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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2515

03/08/2016 Authored by Smith

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

03/14/2016 Adoption of Report: Amended and re-referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to probate; modifying certain probate provisions; amending Minnesota
1.3 Statutes 2014, sections 484.73, subdivision 2; 524.1-201; 524.2-102; 524.2-202;
1.4 524.2-301; 524.2-403; 524.2-404; 524.2-606; 524.3-406; 524.3-1201;
1.5 524.3-1203, subdivision 5; 524.5-313; 609.748, subdivision 2; Minnesota
1.6 Statutes 2015 Supplement, section 524.5-417; proposing coding for new law in
1.7 Minnesota Statutes, chapter 524.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2014, section 484.73, subdivision 2, is amended to read:

1.10 Subd. 2. **Exclusions.** Judicial arbitration may not be used to dispose of matters
1.11 relating to ~~guardianship, conservatorship, or civil commitment~~, matters within the juvenile
1.12 court jurisdiction involving children in need of protection or services or delinquency,
1.13 matters involving termination of parental rights under sections 260C.301 to 260C.328, or
1.14 matters arising under sections 518B.01, 626.557, or 144.651 to 144.652.

1.15 Sec. 2. Minnesota Statutes 2014, section 524.1-201, is amended to read:

1.16 **524.1-201 GENERAL DEFINITIONS.**

1.17 Subject to additional definitions contained in the subsequent articles which are
1.18 applicable to specific articles or parts, and unless the context otherwise requires, in
1.19 chapters 524 and 525:

1.20 (1) "Adoptee" means an individual who is adopted.

1.21 (2) "Application" means a written request to the registrar for an order of informal
1.22 probate or appointment under article III, part 3.

1.23 (3) "Assisted reproduction" means a method of causing pregnancy other than sexual
1.24 intercourse.

2.1 (4) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
2.2 present or future interest, vested or contingent, and also includes the owner of an interest
2.3 by assignment or other transfer and as it relates to a charitable trust, includes any person
2.4 entitled to enforce the trust.

2.5 (5) "Birth mother" means a woman who gives birth to a child, including a woman
2.6 who is the child's genetic mother and including a woman who gives birth to a child of
2.7 assisted reproduction. "Birth mother" does not include a woman who gives birth pursuant
2.8 to a gestational agreement.

2.9 (6) "Child" includes any individual entitled to take as a child under law by intestate
2.10 succession from the parent whose relationship is involved and excludes any person who is
2.11 only a stepchild, a foster child, a grandchild or any more remote descendant.

2.12 (7) "Child of assisted reproduction" means a child conceived by means of assisted
2.13 reproduction by a woman other than a child conceived pursuant to a gestational agreement.

2.14 (8) "Claims" includes liabilities of the decedent whether arising in contract or
2.15 otherwise and liabilities of the estate which arise after the death of the decedent including
2.16 funeral expenses and expenses of administration. The term does not include taxes, demands
2.17 or disputes regarding title of a decedent to specific assets alleged to be included in the
2.18 estate, tort claims, foreclosure of mechanic's liens, or to actions pursuant to section 573.02.

2.19 (9) "Court" means the court or branch having jurisdiction in matters relating to the
2.20 affairs of decedents. This court in this state is known as the district court.

2.21 (10) "Conservator" means a person who is appointed by a court to manage the
2.22 estate of a protected person.

2.23 (11) "Descendant" of an individual means all of the individual's descendants of all
2.24 generations, with the relationship of parent and child at each generation being determined
2.25 by the definition of child and parent contained in this section.

2.26 (12) "Devise," when used as a noun, means a testamentary disposition of real or
2.27 personal property and when used as a verb, means to dispose of real or personal property
2.28 by will.

2.29 (13) "Devisee" means any person designated in a will to receive a devise. In the case
2.30 of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust
2.31 or trustee is the devisee and the beneficiaries are not devisees.

2.32 (14) "Disability" means cause for appointment of a conservator as described in
2.33 section 524.5-401, or a protective order as described in section 524.5-412.

2.34 (15) "Distributee" means any person who has received or who will receive property
2.35 of a decedent from the decedent's personal representative other than as a creditor or
2.36 purchaser. A testamentary trustee is a distributee with respect to property which the trustee

3.1 has received from a personal representative only to the extent of distributed assets or their
3.2 increment remaining in the trustee's hands. A beneficiary of a testamentary trust to whom
3.3 the trustee has distributed property received from a personal representative is a distributee
3.4 of the personal representative. For purposes of this provision, "testamentary trustee"
3.5 includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

3.6 (16) "Divorce" includes an annulment, dissolution, and declaration of invalidity of
3.7 marriage.

3.8 (17) "Estate" includes all of the property of the decedent, trust, or other person
3.9 whose affairs are subject to this chapter as originally constituted and as it exists from
3.10 time to time during administration.

3.11 (18) "Fiduciary" includes personal representative, guardian, conservator and trustee.

3.12 (19) "Foreign personal representative" means a personal representative of another
3.13 jurisdiction.

3.14 (20) "Formal proceedings" means those conducted before a judge with notice to
3.15 interested persons.

3.16 (21) "Functioned as a parent of the child" means behaving toward a child in a manner
3.17 consistent with being the child's parent and performing functions that are customarily
3.18 performed by a parent, including fulfilling parental responsibilities toward the child,
3.19 recognizing or holding out the child as the individual's child, materially participating in
3.20 the child's upbringing, and residing with the child in the same household as a regular
3.21 member of that household.

3.22 (22) "Genetic father" means the man whose sperm fertilized the egg of a child's
3.23 genetic mother. If the father-child relationship is established under the presumption
3.24 of paternity under chapter 257, "genetic father" means only the man for whom that
3.25 relationship is established.

3.26 (23) "Genetic mother" means the woman whose egg was fertilized by the sperm
3.27 of a child's genetic father.

3.28 (24) "Genetic parent" means a child's genetic father or genetic mother.

3.29 (25) "Gestational agreement" means an agreement for assisted reproduction in which
3.30 a woman agrees to carry a child to birth for an intended parent or intended parents.

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

4.1 ~~(26)~~ (27) "Guardian" means a person who has qualified as a guardian of a minor
4.2 or incapacitated person pursuant to testamentary or court appointment, but excludes one
4.3 who is merely a guardian ad litem.

4.4 ~~(27)~~ (28) "Heirs" means those persons, including the surviving spouse, who are
4.5 entitled under the statutes of intestate succession to the property of a decedent.

4.6 ~~(28)~~ (29) "Incapacitated person" is as described in section 524.5-102, subdivision 6,
4.7 other than a minor.

4.8 ~~(29)~~ (30) "Incapacity" when used in sections 524.2-114 to 524.2-120 means the
4.9 inability of an individual to function as a parent of a child because of the individual's
4.10 physical or mental condition.

4.11 ~~(30)~~ (31) "Informal proceedings" means those conducted by the judge, the registrar,
4.12 or the person or persons designated by the judge for probate of a will or appointment of a
4.13 personal representative in accordance with sections 524.3-301 to 524.3-311.

4.14 ~~(31)~~ (32) "Intended parent" means an individual who entered into a gestational
4.15 agreement providing that the individual will be the parent of a child born to a woman by
4.16 means of assisted reproduction, including an individual who has a genetic relationship
4.17 with the child.

4.18 ~~(32)~~ (33) "Interested person" includes heirs, devisees, children, spouses, creditors,
4.19 beneficiaries and any others having a property right in or claim against the estate of a
4.20 decedent, ward or protected person which may be affected by the proceeding. It also
4.21 includes persons having priority for appointment as personal representative, and other
4.22 fiduciaries representing interested persons. The meaning as it relates to particular persons
4.23 may vary from time to time and must be determined according to the particular purposes
4.24 of, and matter involved in, any proceeding.

4.25 ~~(33)~~ (34) "Lease" includes an oil, gas, or other mineral lease.

4.26 ~~(34)~~ (35) "Letters" includes letters testamentary, letters of guardianship, letters of
4.27 administration, and letters of conservatorship.

4.28 ~~(35)~~ (36) "Mortgage" means any conveyance, agreement or arrangement in which
4.29 property is used as security.

4.30 ~~(36)~~ (37) "Nonresident decedent" means a decedent who was domiciled in another
4.31 jurisdiction at the time of death.

4.32 ~~(37)~~ (38) "Organization" includes a corporation, government or governmental
4.33 subdivision or agency, business trust, estate, trust, partnership or association, two or more
4.34 persons having a joint or common interest, or any other legal entity.

4.35 ~~(38)~~ (39) "Person" means an individual, a corporation, an organization, or other
4.36 legal entity.

5.1 ~~(39)~~ (40) "Personal representative" includes executor, administrator, successor
5.2 personal representative, special administrator, and persons who perform substantially the
5.3 same function under the law governing their status. "General personal representative"
5.4 excludes special administrator.

5.5 ~~(40)~~ (41) "Petition" means a written request to the court for an order after notice.

5.6 ~~(41)~~ (42) "Proceeding" includes action at law and suit in equity.

5.7 ~~(42)~~ (43) "Property" includes both real and personal property or any interest therein
5.8 and means anything that may be the subject of ownership.

5.9 ~~(43)~~ (44) "Protected person" is as described in section 524.5-102, subdivision 14.

5.10 ~~(44)~~ (45) "Registrar" refers to the judge of the court or the person designated by the
5.11 court to perform the functions of registrar as provided in section 524.1-307.

5.12 ~~(45)~~ (46) "Relative" means a grandparent or a descendant of a grandparent.

5.13 ~~(46)~~ (47) "Security" includes any note, stock, treasury stock, bond, debenture,
5.14 evidence of indebtedness, certificate of interest or participation in an oil, gas or mining
5.15 title or lease or in payments out of production under such a title or lease, collateral
5.16 trust certificate, transferable share, voting trust certificate or, in general, any interest or
5.17 instrument commonly known as a security, or any certificate of interest or participation,
5.18 any temporary or interim certificate, receipt or certificate of deposit for, or any warrant
5.19 or right to subscribe to or purchase, any of the foregoing.

5.20 ~~(47)~~ (48) "Settlement," in reference to a decedent's estate, includes the full process
5.21 of administration, distribution and closing.

5.22 ~~(48)~~ (49) "Special administrator" means a personal representative as described by
5.23 sections 524.3-614 to 524.3-618.

5.24 ~~(49)~~ (50) "State" includes any state of the United States, the District of Columbia, the
5.25 Commonwealth of Puerto Rico, and any territory or possession subject to the legislative
5.26 authority of the United States.

5.27 ~~(50)~~ (51) "Successor personal representative" means a personal representative,
5.28 other than a special administrator, who is appointed to succeed a previously appointed
5.29 personal representative.

5.30 ~~(51)~~ (52) "Successors" means those persons, other than creditors, who are entitled to
5.31 property of a decedent under the decedent's will, this chapter or chapter 525. "Successors"
5.32 also means a funeral director or county government that provides the funeral and burial of
5.33 the decedent, or a state or county agency with a claim authorized under section 256B.15.

5.34 ~~(52)~~ (53) "Supervised administration" refers to the proceedings described in sections
5.35 524.3-501 to 524.3-505.

6.1 ~~(53)~~ (54) "Testacy proceeding" means a proceeding to establish a will or determine
6.2 intestacy.

6.3 ~~(54)~~ (55) "Third-party donor" means an individual who produces eggs or sperm used
6.4 for assisted reproduction, whether or not for consideration. The term does not include:

6.5 (i) a husband who provides sperm, or a wife who provides eggs, that are used for
6.6 assisted reproduction by the wife;

6.7 (ii) the birth mother of a child of assisted reproduction; or

6.8 (iii) a man who has been determined under section 524.2-120, subdivision 4 or 5, to
6.9 have a parent-child relationship with a child of assisted reproduction.

6.10 ~~(55)~~ (56) "Trust" includes any express trust, private or charitable, with additions
6.11 thereto, wherever and however created. It also includes a trust created or determined
6.12 by judgment or decree under which the trust is to be administered in the manner of an
6.13 express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts,
6.14 conservatorships, personal representatives, trust accounts as defined in chapter 528,
6.15 custodial arrangements pursuant to sections 149A.97, 318.01 to 318.06, 527.21 to 527.44,
6.16 business trusts providing for certificates to be issued to beneficiaries, common trust funds,
6.17 voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose
6.18 of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits
6.19 of any kind, and any arrangement under which a person is nominee or escrowee for another.

6.20 ~~(56)~~ (57) "Trustee" includes an original, additional, or successor trustee, whether
6.21 or not appointed or confirmed by court.

6.22 ~~(57)~~ (58) "Ward" is as described in section 524.5-102, subdivision 17.

6.23 ~~(58)~~ (59) "Will" includes codicil and any testamentary instrument which merely
6.24 appoints an executor or revokes or revises another will.

6.25 Sec. 3. Minnesota Statutes 2014, section 524.2-102, is amended to read:

6.26 **524.2-102 SHARE OF THE SPOUSE.**

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

6.28 (1) the entire intestate estate if:

6.29 (i) no descendant of the decedent survives the decedent; or

6.30 (ii) all of the decedent's surviving descendants are also descendants of the surviving
6.31 spouse and there is no other descendant of the surviving spouse who survives the decedent;

6.32 (2) the first ~~\$150,000~~ \$225,000, plus one-half of any balance of the intestate estate,
6.33 if all of the decedent's surviving descendants are also descendants of the surviving
6.34 spouse and the surviving spouse has one or more surviving descendants who are not

7.1 descendants of the decedent, or if one or more of the decedent's surviving descendants are
 7.2 not descendants of the surviving spouse.

7.3 Sec. 4. Minnesota Statutes 2014, section 524.2-202, is amended to read:

7.4 **524.2-202 ELECTIVE SHARE.**

7.5 (a) **Elective share amount.** The surviving spouse of a decedent who dies domiciled
 7.6 in this state has a right of election, under the limitations and conditions stated in this part,
 7.7 to take an elective-share amount equal to the value of the elective-share percentage of the
 7.8 augmented estate, determined by the length of time the spouse and the decedent were
 7.9 married to each other, in accordance with the following schedule:

7.10	If the decedent and the spouse were	The elective-share percentage is:
7.11	married to each other:	
7.12	Less than one year	Supplemental amount only
7.13	One year but less than two years	Three percent of the augmented estate
7.14	Two years but less than three years	Six percent of the augmented estate
7.15	Three years but less than four years	Nine percent of the augmented estate
7.16	Four years but less than five years	12 percent of the augmented estate
7.17	Five years but less than six years	15 percent of the augmented estate
7.18	Six years but less than seven years	18 percent of the augmented estate
7.19	Seven years but less than eight years	21 percent of the augmented estate
7.20	Eight years but less than nine years	24 percent of the augmented estate
7.21	Nine years but less than ten years	27 percent of the augmented estate
7.22	Ten years but less than 11 years	30 percent of the augmented estate
7.23	11 years but less than 12 years	34 percent of the augmented estate
7.24	12 years but less than 13 years	38 percent of the augmented estate
7.25	13 years but less than 14 years	42 percent of the augmented estate
7.26	14 years but less than 15 years	46 percent of the augmented estate
7.27	15 years or more	50 percent of the augmented estate

7.28 (b) **Supplemental elective-share amount.** If the sum of the amounts described in
 7.29 sections 524.2-207, 524.2-209, paragraph (a), clause (1), and that part of the elective-share
 7.30 amount payable from the decedent's probate estate and nonprobate transfers to others
 7.31 under section 524.2-209, paragraphs (b) and (c), is less than ~~\$50,000~~ \$75,000, the
 7.32 surviving spouse is entitled to a supplemental elective-share amount equal to ~~\$50,000~~
 7.33 \$75,000, minus the sum of the amounts described in those sections. The supplemental
 7.34 elective-share amount is payable from the decedent's probate estate and from recipients of
 7.35 the decedent's nonprobate transfers to others in the order of priority set forth in section
 7.36 524.2-209, paragraphs (b) and (c).

7.37 (c) **Effect of election on statutory benefits.** If the right of election is exercised by
 7.38 or on behalf of the surviving spouse, the surviving spouse's homestead rights and other

8.1 allowances under sections 524.2-402, 524.2-403 and 524.2-404, if any, are not charged
8.2 against but are in addition to the elective-share and supplemental elective-share amounts.

8.3 (d) **Nondomiciliary.** The right, if any, of the surviving spouse of a decedent who
8.4 dies domiciled outside this state to take an elective share in property in this state is
8.5 governed by the law of the decedent's domicile at death.

8.6 Sec. 5. Minnesota Statutes 2014, section 524.2-301, is amended to read:

8.7 **524.2-301 ENTITLEMENT OF SPOUSE; PREMARITAL WILL.**

8.8 (a) If a testator married after making a will and the spouse survives the testator, the
8.9 surviving spouse shall receive a share of the estate of the testator equal in value to that
8.10 which the surviving spouse would have received if the testator had died intestate, unless:

8.11 (1) provision has been made for, or waived by, the spouse by prenuptial or
8.12 postnuptial agreement;

8.13 (2) the will or other written evidence discloses an intention not to make provision
8.14 for the spouse; ~~or~~

8.15 (3) ~~the spouse is provided for~~ person, who was the surviving spouse at death, was
8.16 designated as a devisee, or is the beneficiary of a trust referenced, in the will; ~~or~~

8.17 (4) the testator provided for the spouse by transfer outside the will and the intent
8.18 that the transfer be in lieu of a testamentary provision is shown by the testator's written
8.19 statements or may be reasonably inferred from the amount of the transfer or other evidence.

8.20 (b) In satisfying the share provided by this section, devises made by the will other
8.21 than a devise to a child of the testator who was born before the testator married the
8.22 surviving spouse and who is not a child of the surviving spouse or a devise or substitute
8.23 gift under section 524.2-603 or 524.2-604 to a descendant of such a child, abate first as
8.24 otherwise provided in section 524.3-902.

8.25 Sec. 6. Minnesota Statutes 2014, section 524.2-403, is amended to read:

8.26 **524.2-403 EXEMPT PROPERTY.**

8.27 (a) If there is a surviving spouse, then, in addition to the homestead and family
8.28 allowance, the surviving spouse is entitled from the estate to:

8.29 (1) property not exceeding ~~\$10,000~~ \$15,000 in value in excess of any security
8.30 interests therein, in household furniture, furnishings, appliances, and personal effects,
8.31 subject to an award of sentimental value property under section 525.152; and

8.32 (2) one automobile, if any, without regard to value.

8.33 (b) If there is no surviving spouse, the decedent's children are entitled jointly to
8.34 the same property as provided in paragraph (a), except that where it appears from the

9.1 decedent's will a child was omitted intentionally, the child is not entitled to the rights
9.2 conferred by this section.

9.3 (c) If encumbered chattels are selected and the value in excess of security interests,
9.4 plus that of other exempt property, is less than ~~\$10,000~~ \$15,000, or if there is not ~~\$10,000~~
9.5 \$15,000 worth of exempt property in the estate, the surviving spouse or children are
9.6 entitled to other personal property of the estate, if any, to the extent necessary to make up
9.7 the ~~\$10,000~~ \$15,000 value.

9.8 (d) Rights to exempt property and assets needed to make up a deficiency of exempt
9.9 property have priority over all claims against the estate, but the right to any assets to
9.10 make up a deficiency of exempt property abates as necessary to permit earlier payment
9.11 of the family allowance.

9.12 (e) The rights granted by this section are in addition to any benefit or share passing
9.13 to the surviving spouse or children by the decedent's will, unless otherwise provided, by
9.14 intestate succession or by way of elective share.

9.15 (f) No rights granted to a decedent's adult children under this section shall have
9.16 precedence over a claim under section 246.53, 256B.15, 256D.16, 261.04, or 524.3-805,
9.17 paragraph (a), clause (1), (2), or (3).

9.18 Sec. 7. Minnesota Statutes 2014, section 524.2-404, is amended to read:

9.19 **524.2-404 FAMILY ALLOWANCE.**

9.20 (a) In addition to the right to the homestead and exempt property, the decedent's
9.21 surviving spouse and minor children whom the decedent was obligated to support, and
9.22 children who were in fact being supported by the decedent, shall be allowed a reasonable
9.23 family allowance in money out of the estate for their maintenance as follows:

9.24 (1) for one year if the estate is inadequate to discharge allowed claims; or

9.25 (2) for 18 months if the estate is adequate to discharge allowed claims.

9.26 (b) The amount of the family allowance may be determined by the personal
9.27 representative in an amount not to exceed ~~\$1,500~~ \$2,300 per month.

9.28 (c) The family allowance is payable to the surviving spouse, if living; otherwise to
9.29 the children, their guardian or conservator, or persons having their care and custody.

9.30 (d) The family allowance is exempt from and has priority over all claims.

9.31 (e) The family allowance is not chargeable against any benefit or share passing to
9.32 the surviving spouse or children by the will of the decedent unless otherwise provided, by
9.33 intestate succession or by way of elective share. The death of any person entitled to family
9.34 allowance does not terminate the right of that person to the allowance.

10.1 (f) The personal representative or an interested person aggrieved by any
 10.2 determination, payment, proposed payment, or failure to act under this section may
 10.3 petition the court for appropriate relief, which may include a family allowance other than
 10.4 that which the personal representative determined or could have determined.

10.5 Sec. 8. Minnesota Statutes 2014, section 524.2-606, is amended to read:

10.6 **524.2-606 NONADEMPTION OF SPECIFIC DEVICES; UNPAID PROCEEDS**
 10.7 **OF SALE, CONDEMNATION, OR INSURANCE; SALE BY CONSERVATOR**
 10.8 **OR GUARDIAN.**

10.9 (a) A specific devisee has a right to the specifically devised property in the testator's
 10.10 estate at death and:

10.11 (1) any balance of the purchase price, together with any security agreement, owing
 10.12 from a purchaser to the testator at death by reason of sale of the property;

10.13 (2) any amount of a condemnation award for the taking of the property unpaid
 10.14 at death;

10.15 (3) any proceeds unpaid at death on fire or casualty insurance on or other recovery
 10.16 for injury to the property; and

10.17 (4) property owned by the testator at death and acquired as a result of foreclosure, or
 10.18 obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

10.19 (b) If specifically devised property is sold or mortgaged by a conservator or
 10.20 guardian or by an agent acting within the authority of a durable power of attorney for
 10.21 an incapacitated principal, or by the trustee of a revocable trust during the period of the
 10.22 settlor's incapacity, or if a condemnation award, insurance proceeds, or recovery for injury
 10.23 to the property are paid to a conservator or guardian or to an agent acting within the
 10.24 authority of a durable power of attorney for an incapacitated principal, or to the trustee of
 10.25 a revocable trust during the period of the settlor's incapacity, the specific devisee has the
 10.26 right to a general pecuniary devise equal to the net sale price, the amount of the unpaid
 10.27 loan, the condemnation award, the insurance proceeds, or the recovery.

10.28 (c) The right of a specific devisee under paragraph (b) is reduced by any right the
 10.29 devisee has under paragraph (a).

10.30 (d) For the purposes of the references in paragraph (b) to a conservator or guardian
 10.31 or an agent acting within the authority of a durable power of attorney or a trustee of a
 10.32 revocable trust during the period of the settlor's incapacity, paragraph (b) does not apply if
 10.33 after the sale, mortgage, condemnation, casualty, or recovery;

10.34 (1) in the case of a conservator or guardian, it was adjudicated that the testator's
 10.35 incapacity ceased and the testator survived the adjudication by one year; or

11.1 (2) in the case of an agent acting within the authority of a durable power of attorney,
 11.2 the testator's incapacity ceased and the testator survived for one year after the incapacity
 11.3 ceased; or

11.4 (3) in the case of a trustee, the settlor's incapacity ceased and the settlor survived
 11.5 for one year after the incapacity ceased.

11.6 (e) For the purposes of the references in paragraph (b) to the trustee of a revocable
 11.7 trust during the period of the settlor's incapacity, paragraph (b) does not apply to a specific
 11.8 devise contained in a will if:

11.9 (1) the revocable trust provides for the transfer, devise, or distribution of all trust
 11.10 assets held as of the death of the settlor to persons or entities other than the settlor's
 11.11 estate; and

11.12 (2) the initial transfer of devised property into the trust occurred prior to the settlor's
 11.13 incapacity.

11.14 ~~(e)~~ (f) For the purposes of the references in paragraph (b) to an agent acting within
 11.15 the authority of a durable power of attorney for an incapacitated principal or the trustee of
 11.16 a revocable trust during the period of the settlor's incapacity, (i) "incapacitated principal"
 11.17 means a principal who is an incapacitated person as defined in section 524.5-102,
 11.18 subdivision 6, and the "period of the settlor's incapacity" means a period when the settlor
 11.19 of a revocable trust is an incapacitated person as defined by the trust instrument, or, if the
 11.20 trust instrument is silent, as defined in section 524.5-102, subdivision 6, and (ii) a finding
 11.21 of the principal's or settlor's incapacity need not occur during the principal's or settlor's life.

11.22 **Sec. 9. [524.2-805] REFORMATION TO CORRECT MISTAKES.**

11.23 The court may reform the terms of a governing instrument, even if unambiguous,
 11.24 to conform the terms to the transferor's intention, if it is proved by clear and convincing
 11.25 evidence what the transferor's intention was and that the terms of the governing instrument
 11.26 were affected by a mistake of a fact or law, whether in expression or inducement.

11.27 **Sec. 10. [524.2-806] MODIFICATION TO ACHIEVE TRANSFEROR'S TAX**
 11.28 **OBJECTIVES.**

11.29 To achieve the transferor's tax objectives, the court may modify the terms of a
 11.30 governing instrument in a manner that is not contrary to the transferor's probable intention.
 11.31 The court may provide that the modification has retroactive effect.

12.1 Sec. 11. Minnesota Statutes 2014, section 524.3-406, is amended to read:

12.2 **524.3-406 FORMAL TESTACY PROCEEDINGS; CONTESTED CASES;**
12.3 **TESTIMONY OF ATTESTING WITNESSES.**

12.4 (a) If evidence concerning execution of an attested will which is not self-proved is
12.5 necessary in contested cases, the testimony of at least one of the attesting witnesses, if
12.6 within the state competent and able to testify, is required. Due execution of a will may be
12.7 proved by other evidence, including an affidavit of an attesting witness. An attestation
12.8 clause that is signed by the attesting witnesses raises a rebuttable presumption that the
12.9 events recited in the clause occurred.

12.10 (b) If the will is self-proved, compliance with signature requirements for execution
12.11 is conclusively presumed and other requirements of execution are presumed subject to
12.12 rebuttal without the testimony of any witness upon filing the will and the acknowledgment
12.13 and affidavits annexed or attached thereto, unless there is proof of fraud or forgery
12.14 affecting the acknowledgment or affidavit.

12.15 Sec. 12. Minnesota Statutes 2014, section 524.3-1201, is amended to read:

12.16 **524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.**

12.17 (a) Thirty days after the death of a decedent, (i) any person indebted to the
12.18 decedent, (ii) any person having possession of tangible personal property or an instrument
12.19 evidencing a debt, obligation, stock, or chose in action belonging to the decedent, or (iii)
12.20 any safe deposit company, as defined in section 55.01, controlling the right of access to
12.21 decedent's safe deposit box shall make payment of the indebtedness or deliver the tangible
12.22 personal property or an instrument evidencing a debt, obligation, stock, or chose in
12.23 action or deliver the entire contents of the safe deposit box to a person claiming to be the
12.24 successor of the decedent, or a state or county agency with a claim authorized by section
12.25 256B.15, upon being presented a certified death record of the decedent and an affidavit
12.26 made by or on behalf of the successor stating that:

12.27 (1) the value of the entire probate estate, determined as of the date of death,
12.28 wherever located, including specifically any contents of a safe deposit box, less liens and
12.29 encumbrances, does not exceed ~~\$50,000~~ \$75,000;

12.30 (2) 30 days have elapsed since the death of the decedent or, in the event the property
12.31 to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing
12.32 of an inventory of the contents of the box pursuant to section 55.10, paragraph (h);

12.33 (3) no application or petition for the appointment of a personal representative is
12.34 pending or has been granted in any jurisdiction;

13.1 (4) if presented, by a state or county agency with a claim authorized by section
13.2 256B.15, to a financial institution with a multiple-party account in which the decedent
13.3 had an interest at the time of death, the amount of the affiant's claim and a good faith
13.4 estimate of the extent to which the decedent was the source of funds or beneficial owner
13.5 of the account; and

13.6 (5) the claiming successor is entitled to payment or delivery of the property.

13.7 (b) A transfer agent of any security shall change the registered ownership on
13.8 the books of a corporation from the decedent to the successor or successors upon the
13.9 presentation of an affidavit as provided in subsection (a).

13.10 (c) The claiming successor or state or county agency shall disburse the proceeds
13.11 collected under this section to any person with a superior claim under section 524.2-403
13.12 or 524.3-805.

13.13 (d) A motor vehicle registrar shall issue a new certificate of title in the name of the
13.14 successor upon the presentation of an affidavit as provided in subsection (a).

13.15 (e) The person controlling access to decedent's safe deposit box need not open the
13.16 box or deliver the contents of the box if:

13.17 (1) the person has received notice of a written or oral objection from any person or
13.18 has reason to believe that there would be an objection; or

13.19 (2) the lessee's key or combination is not available.

13.20 Sec. 13. Minnesota Statutes 2014, section 524.3-1203, subdivision 5, is amended to
13.21 read:

13.22 Subd. 5. **Exhaustion of estate.** In any summary, special, or other administration
13.23 in which it appears that the estate will not be exhausted in payment of the priority items
13.24 enumerated in subdivisions 1 to 4, the estate may nevertheless be summarily closed
13.25 without further notice, and the property assigned to the proper persons, if the gross probate
13.26 estate, exclusive of any exempt homestead as defined in section 524.2-402, and any
13.27 exempt property as defined in section 524.2-403, does not exceed the value of \$100,000
13.28 \$150,000. If the closing and distribution of assets is made pursuant to the terms of a
13.29 will, no decree shall issue until a hearing has been held for formal probate of the will as
13.30 provided in sections 524.3-401 to 524.3-413.

13.31 No summary closing of an estate shall be made to any distributee under this
13.32 subdivision, unless a showing is made by the personal representative or the petitioner, that
13.33 all property selected by and allowances to the spouse and children as provided in section
13.34 524.2-403 and the expenses and claims provided in section 524.3-805 have been paid,
13.35 and provided, further, that a bond shall be filed by the personal representative or the

14.1 petitioner, conditioned upon the fact that all such obligations have been paid and that all
14.2 the facts shown on the petition are true, with sufficient surety approved by the court in
14.3 an amount as may be fixed by the court to cover potential improper distributions. If a
14.4 personal representative is appointed, the representative's bond shall be sufficient for such
14.5 purpose unless an additional bond is ordered, and the sureties on the bond shall have the
14.6 same obligations and liabilities as provided for sureties on a distribution bond.

14.7 In the event that an improper distribution or disbursement is made in a summary
14.8 closing, in that not all of said obligations have been paid or that other facts as shown by
14.9 the personal representative or the petitioner, are not true, resulting in damage to any
14.10 party, the court may vacate its summary decree or closing order, and the petitioner or
14.11 the personal representative, together with the surety, shall be liable for damages to any
14.12 party determined to be injured thereby as herein provided. The personal representative,
14.13 petitioner, or the surety, may seek reimbursement for damages so paid or incurred from
14.14 any distributee or recipient of assets under summary decree or order, who shall be required
14.15 to make a contribution to cover such damages upon a pro rata basis or as may be equitable
14.16 to the extent of assets so received. The court is hereby granted complete and plenary
14.17 jurisdiction of any and all such proceedings and may enter such orders and judgments as
14.18 may be required to effectuate the purposes of this subdivision.

14.19 Any judgment rendered for damages or the recovery of assets in such proceedings
14.20 shall be upon petition and only after hearing held thereon on 14 days' notice of hearing and
14.21 a copy of petition served personally upon the personal representative and the surety and
14.22 upon any distributee or recipient of assets where applicable. Any action for the recovery
14.23 of money or damages under this subdivision is subject to the time and other limitations
14.24 imposed by section 524.1-304.

14.25 Sec. 14. Minnesota Statutes 2014, section 524.5-313, is amended to read:

14.26 **524.5-313 POWERS AND DUTIES OF GUARDIAN.**

14.27 (a) A guardian shall be subject to the control and direction of the court at all times
14.28 and in all things.

14.29 (b) The court shall grant to a guardian only those powers necessary to provide
14.30 for the demonstrated needs of the ward.

14.31 (c) The court may appoint a guardian if it determines that all the powers and duties
14.32 listed in this section are needed to provide for the needs of the incapacitated person. The
14.33 court may also appoint a guardian if it determines that a guardian is needed to provide
14.34 for the needs of the incapacitated person through the exercise of some, but not all, of the

15.1 powers and duties listed in this section. The duties and powers of a guardian or those
15.2 which the court may grant to a guardian include, but are not limited to:

15.3 (1) the power to have custody of the ward and the power to establish a place of
15.4 abode within or outside the state, except as otherwise provided in this clause. The ward or
15.5 any interested person may petition the court to prevent or to initiate a change in abode. A
15.6 ward may not be admitted to a regional treatment center by the guardian except:

15.7 (i) after a hearing under chapter 253B;

15.8 (ii) for outpatient services; or

15.9 (iii) for the purpose of receiving temporary care for a specific period of time not
15.10 to exceed 90 days in any calendar year;

15.11 (2) the duty to provide for the ward's care, comfort, and maintenance needs,
15.12 including food, clothing, shelter, health care, social and recreational requirements, and,
15.13 whenever appropriate, training, education, and habilitation or rehabilitation. The guardian
15.14 has no duty to pay for these requirements out of personal funds. Whenever possible and
15.15 appropriate, the guardian should meet these requirements through governmental benefits
15.16 or services to which the ward is entitled, rather than from the ward's estate. Failure to
15.17 satisfy the needs and requirements of this clause shall be grounds for removal of a private
15.18 guardian, but the guardian shall have no personal or monetary liability;

15.19 (3) the duty to take reasonable care of the ward's clothing, furniture, vehicles,
15.20 and other personal effects, and, if other property requires protection, the power to seek
15.21 appointment of a conservator of the estate. The guardian must give notice by mail to
15.22 interested persons prior to the disposition of the ward's clothing, furniture, vehicles, or
15.23 other personal effects. The notice must inform the person of the right to object to the
15.24 disposition of the property within ten days of the date of mailing and to petition the court
15.25 for a review of the guardian's proposed actions. Notice of the objection must be served
15.26 by mail or personal service on the guardian and the ward unless the ward is the objector.
15.27 The guardian served with notice of an objection to the disposition of the property may not
15.28 dispose of the property unless the court approves the disposition after a hearing;

15.29 (4)(i) the power to give any necessary consent to enable the ward to receive
15.30 necessary medical or other professional care, counsel, treatment, or service, except that no
15.31 guardian may give consent for psychosurgery, electroshock, sterilization, or experimental
15.32 treatment of any kind unless the procedure is first approved by order of the court as
15.33 provided in this clause. The guardian shall not consent to any medical care for the ward
15.34 which violates the known conscientious, religious, or moral belief of the ward;

15.35 (ii) a guardian who believes a procedure described in item (i) requiring prior court
15.36 approval to be necessary for the proper care of the ward, shall petition the court for an

16.1 order and, in the case of a public guardianship under chapter 252A, obtain the written
16.2 recommendation of the commissioner of human services. The court shall fix the time
16.3 and place for the hearing and shall give notice to the ward in such manner as specified
16.4 in section 524.5-308 and to interested persons. The court shall appoint an attorney to
16.5 represent the ward who is not represented by counsel, provided that such appointment
16.6 shall expire upon the expiration of the appeal time for the order issued by the court under
16.7 this section or the order dismissing a petition, or upon such other time or event as the court
16.8 may direct. In every case the court shall determine if the procedure is in the best interest
16.9 of the ward. In making its determination, the court shall consider a written medical report
16.10 which specifically considers the medical risks of the procedure, whether alternative, less
16.11 restrictive methods of treatment could be used to protect the best interest of the ward, and
16.12 any recommendation of the commissioner of human services for a public ward. The
16.13 standard of proof is that of clear and convincing evidence;

16.14 (iii) in the case of a petition for sterilization of a developmentally disabled ward, the
16.15 court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis
16.16 and treatment of developmental disability, and a social worker who is familiar with the
16.17 ward's social history and adjustment or the case manager for the ward to examine or
16.18 evaluate the ward and to provide written reports to the court. The reports shall indicate
16.19 why sterilization is being proposed, whether sterilization is necessary and is the least
16.20 intrusive method for alleviating the problem presented, and whether it is in the best
16.21 interest of the ward. The medical report shall specifically consider the medical risks of
16.22 sterilization, the consequences of not performing the sterilization, and whether alternative
16.23 methods of contraception could be used to protect the best interest of the ward;

16.24 (iv) any ward whose right to consent to a sterilization has not been restricted under
16.25 this section or section 252A.101 may be sterilized only if the ward consents in writing
16.26 or there is a sworn acknowledgment by an interested person of a nonwritten consent by
16.27 the ward. The consent must certify that the ward has received a full explanation from a
16.28 physician or registered nurse of the nature and irreversible consequences of the sterilization;

16.29 (v) a guardian or the public guardian's designee who acts within the scope of
16.30 authority conferred by letters of guardianship under section 252A.101, subdivision 7, and
16.31 according to the standards established in this chapter or in chapter 252A shall not be
16.32 civilly or criminally liable for the provision of any necessary medical care, including,
16.33 but not limited to, the administration of psychotropic medication or the implementation
16.34 of aversive and deprivation procedures to which the guardian or the public guardian's
16.35 designee has consented;

17.1 (5) in the event there is no duly appointed conservator of the ward's estate, the
 17.2 guardian shall have the power to approve or withhold approval of any contract, except for
 17.3 necessities, which the ward may make or wish to make;

17.4 (6) the duty and power to exercise supervisory authority over the ward in a manner
 17.5 which limits civil rights and restricts personal freedom only to the extent necessary to
 17.6 provide needed care and services;

17.7 (7) if there is no acting conservator of the estate for the ward, the guardian has the
 17.8 power to apply on behalf of the ward for any assistance, services, or benefits available to
 17.9 the ward through any unit of government;

17.10 (8) unless otherwise ordered by the court, the ward retains the right to vote; and

17.11 (9) if there is no conservator appointed for the protected person, the duty and power
 17.12 to institute suit on behalf of the ward and represent the ward in expungement proceedings,
 17.13 harassment proceedings, and all civil court proceedings including, but not limited to,
 17.14 restraining orders, orders for protection, name changes, conciliation court, housing court,
 17.15 family court, and juvenile court.

17.16 Sec. 15. Minnesota Statutes 2015 Supplement, section 524.5-417, is amended to read:

17.17 **524.5-417 GENERAL POWERS AND DUTIES OF CONSERVATOR.**

17.18 (a) A conservator shall be subject to the control and direction of the court at all
 17.19 times and in all things.

17.20 (b) The court shall grant to a conservator only those powers necessary to provide for
 17.21 the demonstrated needs of the protected person.

17.22 (c) The court may appoint a conservator if it determines that all the powers and
 17.23 duties listed in this section are needed to provide for the needs of the protected person.
 17.24 The court may also appoint a conservator if it determines that a conservator is necessary to
 17.25 provide for the needs of the protected person through the exercise of some, but not all,
 17.26 of the powers and duties listed in this section. The duties and powers of a conservator
 17.27 include, but are not limited to:

17.28 (1) the duty to pay the reasonable charges for the support, maintenance, and education
 17.29 of the protected person in a manner suitable to the protected person's station in life and the
 17.30 value of the estate. Nothing herein contained shall release parents from obligations imposed
 17.31 by law for the support, maintenance, and education of their children. The conservator
 17.32 has no duty to pay for these requirements out of personal funds. Wherever possible and
 17.33 appropriate, the conservator should meet these requirements through governmental
 17.34 benefits or services to which the protected person is entitled, rather than from the protected

18.1 person's estate. Failure to satisfy the needs and requirements of this section shall be
18.2 grounds for removal, but the conservator shall have no personal or monetary liability;

18.3 (2) the duty to pay out of the protected person's estate all lawful debts of the
18.4 protected person and the reasonable charges incurred for the support, maintenance, and
18.5 education of the protected person's spouse and dependent children and, upon order of the
18.6 court, pay such sum as the court may fix as reasonable for the support of any person
18.7 unable to earn a livelihood who is legally entitled to support from the protected person;

18.8 (3) the duty to possess and manage the estate; collect all debts and claims in favor
18.9 of the protected person, or, with the approval of the court, compromise them; institute
18.10 suit on behalf of the protected person and represent the protected person in ~~any court~~
18.11 proceedings, expungement proceedings, harassment proceedings, and all civil court
18.12 proceedings including, but not limited to, restraining orders, orders for protection,
18.13 name changes, conciliation court, housing court, family court, and juvenile court; and
18.14 invest all funds not currently needed for the debts and charges named in clauses (1) and
18.15 (2) and the management of the estate, in accordance with the provisions of sections
18.16 48A.07, subdivision 6, 501C.0901, and 524.5-423, or as otherwise ordered by the court.
18.17 The standard of a fiduciary shall be applicable to all investments by a conservator. A
18.18 conservator shall also have the power to purchase certain contracts of insurance as
18.19 provided in section 50.14, subdivision 14, clause (b);

18.20 (4) where a protected person has inherited an undivided interest in real estate, the
18.21 court, on a showing that it is for the best interest of the protected person, may authorize an
18.22 exchange or sale of the protected person's interest or a purchase by the protected person of
18.23 any interest other heirs may have in the real estate, subject to the procedures and notice
18.24 requirements of section 524.5-418;

18.25 (5) the power to approve or withhold approval of any contract, except for necessities,
18.26 which the protected person may make or wish to make; and

18.27 (6) the power to apply on behalf of the protected person for any assistance, services,
18.28 or benefits available to the protected person through any unit of government.

18.29 (d) The conservator shall have the power to revoke, suspend, or terminate all or any
18.30 part of a durable power of attorney of which the protected person is the principal with
18.31 the same power the principal would have if the principal were not incapacitated. If a
18.32 durable power of attorney is in effect, a decision of the conservator takes precedence
18.33 over that of an attorney-in-fact.

18.34 (e) Transaction set aside. If a protected person has made a financial transaction or
18.35 gift or entered into a contract during the two-year period before establishment of the
18.36 conservatorship, the conservator may petition for court review of the transaction, gift, or

19.1 contract. If the court finds that the protected person was incapacitated or subject to duress,
19.2 coercion, or undue influence when the transaction, gift, or contract was made, the court
19.3 may declare the transaction, gift, or contract void except as against a bona fide transferee
19.4 for value and order reimbursement or other appropriate relief. This paragraph does not
19.5 affect any other right or remedy that may be available to the protected person with respect
19.6 to the transaction, gift, or contract.

19.7 (f) After the filing of the petition, a certificate of the district court certified to that
19.8 fact may be filed for record with the Minnesota secretary of state in the same manner as
19.9 provided in section 336.9-501. The certificate shall state that a petition is pending and
19.10 the name and address of the person for whom a conservator is sought. If a conservator is
19.11 appointed on the petition, and if the conservatorship order removes or restricts the right
19.12 of the protected person to transfer property or to contract, then all contracts except for
19.13 necessities, and all transfers of personal property, tangible or intangible, including, but
19.14 not limited to, cash or securities transfers at banks, brokerage houses, or other financial
19.15 institutions, or transfers of cash or securities, made by the protected person after the filing
19.16 and before the termination of the conservatorship shall be voidable.

19.17 Sec. 16. Minnesota Statutes 2014, section 609.748, subdivision 2, is amended to read:

19.18 Subd. 2. **Restraining order; court jurisdiction.** A person who is a victim of
19.19 harassment may seek a restraining order from the district court in the manner provided in
19.20 this section. The parent, guardian, or stepparent of a minor or the guardian or conservator
19.21 of an incapacitated person who is a victim of harassment may seek a restraining order
19.22 from the district court on behalf of the minor, ward, or protected person. An application
19.23 for relief under this section may be filed in the county of residence of either party or in the
19.24 county in which the alleged harassment occurred. There are no residency requirements
19.25 that apply to a petition for a harassment restraining order.