conservatorship

1. Interest not transferable or assignable; not subject to claims. The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferable or assignable by the individual and is not subject to levy, garnishment or similar process for claims against the individual unless allowed under section 5-428.

2. Contract void against individual and property. If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

3. Protection of 3rd parties. A 3rd party that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this State other than this Act.

§ 5-425. Transaction involving conflict of interest

A transaction involving a conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by the court by specific order after notice to all persons entitled to notice under section 5-411, subsection 5 or a subsequent order. A transaction affected by a substantial conflict between fiduciary duties and personal interests includes a sale, encumbrance or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, domestic partner, descendant, sibling, agent or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

§ 5-426. Protection of person dealing with conservator

1. Protection of 3rd party. A person that assists or deals with a conservator in good faith and for value in any transaction, other than one requiring a court order under section 5-414, is protected as though the conservator properly exercised the power in question. Knowledge by a person that the person is dealing with a conservator does not alone require the person to inquire into the existence of the authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority that are stated in letters of office, or as otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

2. Application of protection. Protection under subsection 1 extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and is not a substitute for protection provided to a person that assists or deals with a conservator by comparable provisions in law of this State other than this Act relating to commercial transactions or simplifying transfers of securities by fiduciaries.

§ 5-427. Death of individual subject to conservatorship

1. Delivery of will. If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will if feasible, or if not feasible a beneficiary named in the will, of the delivery.

2. Powers and duties of personal representative; notice. If 40 days after the death of an individual subject to conservatorship no personal representative has been appointed and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware and to all of the decedent's heirs and all devisees of the will, if any. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

3. Effect of appointment as personal representative. Issuance of an order under this section has the effect of an order of appointment of a personal representative under section 3-308 and Article 3, Parts 6 to 10.

4. Distribution; discharge. On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate by distributing property subject to conservatorship to the individual's successors. Not later than 30 days after distribution, the conservator shall file a final report and petition for discharge.

§ 5-428. Presentation and allowance of claim

1. Claims against estate or protected person. A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship on presentation and allowance in accordance with the priorities under subsection 4. A claimant may present a claim by:

A. Sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the name and address of the claimant and the amount claimed; or

B. Filing with the court a record of the claim, in a form acceptable to the court, and sending or delivering a copy of the statement to the conservator.

2. Presented claim; allowance; disallowance. A claim under subsection 1 is presented on receipt by the conservator of the statement of claim ~~by the conservator~~ or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed by the conservator in a record sent or delivered to the claimant not later than 60 days after its presentation. Before payment the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls the running of a statute of limitations that has not expired relating to the claim until 30 days after its disallowance.

3. Unpaid claim. A claimant whose claim under subsection 1 has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

4. Distribution; order. If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

A. Costs and expenses of administration;

B. A claim of the Federal Government or State Government having priority under law other than this Act;

C. A claim incurred by the conservator for support, care, education, health or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;

D. A claim arising before the conservatorship; and

E. All other claims.

5. Preference of claims. Preference may not be given in the payment of a claim under subsection 4 over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

A. Doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and

B. The court authorizes the preference under section 5-414, subsection 1, paragraph H.

6. Security interest in conservatorship estate. If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

§ 5-429. Personal liability of conservator

1. Not personally liable. Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal in the contract or before entering into the contract the conservator's representative capacity.

2. Personally liable. A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

3. Claims asserted against conservator. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate or a claim based on a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

4. Determination of liability. A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge or indemnification or another appropriate proceeding or action.

§ 5-430. Removal of conservator; appointment of successor

1. Removal by court. The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

2. Hearing upon petition, communication or determination. The court shall conduct a hearing to determine whether to remove a conservator and appoint a successor on:

A. Petition of the individual subject to conservatorship, conservator or person interested in the welfare of the individual that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. Communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

3. Notice of petition. Notice of a petition under subsection 2, paragraph A must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

4. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to remove the conservator and have a successor appointed is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-406. The court shall award reasonable attorney's fees to the attorney for the individual as provided in section 5-119.

5. Selection of successor conservator. In selecting a successor conservator, the court shall follow the procedures under section 5-410.

6. Notice of appointment of successor conservator. Not later than 30 days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and all persons entitled to the notice under section 5-411, subsection 5 or a subsequent order.

§ 5-431. Termination or modification of conservatorship

1. Conservatorship for a minor. A conservatorship for a minor terminates on the earlier of:

A. An order of the court;

B. The minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age;

C. Emancipation of the minor; and

D. Death of the minor.

2. Conservatorship for an adult. A conservatorship for an adult terminates on order of the court or when the adult dies.

3. Petition for termination or modification. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

A. Termination of the conservatorship on the ground that a basis for appointment under section 5-401 does not exist or termination would be in the best interest of the individual, or for other good cause; or

B. Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

4. Hearing. The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

A. Petition under subsection 3 that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. A communication from the individual subject to conservatorship, the conservator or a person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the

individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

D. A determination by the court that a hearing would be in the best interest of the individual.

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

9. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions in section 5-406. The court shall award reasonable attorney's fees to the individual's attorney as provided in section 5-119.

10. Property; report; petition for discharge. On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or other persons entitled to the property~~the individual's heirs, successors or assigns~~. The order of termination must provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

11. Discharge. The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

12. Distribution. On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other persons entitled to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

Maine Comment

Section 5-431(10) provides for distribution to 'other persons entitled to the property', which entitlement will be determined by the applicable decedent's estate provisions of Title 18-C, rather than the Uniform Act's ambiguous reference to 'heirs, successor or assigns'.

PART 5

OTHER PROTECTIVE ARRANGEMENTS

§ 5-501. Authority for protective arrangements

1. Order protective arrangement. Under this Part, a court:

A. Upon receiving a petition for a guardianship for an adult may order one or more protective arrangements instead of guardianship as a less restrictive alternative to guardianship; and

B. Upon receiving a petition for a conservatorship for an individual may order one or more protective arrangements instead of conservatorship as a less restrictive alternative to conservatorship.

2. Protective arrangement instead of guardianship. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this Part for one or more protective arrangements instead of guardianship.

3. Protective arrangement instead of conservatorship. The following persons may petition under this Part for one or more protective arrangements instead of conservatorship:

A. The individual for whom the protective arrangements are sought;

B. A person interested in the property, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; and

C. The guardian of the individual.

Maine Comment: In contrast to the Uniform Probate Code, this section expressly refers to one or more protective arrangements instead of a guardianship or conservatorship in recognition that a petition may include more than one protective arrangement.

§ 5-502. Basis for protective arrangements instead of guardianship for adult

1. Findings. After the hearing conducted on a petition for guardianship under section 5-302 or one or more protective arrangements instead of guardianship under

section 5-501, subsection 2~~1~~, the court may enter an order for one or more protective arrangements instead of guardianship under subsection 2 if the court finds by clear and convincing evidence that:

A. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, after the court's consideration of the respondent's ability to use ~~even with~~ appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent; and

B. The respondent's identified needs cannot be met by ~~appropriate~~ less restrictive alternatives that provide adequate protection for the respondent.

2. Orders other than guardianship. If the court makes the findings under subsection 1, the court, instead of appointing a guardian, may:

A. Authorize or direct one or more transactions necessary to meet the respondent's need for health, safety or care, including but not limited to:

(1) One or more particular medical treatments or refusals of particular medical treatments;

(2) A move to a specified place of dwelling; or

(3) Visitation or supervised visitation between the respondent and another person;

B. Restrict access to the respondent by a person whose access places the respondent at serious risk of physical or psychological harm; and

C. Order other arrangements on a limited basis that are appropriate.

3. Factors. In deciding whether to enter an order under this section, the court shall consider the factors under sections 5-313 and 5-314 that a guardian must consider when making a decision on behalf of an adult subject to guardianship.

Maine Comment: In contrast to the Uniform Probate Code, this section expressly permits the court to authorize one or more transactions in recognition that a petition may include more than one protective arrangement.

§ 5-503. Basis for protective arrangements instead of conservatorship for adult or minor

1. Findings. After the hearing conducted on a petition for conservatorship for an adult under section 5-402 or one or more protective arrangements instead of conservatorship for an adult under section 5-501, subsection 3, the court may enter an order for one or more protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds:

A. By clear and convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provide adequate protection for the respondent, or the adult is missing, detained or unable to return to the United States;

B. By a preponderance of the evidence that:

(1) The respondent has property likely to be wasted or dissipated unless management is provided; or

(2) The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and

C. The respondent's identified needs cannot be met by less restrictive alternatives.

2. Protective arrangements for minors. After the hearing conducted on a petition for conservatorship for a minor under section 5-402 or a protective arrangement instead of conservatorship for a minor under section 5-501, subsection 3, the court may enter an order for a protective arrangement or protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

A. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

B. The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

3. Orders other than conservatorship. If the court makes the findings under subsection 1 or 2, the court, instead of appointing a conservator, may:

A. Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including but not limited to:

(1) An action to establish eligibility for benefits;

(2) Payment, delivery, deposit or retention of funds or property;

(3) Sale, mortgage, lease or other transfer of property;

(4) Purchase of an annuity;

(5) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;

(6) Addition to or establishment of a trust;

(7) Creation, modification, amendment, or revocation of a will or a codicil;

(8~~7~~) Ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or

(9~~8~~) Settlement of a claim; or

B. Restrict access to the respondent's property by a person whose access to the property places the respondent at serious risk of financial harm.

4. Order to restrict access. ~~If, A~~after the hearing conducted under section 5-505 on a petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a court may enter an order to restrict access to the respondent or the respondent's property by a person if~~that~~ the court finds by clear and convincing evidence that the person:

A. Through fraud, coercion, duress or the use of deception and control, caused or ~~, or~~ attempted to cause ~~, or may likely cause an action that would have resulted in financial~~ harm to the respondent or the respondent's property; or~~and~~

B. Poses a significant ~~serious~~ risk of ~~substantial financial~~ harm to the respondent or the respondent's property.

5. Factors. In deciding whether to enter an order under subsection 3 or 4, the court shall consider the factors under section 5-418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

6. Minors; factors. In deciding whether to enter an order under subsection 3 or 4 for a respondent who is a minor, the court also shall consider the best interest of the respondent, the preference of the parents of the respondent and the preference of the respondent if the minor is 14 years of age or older.

Maine Comment: Consistent with the Uniform Probate Code, subsection 1(A) of this section requires proof by clear and convincing evidence that the respondent is unable to manage property

or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making, or the adult is missing, detained or unable to return to the United States. Howeversubsection 1(B) of this section reduces the burden of proof to a preponderance of evidence for the required findings that the respondent has property likely to be wasted or dissipated unless management is provided or the order is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and the respondent's identified needs cannot be met by less restrictive alternatives.

§ 5-504. Petition

1. Petition contents. A petition for one or more protective arrangements instead of guardianship or conservatorship must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the protective arrangements and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

(1) A person responsible for care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian or conservator by the respondent;

(10) A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected;

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition; and

(13) If the respondent is a minor:

(a) An adult with whom the respondent resides if not otherwise listed; and

(b) Any person not otherwise listed that had primary care or custody of the respondent for 60 or more days during the 2 years immediately preceding the filing of the petition or any person that had primary care or custody of the respondent for at least 730 days during the 5 years immediately preceding the filing of the petition;

D. The nature of the protective arrangement or protective arrangements sought;

E. The reason a protective arrangement sought is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) Any less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented and, if there are none, the reason they have not been considered or implemented; and

(3) The reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

F. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

G. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

H. If one or more protective arrangements instead of conservatorship are sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

I. If one or more protective arrangements instead of guardianship are sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

2. Attorney for petitioner. A petition under subsection 1 must state the name and address of an attorney representing the petitioner, if any.

§ 5-505. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-501, the court shall set a date, time and place for hearing on the petition.

2. Notice to respondent. A copy of a petition under section 5-501 and notice of the hearing under subsection 1 must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to others. In a hearing under subsection 1, notice of the hearing also must be given to the persons listed in the petition and any other person interested in the respondent's welfare as the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

4. Notice of petition after order. Notice of a hearing on a petition filed under this Act after the court has ordered a protective arrangement or protective arrangements

under this Part, together with a copy of the petition, must be given to the respondent and any other person as the court determines.

§ 5-506. Appointment of visitor

1. Petition for protective arrangement. On receipt of a petition for one or more protective arrangements instead of guardianship for an adult under section 5-501, the court shall appoint a visitor. A visitor appointed under this subsection must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Protective order for minor. On receipt of a petition for a protective order instead of conservatorship for a minor under section 5-501, the court may appoint a visitor to investigate a matter related to the petition or to inform the respondent or a parent of the respondent about the petition or a related matter.

3. Protective order for adult. On receipt of a petition for a protective order instead of conservatorship for an adult under section 5-501, the court shall appoint a visitor unless the respondent is represented by an attorney.

4. Visitor's duties. A visitor appointed under subsection 1 or 3 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, and the respondent's rights at the hearing;

B. Determine the respondent's views, preferences and values with respect to the order sought;

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.~~;~~

5~~3~~. Additional Visitor duties. In addition to the duties imposed by subsection 4, the visitor shall perform any duties that the court ~~may~~ directs, which may include:

A~~E~~. ~~If the petitioner seeks an order related to the dwelling of the respondent,~~ V~~v~~isiting the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

B~~F~~. Obtaining ~~If one or more protective arrangements instead of guardianship are sought, obtain~~ information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition;

CG. ~~If one or more protective arrangements instead of conservatorship are sought,~~ rReviewing financial records of the respondent if relevant to the visitor's recommendation ~~under subsection 5, paragraph C~~; ~~and~~; and

DH. Investigatinge the allegations in the petition and any other matter relating to the petition as the court directs~~;, and~~.

~~E. Determining the respondent's medical conditions, cognitive functioning, every day functioning, preferences, values, and levels of supervision needed.~~

65. Report. A visitor under this section promptly shall file a report in a record with the court, which, in addition to reporting on the additional visitor duties directed by the court under subsection 5 above, must include:

A. A recommendation whether an attorney should be appointed to represent the respondent;

B. To the extent relevant to the order sought, a summary of self-care, independent living tasks and financial management tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision that provide~~making~~ adequate protections for the respondent ~~and cannot manage~~;

C. To the extent relevant to the order sought, a summary of the respondent's medical conditions, cognitive functioning, everyday functioning, values and preferences, risks and levels of supervision needed, and any means to enhance the respondent's capacity;

DC. Recommendations regarding the appropriateness of the protective arrangement sought and whether less restrictive alternatives for meeting the respondent's needs are available;

ED. If the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

EF. A recommendation whether a professional evaluation under section 5-508 is necessary;

GF. A statement whether the respondent wishes to attend a hearing, after being informed of the right to attend the hearing, the purposes of the hearing and the potential consequences of failing to do so;

HF. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

I~~G~~. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and

J~~H~~. Any other matter as the court directs.

§ 5-507. Appointment and role of attorney

1. Appointment of attorney. The court shall appoint an attorney to represent the respondent in a proceeding under this Part if:

A. Requested by the respondent;

B. Recommended by the visitor;

C. The court determines that the respondent needs representation; or

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitations on the protective arrangement.

2. Attorney's duties. An attorney representing the respondent in a proceeding under this Part shall:

A. Make reasonable efforts to ascertain the respondent's wishes;

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this Part if:

A. The parent objects to the entry of an order for a protective arrangement or protective arrangements instead of guardianship or conservatorship;

B. The court determines that counsel is needed to ensure that consent to the entry of an order for one or more protective arrangements is informed; or

C. The court otherwise determines the parent needs representation.

Maine Comment: This section deviates from the Uniform Probate Code in that, instead of appointing an attorney in all situations, the court is merely required to appoint an attorney for the respondent if requested by the respondent, recommended by the visitor, or if the court determines that the respondent needs representation. Subsection 1(D) of this section gives even more flexibility for the court to appoint an attorney if it comes to the court's attention that the respondent wishes to contest or seek a limitation to the proceeding or protective arrangement.

§ 5-508. Professional evaluation

1. Order professional evaluation. At or before a hearing on a petition under this Part for a protective arrangement, the court shall order a professional evaluation of the respondent:

A. If the respondent requests the evaluation; or

B. Unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.

2. Examination; report. If the court orders an evaluation under subsection 1, the respondent must be examined by a licensed physician or psychologist approved by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;

C. A prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment, support or habilitation plan; and

D. The date of the examination on which the report is based.

3. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation pursuant to Section 1, above, or the respondent refuses to provide medical reports, the court may enter an order for a protective arrangement without such report or supporting medical reports, if the court otherwise finds that there is a basis for such an order in accordance with section 5-401.

Maine Comment: Subsection 2 of this section limits the professionals who may examine a respondent to a licensed physician or psychologist approved by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities limitations, in comparison to the Uniform Probate Code's broader list of professionals which adds a social worker or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities limitations.

§ 5-509. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under this Part may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology or telephone.

2. Hearing without respondent; findings. A hearing under this Part may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so;

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance;

C. The respondent is represented by an attorney and the attorney represents that the respondent does not want to attend the hearing;

D. The visitor has confirmed with the respondent that the respondent has no objection to the protective arrangements and that the respondent does not wish to attend the hearing; or

E. The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

3. Assistance to respondent. The respondent may be assisted in a hearing under this Part by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under this Part.

5. Rights of respondent at hearing. At a hearing under this Part, the respondent may:

A. Present evidence and subpoena witnesses and documents;

B. Examine witnesses, including any court-appointed evaluator and the visitor; and

C. Otherwise participate in the hearing.

6. Closed upon request; good cause. A hearing under this Part must be closed on request of the respondent and a showing of good cause.

7. Participation; best interest of respondent. Any person may request to participate in a hearing under this Part. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

Maine Comment: Subsection 2(C) of this section permits a hearing to proceed without the presence of the respondent if the respondent is represented by an attorney and the attorney attends the hearing and represents that the respondent does not wish to attend the hearing, in recognition of the authority of the respondent's attorney to represent the respondent alone if the respondent so wishes.

§ 5-510. Notice of order

The court shall give notice of an order under this Part to the individual who is the subject of the protective arrangements instead of guardianship or conservatorship, a person whose access to the respondent is restricted by the order and any other person as the court determines.

§ 5-511. Confidentiality of records

1. Matter of public record; exceptions. Only t~~T~~he existence of a proceeding for or the existence of one or more protective arrangements instead of a guardianship or conservatorship is a matter of public record. ~~unless the court seals the record after:~~

~~A. The respondent, the individual subject to the protective arrangements or the parent of a minor subject to the protective arrangements requests the record be sealed; and~~

~~B. Either:~~

~~(1) The proceeding is dismissed;~~

~~(2) The protective arrangement is no longer in effect; or~~

~~(3) Any act authorized by the order granting the protective arrangement has been completed.~~

2. Access to records. A respondent, an individual subject to a proceeding for one or more protective arrangements instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to one or more protective arrangements, petitioner on a petition for protective arrangement, the court appointed visitor, all parties listed in the petition under section 5-504, subsection 1(B) and (C), counsel for any of the foregoing, and any other person the court determines, are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this

subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangements or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

~~3.~~ **Reports sealed; availability.** ~~A report of a visitor or professional evaluation generated in the course of a proceeding under this Part must be sealed on filing but is available to:~~

~~A. The court;~~

~~B. The individual who is the subject of the report or evaluation, without limitation as to use;~~

~~C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;~~

~~D. Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal;~~

~~E. If the order is for one or more protective arrangements instead of guardianship and unless the court directs otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and~~

~~F. Other persons when it is in the public interest or for a purpose the court orders for good cause.~~

MEMORANDUM

To: Maine Legislature Joint Committee on Judiciary

From: Maine Family Law Advisory Commission

Date: January 22, 2019

Re: Proposed revision to MUPC § 5-210(7) for Errors and Inconsistencies Legislation

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The Maine Family Law Advisory Commission (FLAC) has identified an inconsistency and potential constitutional infirmity in the minor guardianship termination provision in the Maine Uniform Probate Code (MUPC), 18-C M.R.S.A. § 2-510(7). This memo describes the problem and a proposed revision to the language. Such revision could be included in the MUPC "errors and inconsistencies" bill that will be considered by the Judiciary Committee in the First Session of the 129th Legislature, which would put the amendment on track for enactment prior to the July 1, 2019, MUPC effective date.

In 2005, the Maine Legislature amended the minor guardianship termination provision in 18-A M.R.S.A. § 5-212(d) to place on the "petitioner" (meaning the person who filed the petition to terminate) the burden of proof by a preponderance of the evidence on the issue of whether the termination of the guardianship is in the minor's best interest. The Law Court held in *Guardianship of David C.*, 2010 ME 136, ¶ 7, that, notwithstanding the burden assigned to the petitioner under the statute, when a *parent* petitions to terminate a guardianship:

> [t]he party opposing the termination of the guardianship bears the burden of proving, by a preponderance of the evidence, that the parent seeking to terminate the guardianship is currently unfit to regain custody of the child. If the party opposing termination of the guardianship fails to meet its burden of proof on this issue, the guardianship must terminate for failure to prove an essential element to maintain the guardianship. This rule applies whether the guardianship was initially established with the parents' consent…or otherwise.

This clarification by the Law Court reflects the constitutional implications of continuing a guardianship over a parent's objection. *Id*. ¶ 6 ("Because a parent has a fundamental right to parent his or her child, the burden of proving parental unfitness is generally on the non-parent party who is attempting to limit the parent's right.") (citing *Guardianship of Jeremiah T*., 2009 ME 74, ¶ 28).

The original text of LD 123 ("An Act to Revise and Recodify the Maine Probate Code") proposed by the Probate and Trust Law Advisory Commission included language consistent with this holding in *David C.* FLAC recommended additional substantive and organizational changes to the minor guardian termination provision that were included in the final version of LD 123 (P.L. 2017, ch. 402). As enacted, MUPC §§ 5-210(6) and (7) address the standards and burdens of proof applicable to contested petitions to terminate a guardianship. Under subsection (6), except upon a petition to terminate the guardianship filed by the parent, the court may not terminate the guardianship without the consent of the guardian unless the court finds by a

preponderance of the evidence that the termination is in the best interest of the minor. Subsection (7) provides that if a parent petitions for the termination of the guardianship, the party opposing the termination (usually the guardian) bears the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor. The court must determine unfitness by applying the standard in section 5-204(2)(C) for appointing a guardian over a parent's objection by finding unfitness. If the party fails to prove that the parent is unfit, the court must terminate the guardianship and make any further order that may be appropriate. The full text of that section is as follows:

> **7. Parent's petition to terminate guardianship; burden of proof.** A parent may bring a petition to terminate the guardianship of a minor. A parent's notification to the court of the revocation of prior consent for a guardianship must be considered a petition to terminate the guardianship. *Before the court may apply the termination requirements in subsection 6, a party opposing a parent's petition to terminate a guardianship bears the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor, in accordance with the standard set forth in section 5-204, subsection 2, paragraph C.* If the party opposing termination of the guardianship fails to meet its burden of proof on the question of the parent's fitness to regain custody, the court shall terminate the guardianship and make any further order that may be appropriate. In a contested action, the court may appoint counsel for the minor or for any indigent guardian or parent. In ruling on a petition to terminate a guardianship, the court may modify the terms of the guardianship or order transitional arrangements pursuant to section 5-211.

The standard in § 5-204(2)(C) cross-referenced in the sentence highlighted in italicized text above is the following:

> 2. Appointment. The court may appoint a guardian for a minor if the court finds the appointment is in the best interest of the minor, finds the proposed guardian is suitable and finds:…
>
> C. By clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including but not limited to:
>
> (1) The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent; or
>
> (2) The parent has failed, without good cause, to maintain a parental relationship with the minor, including but not limited to failing to maintain regular contact with the minor for a length of time that evidences an intent to abandon the minor.

The § 5-204(2)(C) standard highlighted above requires proof by clear and convincing evidence. Therefore, the cross-reference to the definition of unfitness creates an internal inconsistency in Article 5, Part 2 in terms of the evidentiary standard to be applied by the court in determining unfitness in a contested termination petition brought by a parent.

Moreover, while LD 123 was pending in the Legislature, the Law Court issued its opinion in *Guardianship of Alisha K. Golodner*, 2017 ME 54, which included the following *dictum* casting

doubt on the constitutionality of using a preponderance of the evidence standard to assess fitness in a contested guardianship termination matter:

> Although the Legislature has established the standard of a preponderance of the evidence for addressing the best interest of the child in a proceeding to terminate a guardianship, neither we nor the Legislature has made clear what specific standard of proof the existing guardian must meet in proving the petitioning parent's unfitness in order for the guardianship to continue.[5] Nor has the Legislature defined "fitness" for purposes of termination-of-guardianship cases. The law in these areas is unsettled and evolving. *See Guardianship of Reena D.*, 35 A.3d 509, 514-15 (N.H. 2011) (collecting cases and holding that where a guardianship was established by consent, for the court to order continuation of the guardianship over the petitioning parent's objection, the guardian must prove, by clear and convincing evidence, that the guardianship is "necessary to provide for the essential physical and safety needs of the minor" and that terminating it would "adversely affect the child's psychological well-being" (quotation marks omitted)); *see also Tourison v. Pepper*, 51 A.3d 470, 473-74 (Del. 2012) (holding that on a parent's petition, the guardianship must terminate unless the guardian proves, by clear and convincing evidence, that terminating the guardianship would result in physical or emotional harm to the child); *Boddie v. Daniels*, 702 S.E.2d 172, 174-75 (Ga. 2010) (same); *In re Guardianship of D.J.*, 682 N.W.2d 238, 243-46 (Neb. 2004) (holding that the guardianship must terminate unless the guardian proves, by clear and convincing evidence, that the petitioning parent is either unfit or has forfeited the right to custody).
>
> We need not decide the applicable burden in this case because the court in fact applied the more stringent standard of proof—namely, clear and convincing evidence, which is more favorable to [the parent]—and the court's findings are supported by the evidence even under that standard of proof….
>
> ---
>
> [5] We referred to a preponderance-of-the-evidence standard in *Guardianship of David C.* and cases that followed. *See Guardianship of David C.*, 2010 ME 136, ¶ 7, 10 A.3d 684; *see also Guardianship of Chamberlain*, 2015 ME 76, ¶ 28, 118 A.3d 229; *Guardianship of Stevens*, 2014 ME 25, ¶ 14, 86 A.3d 1197. In *Guardianship of David C.*, however, we were concerned primarily with the allocation of the burden to prove unfitness as opposed to the standard of proof. 2010 ME 136, ¶¶ 4, 7, 10 A.3d 684.

Guardianship of Alisha K. Golodner, 2017 ME 54, ¶¶12-13 n.5.

FLAC's research findings on how other states address the burdens and standards in contested guardianship termination cases are consistent with the Law Court's characterization of the law as "unsettled and evolving." Most opinions addressing the question of the allocation of burdens note the constitutional rights at stake and hold that it the guardian's burden to prove unfitness or other potential harm to the child in a contested guardian termination matter, particularly if the parents had originally consented to the guardianship (which is the scenario in the majority of guardianships). As most states require unfitness findings for the appointment of a guardian to be based on clear and convincing evidence, they require the same evidentiary standard in a

contested termination case. However, one state, New Hampshire, has held that where there was an adjudication of unfitness at the appointment stage, the parent is no longer entitled to the presumption of fitness, and the burden-shifting and higher standard of proof is not *constitutionally* required. *In re Guardianship of Raven G.*, 66 A.3d 1245, 1248-49 (N.H. 2013).

To eliminate the internal inconsistency and any potential constitutional infirmity, FLAC recommends that the standard for finding unfitness in MUPC § 5-210(7) be revised from "a preponderance of the evidence" to "clear and convincing evidence" as follows:

> **7. Parent's petition to terminate guardianship; burden of proof.** A parent may bring a petition to terminate the guardianship of a minor. A parent's notification to the court of the revocation of prior consent for a guardianship must be considered a petition to terminate the guardianship. Before the court may apply the termination requirements in subsection 6, a party opposing a parent's petition to terminate a guardianship bears the burden of proving by ~~a preponderance of the evidence~~ clear and convincing evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor, in accordance with the standard set forth in section 5-204, subsection 2, paragraph C. If the party opposing termination of the guardianship fails to meet its burden of proof on the question of the parent's fitness to regain custody, the court shall terminate the guardianship and make any further order that may be appropriate. In a contested action, the court may appoint counsel for the minor or for any indigent guardian or parent. In ruling on a petition to terminate a guardianship, the court may modify the terms of the guardianship or order transitional arrangements pursuant to section 5-211.

Thank you for considering this recommendation. Please let us know if we can be of further assistance.

MEMORANDUM

To: Maine Legislature Joint Standing Committee on Judiciary

From: Maine Family Law Advisory Commission

Date: January 22, 2019

Re: Proposal for project to study certain adoption and guardianship questions under the Maine Uniform Probate Code

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The 128th Legislature enacted Public Law 2017, Chapter 402 "An Act to Revise and Recodify the Maine Probate Code," which includes several revisions to the minor guardianship provisions (Maine Uniform Probate Code (MUPC) Article 5, Part 2) and the Maine Adoption Act (MUPC Article 9) based on recommendations made by the Maine Family Law Advisory Commission (FLAC). The MUPC has an effective date of July 1, 2019. FLAC anticipates that an "errors and omissions" bill regarding the new MUPC will come before the 129th Maine Legislature's First Regular Session.

FLAC requests that the Legislature include language in that bill directing FLAC to study and provide recommendations on three questions concerning minor guardianship and adoption. Two of the questions concern the Adoption Act as it applies in two contexts: private termination of parental rights and competing adoption petitions. Such matters have been the subject of recent Maine Supreme Judicial Court opinions, and FLAC would like the opportunity to develop specific recommendations for consideration by the Legislature in the Second Regular Session to address concerns raised in recent cases.

In addition, FLAC would also like to study a difficult question that Maine Probate and District Courts occasionally face which is whether and how to award, in conjunction with terminating a guardianship of minor, specific rights of contact between the minor and the former guardian where there is a particularly strong relationship between the two and where, absent such rights of contact, there is a likelihood that there would be a cessation of contact that would pose a risk of harm to the minor.

This memo provides background on those three issues and the reasons FLAC would like the opportunity to study them and to develop recommendations to amend the Maine Uniform Probate Code.

Termination of Parental Rights in Adoption Proceedings

The Maine Adoption Act permits an adoption petitioner to file a petition to terminate the parental rights (TPR) of the child's parent if that parent does not consent to the adoption or join the petition. 18-A M.R.S.A. § 9-204.[1] These TPR petitions generally arise in one of the following contexts: a putative

[1] The Adoption Act provision currently provides, in part:

§9-204. Termination of parental rights

(a). A petition for termination of parental rights may be brought in Probate Court in which an adoption petition is properly filed as part of that adoption petition except when the District Court has exclusive jurisdiction over the child pursuant to Title 4, section 152, subsection 5-A.

father is initially identified during the adoption proceedings; a child's guardian wishes to adopt the child; or a child's parent co-petitions for adoption with a new spouse or partner (commonly referred to as "step-parent" adoptions).

FLAC examined this provision as part of its 2016 study of the parental rights and responsibilities provisions pursuant to Resolve 2015, c. 73, section 3. As part of its study, FLAC sought input from a range of stakeholders, many of whom raised concerns about the private TPR provisions of the Adoption Act. Some stakeholders questioned whether it was appropriate to employ the child protection TPR standard, 22 M.R.S. § 4005, in a private adoption proceeding with no state involvement. When a court determines whether to TPR a parent in a child protection case, there has already been a jeopardy finding, reunification efforts, and a cease reunification determination, all of which are TPR prerequisites in such actions. 22 M.R.S. §§ 4035, 4041(1-A), (2). Also, child protection proceedings often last longer than a year, and the resulting lengthy and detailed record can assist the court in its TPR determination. Private TPR determinations, by contrast, are made in a procedural context that lacks these preliminary steps and findings.

FLAC recommended—and the 128th Legislature adopted in Chapter 402—that the new MUPC revise the standard for termination of parental rights. Specifically, while current section 9-204(b) includes only a cross-reference to the child protection statute in Title 22, the MUPC (Title 18-C) section 9-204(3) spells out the TPR standard to be used by the court. The MUPC TPR standard is consistent with the Title 22 standard, except that it does not include the language set forth at 22 M.R.S.A. § 4055(1)(B)(2)(c) regarding the parent's failure to make a good faith effort to follow a reunification plan. It is unlikely that any such plan was ordered in the context of the adoption proceeding. A court cannot, as a practical matter, order reunification as a prerequisite (even if the statute required it) because the Department of Health and Human Services is not a party and the petitioners are likely not in a position to provide services to the parent.

The MUPC provision directs the court instead to consider "the extent to which the parent had opportunities to rehabilitate and to reunify with the child, including actions by the child's other parent to foster or to interfere with a relationship between the parent and child or services provided by public or non-profit agencies." 18-C M.R.S.A. §9-204(3)(B). This language permits a more appropriate and context-specific finding regarding the parent's opportunities and efforts to reunify with the child.

This change to the TPR standard, however, does not fully address the concerns about private TPR. It is challenging for a court to apply concepts such as "rehabilitate and reunify" in the absence of prior proceedings in which a parent had an opportunity and the services needed to do so. Stakeholders noted that it is particularly difficult to apply the TPR standard to a parent who has never been actively involved in the child's life but who now states they want to have a parental role. In some cases, the notification of the adoption proceeding and TPR may be the first time the father has learned of the current location or even the existence of a child.

(b). Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter VI.

(c).The court may appoint a guardian ad litem for the child. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated….

As some stakeholders observed, the objecting parent in most private TPR cases is not asking the court to remove the child from the petitioners' care or to deny the adoption petition; rather, they simply do not want their own connection to the child to be severed completely and permanently. Because of the "winner take all" orientation of the Adoption Act, however, the only way to prevent TPR is to object to the adoption itself.

The Maine Supreme Judicial Court has echoed many of the stakeholders' concerns about the private TPR process in a series of appellate opinions. Most recently, in the unanimous *per curiam* opinion in *Adoption of Isabelle T.*, 2017 ME 220, a step-parent adoption case in which the child's mother and step-father successfully petitioned to terminate the parental rights of the father, the Court noted the following:

> There is no state assertion of parental unfitness in private termination/adoption proceedings, and the Adoption Act provides fewer protections for parents than those provided in Title 22 child protection proceedings. Individuals facing the loss of their rights in Title 22 termination of parental rights proceedings are nearly always provided opportunities for rehabilitation and reunification before a court even considers the termination of their parental rights.
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> The Adoption Act, on the other hand, does not require—or even authorize—the court to consider rehabilitation or reunification efforts prior to terminating parental rights. A termination action litigated as part of a "private adoption," where the adoption petitioner—often one parent—seeks to terminate the parental rights of a nonconsenting parent to facilitate an adoption, requires only that the petitioner prove that the grounds for termination have been met in order for the court to permanently terminate that parent's legal rights to his or her child.
>
> In a Title 22 child protection proceeding, the question of termination is addressed only after a court has decided that the parent's unfitness is so dire that the children must be removed from his or her care. And, even in those circumstances, the parent is nonetheless usually offered multiple opportunities to better his or her parenting abilities and reunify with the children through court-ordered and state-provided services.
>
> Thus, application of the Adoption Act, as written, poses a substantial risk to fundamental parental rights that the court must respect by rigorous application of quality of evidence standards and procedural protections as we have articulated in opinions such as *Guardianship of Chamberlain*, 2015 ME 76, 118 A.3d 229.

Id. at ¶¶ 11-14 (internal citations omitted). The Law Court vacated the TPR of the father in that case because he "has had no opportunity to receive rehabilitative services, and … he has been prohibited from having contact with his children." *Id.* at ¶ 35. It also observed:

> In the private adoption setting, the permanency concerns that are typically present in state-initiated termination proceedings are not at issue. Here, the children are in a permanent living situation with their mother and stepfather, which, as all the parties testified, is not going to change regardless of the outcome of the termination and adoption processes.

Id. at ¶ 26.

A pending appeal in a pair of private adoption cases arising from Cumberland County Probate Court may provide another opportunity for the Law Court to address private TPR. On August 6, 2018, the Law Court called for amicus briefs to address the question of whether courts must or should follow certain procedures in private TPR cases and take measures such as making rehabilitation and reunification services available for the parent whose rights are at issue. The Court heard oral arguments in the cases on October 11, and an opinion could be issued at any time.

Thus, real questions exist about whether private TPR should remain in the Maine Adoption Act and, if so, whether current law sufficiently protects parents' rights and children's interests. The Law Court may rule in the pending appeals about the constitutional implications of the practice, but it will be for the Legislature to decide if it is good family law policy.

Competing Adoption Petitions

Maine's Adoption Act is silent on how a court should address competing petitions for adoption. Such petitions arise most commonly out of a Title 22 child protection matter brought by the Department of Health and Human Services in which both parents' rights were terminated and the permanency plan approved by the District Court for the child is adoption. The approved plan may make reference to a prospective adoption petitioner, who is usually the person with whom the child has been placed such as a foster parent or kinship caregiver, but it does not determine as a matter of law who should adopt the child.

Rather, the determination of who may adopt the child is made in a separate proceeding pursuant to the Maine Adoption Act. The person identified in the permanency plan must file a petition to adopt pursuant to 18-A/C M.R.S.A. § 9-301. If someone else wishes to adopt the child–such as a family member not named in the permanency plan–they may also file a petition to adopt. The Adoption Act sets no standing requirement for filing a petition to adopt and there is no limitation on how many petitioners may pursue adoption of the same child.

Until the enactment of the so-called Home Court Act, P.L. 2015, c. 460, which gives the District Court exclusive jurisdiction over adoptions if there is a pending matter involved the child (such as a child protection matter), the adoption proceeding also had to take place in a different court. This set up problematic scenarios such as where the child was the subject of proceedings in multiple courts: the District Court, in which the child protection matter was pending, as well as two different probate courts in which each of the competing petitions had been filed.

Now with the District Court having jurisdiction over both the child protection and adoption matters, there may be multiple petitions in one consolidated proceeding before the District Court. For example, in the recent case *Adoption of Parker J.*, 2018 ME 63, there was a single consolidated trial involving three competing petitioners: the maternal grandmother (who had served as the foster care placement), the paternal grandmother, and the maternal grandfather and his spouse.

The Adoption Act provides no guidance to a court on how to decide which petition to grant. Unlike the parental rights and responsibilities provisions in Title 19-A, the Adoption Act is framed in an "up or down" approach: either the petition meets the statutory requirements and therefore may be granted or it does not. 18-A M.R.S.A. § 9-308(a). The statutory language assumes that there is a single petition to

consider at one time, and it sets forth the requirements for *whether* to grant that petition, not how to decide *among* competing petitions, especially if all of them meet the basic qualifications to adopt, as in *Parker J*.

These cases are highly contentious and emotional, in part because of the impact of the court's decision to grant or deny a petition to adopt–the "winner take all" result noted above. The successful petitioner will have full parental rights to the child, including the decision whether to allow any post-adoption contact with the child's existing relatives or caregivers. And the unsuccessful petitioner has no right to contact with the child or to seek the same in a court proceeding. Courts and mediators have few middle-ground options to offer the parties in these cases.

A related potential source of conflict in an adoption proceeding concerns the role of the Department of Health and Human Services if the child is in DHHS custody at the time the adoption petition is filed, which is usually the case if a petition is filed in the context of a child protection proceeding. The Adoption Act at 18-A M.R.S.A. § 9-302(a)(3) provides that an adoption of a child in agency custody may be granted only if the agency, such as DHHS, consents to the adoption, or, if the agency does not consent, only if the court finds by a preponderance of the evidence that the "agency acted unreasonably" in withholding its consent. That provision includes four factors the court must consider when determining whether the consent was unreasonably withheld.

The implications of this language were addressed in Law Court opinions for the first time in *Adoption of Parker J.* and another 2018 case, *Adoption of Paisley*, ME 2018 19. Both appeals were from District Court decisions to grant an adoption, without the consent of the Department, to a petitioner who had filed a petition competing with that of the person who did have the Department's consent to adopt. In *Paisley*, the child's siblings' relatives sought to adopt the child with the consent of the Department, and the court granted the adoption instead to the child's foster parents. The other case was *Parker J.*, where the court granted the petition of the paternal grandmother rather than the maternal grandmother, who had the Department's consent. In *Paisley*, the Court affirmed the District Court's determination that the Department unreasonably withheld consent to the foster family. In *Parker J.*, the Court vacated the adoption decree due to a procedural error, and it did not address the question of the Department's consent at all. However, Justice Jabar, in a concurrence, described what he characterized as a "shortcoming" in § 9-302(a)(3) in that it "fails to adequately address the Department's obligation in cases where more than one suitable party petitions to adopt a child placed in the Department's custody." *Parker J.*, 2018 ME 63, ¶ 31 (J. Jabar, concurring).

Thus, there are two aspects of the Adoption Act that could provide more guidance to the Court in competing adoption matters. First, it may be beneficial to provide a court with specific standards and procedures to follow when a court must decide between multiple petitions, all of whom meet the basic qualifications for adoption. Relatedly, the Legislature may want to consider providing courts other tools to enable courts to minimize the extreme results in such cases and to facilitate mediated agreements, such as permitting post-adoption contact by relative caregivers. The second issue is whether to clarify the Adoption Act's provision regarding the Department's consent, or lack thereof, in the context of a proceeding with multiple petitions.

<u>Post-Termination Rights of Contact between a Former Guardian and Minor</u>

FLAC also has an interest in reviewing the question of what options are or should be available under Maine Law to confer authority to a District Court or Probate Court to order rights of contact between a former guardian of a minor and the minor when terminating the guardianship, such as when a parent resumes custody of the minor.

Under the MUPC, a guardianship order continues indefinitely, unless it is specifically time-limited, until one of the following events happens: "the minor's death, adoption, emancipation, marriage or attainment of majority,... the death, resignation or removal of the guardian or conservator[,] or upon termination of the guardianship or conservatorship." 18-C M.R.S.A. § 5-210(2), (3). A court may terminate the guardianship based on a petition. 18-C M.R.S.A. § 5-210(6), (7).

When the circumstances giving rise to the initial appointment of a guardian—such as a parent's illness, absence, incarceration, or housing instability—changes, a parent may seek to resume care and custody of the child. Most guardianships and created with the consent of the parent, and in many if not most instances, the parent and guardian (most often a child's close relative) can also agree when the child may be returned to the parent's care. It is unusual in such cases for the parties to return to court to ask the court to terminate the order; most likely, they will simply disregard the guardianship order. In those situations, the minor continues to have contact with the guardian after returning to the parent's home.

A far more difficult situation arises when the parent and guardian cannot agree whether the child should return to the parent's care. In such instances, a parent must file a petition to terminate the guardianship over the objection of the guardian. 18-C M.R.S.A. § 5-210(7). In ruling on the petition, the court does not compare the two competing parties and decide which should have custody of the child based on the child's best interest, as would be the case if the dispute were between two parents. *See* 19-A M.R.S.A. § 1653(3). This is because the parent and guardian are not on equal footing due to the parent's fundamental constitutional right to parent their child. The Law Court held in *Guardianship of David C.*, 2010 ME 136, ¶ 7, that, in light of the constitutional rights at stake, when a parent petitions to terminate a guardianship, the guardian opposing the termination must prove:

> that the parent seeking to terminate the guardianship is currently unfit to regain custody of the child. If the party opposing termination of the guardianship fails to meet its burden of proof on this issue, the guardianship must terminate for failure to prove an essential element to maintain the guardianship. This rule applies whether the guardianship was initially established with the parents' consent…or otherwise.

This holding reflects the constitutional implications of continuing a guardianship over a parent's objection. *Id*. ¶ 6. The MUPC incorporates *David C.*'s holding: section 5-210 (7) provides that if a parent petitions for the termination of the guardianship and the guardian does not prove that the parent is currently unfit and the need for a guardianship continues, the court must terminate the guardianship.

In a high-conflict termination case where a parent is fit and able to resume care of the child, that parent may also indicate that they do not wish there to be contact between the former guardian and the child once the guardianship ends. If the guardianship appointment was in place for an extended period of time, there may be a risk that the child may suffer harm or trauma if their contact with a former guardian and caretaker is severed abruptly and entirely.

There are some tools available under the MUPC that enable courts to structure a guardianship termination to minimize any adverse impact on the child. Section 5-210(7) permits a court to make "any further order that may be appropriate." More specifically, section § 5-211 permits a court to order transitional arrangements, such as "rights of contact, housing, counseling or rehabilitation," if the court determines that such arrangements "will assist the minor with a transition of custody and are in the best interest of the minor." This provision carries forward the current law, with an additional sentence allowing a court to consider the child's "relationship with the guardian and need for stability" when evaluating a child's best interest in the context of ordering transitional arrangements for minors.

Therefore, a court may order rights of contact for a limited period of time to facilitate the minor's return to their parents if doing so is in the child's best interest. The court may appoint a guardian ad litem (GAL) to advise the court on specific transitional arrangements that would be in the child's best interest. 18-C M.R.S.A. § 5-212; *see also Guardianship of Zachariah Stevens*, 2014 ME 25, ¶¶ 4–7 (discussing GAL's recommendations for terminating the guardianship with transitional arrangements in light of young child's connection with his grandparents-guardians, who had cared for him since shortly after his birth). The court may also order the parties to mediate in good faith before a hearing on a petition to terminate, if such services are available at a reasonable fee or no cost. MUPC § 5-205(9). Ideally, the parties, assisted by a GAL, could agree on a transition plan. If they cannot agree, it's likely that any continued custody or rights of contact awarded to a former guardian pursuant to § 5-211 must be time limited rather than indefinite. The Law Court has never addressed the constitutional implications of post-termination contact rights of a former guardian ordered over the objection of parents.

Outside of the MUPC, Maine law includes a few provisions for affording rights of contact to non-parents. Most notably, the Grandparent Visitation Act, 19-A M.R.S.A., ch. 59 (§§ 1801–1806), enables a grandparent with a "sufficient existing relationship" with a grandchild to have rights of contact. Given that many guardians are also grandparents, an extended guardianship could give rise to the conditions conferring standing for a former guardian to petition for such rights under that statute.[2] However, this would require a guardian or former guardian to bring a separate petition, and probate courts do not have jurisdiction to award rights under that statute.

In addition, there is a provision in the parental rights and responsibilities statute at 19-A M.R.S.A. § 1653 that could potentially serve as a basis to award contact to a former guardian. Specifically, § 1653(2)(B) permits a court to "award reasonable rights of contact with a minor child to a 3rd person." However, it's unclear whether that provision could be applied outside of the context in which the court is addressing a family matter between the child's parents. The Law Court addressed this provision at some length in a recent opinion and held:

[2] Under 19-A M.R.S.A. § 1802(2), a "Sufficient existing relationship" is defined as "a relationship involving extraordinary contact between a grandparent and a child, including but not limited to *circumstances in which the grandparent has been a primary caregiver and custodian of the child for a significant period of tim*e." (emphasis added). This high standard reflects the procedural requirements serving as constitutional safeguards that are triggered "when a non-parent third party seeking to interfere with the fundamental right to parent"; a non-parent must affirmatively demonstrate "standing to commence the litigation sufficient to justify the interference that is created just by having to defend against such a petition." *Curtis v. Medeiro*s, 2016 ME 180, ¶ 15 (citing Law Court opinions addressing grandparent visitation and *de facto* parent matters).

> [B]efore a court may grant a third party contact with a child pursuant to 19–A M.R.S. § 1653(2)(B), the third party must file both a motion to intervene in the matter and his or her own motion seeking such contact. The motion for contact must—at a minimum—be accompanied by an affidavit that demonstrates, on a *prima facie* basis, the party's standing to interfere with the fundamental right to parent.

Curtis v. Medeiros, 2016 ME 180, ¶ 18. This suggests that there must be a pending matter in which a non-parent can seek to intervene and also file a motion for contact rights. Therefore, unless the guardianship termination occurs in conjunction with a divorce or parental rights matter, this provision is not likely to authorize a court to award rights of contact to a former guardian over the objection of a parent.

The closest analogy to the guardianship termination context is when a child returns to their parents after a period in foster care. Maine law provides no authority for a court to award rights of contact for former foster parents. However, given that child protection matters are time-limited due to the statutory requirements for achieving permanency, it is less likely that a child will be with foster parents for several years before returning a parent's care.

FLAC would like the opportunity to explore potential ways to expand the tools available to a court terminating a guardianship that will serve a child's interests while also respecting an objecting parent's fundamental constitutional rights. The goal would be to give the court the ability to mitigate or avoid harm or unnecessary trauma to a child who has a strong relationship with the guardian by providing some rights of contact between the former guardian and the child after the guardianship has been terminated so that the relationship can be preserved.

Proposal from FLAC

FLAC proposes to examine the three issues outlined above over the coming months. As part of this study, FLAC will review approaches taken by other states regarding these difficult, contested adoption and guardianship termination questions. FLAC will also seek input and ideas from stakeholders, including the Department of Health and Human Services and the Office of the Attorney General, as well as legal practitioners, mediators, and guardians *ad litem*.

FLAC will then prepare a report to be submitted to this Committee by December 1, 2019, which will include specific recommendations for amendments to the Maine Uniform Probate Code or other family law statues to be considered during the Second Regular Session.