

## PART III

## Estates of Decedents and Guardianships

## CHAPTER 525

## MINNESOTA PROBATE CODE

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### POWERS OF COURT

**525.01 PROBATE COURT; PROVISIONS.** A probate court, which shall be a court of record having a seal, is established in each county. The court shall be open for the transaction of business at the county-seat at all reasonable hours. Hearings may be had at such times and places in the county as the court may deem advisable. The necessary and reasonable traveling expenses of the judge, referee, reporter, clerks, and employees in attending hearings in places other than the county-seat shall be paid by the county.

[1935 c. 72 s. 1] (8992-1)

**525.02 POWERS.** In addition to its general powers, the probate court shall have power:

- (1) To examine witnesses on oath, to compel their attendance, and to preserve order during any proceedings before it;
- (2) To issue citations, subpoenas, and attachments, to make orders, judgments, and decrees, to issue executions, warrants, or processes to enforce them, and to authorize the taking of depositions of witnesses either within or without the state in any matter pending in such court; provided, that in any contested matter notice of the taking of the deposition shall be given as provided by law;
- (3) To adjourn any hearing with or without terms, provided that when objection is made the adjournment shall be only for cause shown by affidavit or otherwise;
- (4) To correct, modify, or amend its records to conform to the facts, and to correct its final decrees so as to include therein property omitted from the same or from administration;
- (5) To order any representative to surrender and deliver property to his successor or to distribute it;
- (6) To punish for contempt, including contempt committed in proceedings before the referee, clerk, or auditor.

[1935 c. 72 s. 2] (8992-2)

**525.03 BOOKS OF RECORD.** The court shall keep the following books of record:

(1) An index in which files pertaining to estates of deceased persons shall be indexed under the name of the decedent, those pertaining to guardianships under the name of the ward, those pertaining to an insane, inebriate, feeble-minded, or epileptic person under the name of such person, those pertaining to wills deposited pursuant to section 525.22, under the name of the testator; after the name of each file shall be shown the file number and, if ordered by the court, the book and page of the register in which the documents pertaining to such file are listed, and the date of the filing of the first document;

(2) A register, properly indexed, in which shall be listed under the name of the decedent, ward, insane, inebriate, feeble-minded, or epileptic person, or testator, all documents filed pertaining thereto and in the order filed; such list shall show the name of the document, the date of the filing thereof, and shall give a reference to the volume and page of any other book in which any record shall have been made of such document;

(3) A record of wills, properly indexed, in which shall be recorded all wills admitted to probate with the certificate of probate thereof;

(4) A record of bonds, properly indexed, in which shall be recorded all bonds filed; provided, that bonds not in excess of \$250.00 may be entered instead of recorded; when a bond is entered and not recorded, the entry shall show the name of the estate, guardianship, or other proceedings, the name of the principal, the name and address of each surety, the amount, and the date of approval;

(5) A record of letters, properly indexed, in which shall be entered all letters testamentary, of administration, and of guardianship issued;

(6) A record of claims, properly indexed, in which shall be entered under the title of the estate all claims filed against such estate and all offsets thereto. It shall show the number of the claim, the date of filing, the name of the claimant, the amount of the claim, the date of adjudication, the amounts allowed and disallowed, and the final balance;

(7) A record of orders, properly indexed, in which shall be recorded all orders, judgments, and decrees, except orders allowing or disallowing claims and non-appealable orders.

[1935 c. 72 s. 3; 1937 c. 435 ss. 1, 2] (8992-3)

**525.031 COPIES.** The court shall furnish a return on appeal or a certified, exemplified, or authenticated copy of any paper on file or of record upon payment therefor at the rate of ten cents per folio, and 25 cents for each certificate.

[1935 c. 72 s. 4] (8992-4)

## PERSONNEL

**525.04 ELECTION OF PROBATE JUDGE; BOND.** There shall be elected in each county a probate judge who before he enters upon the duties of his office shall execute a bond to the state in the amount of \$1,000, approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with his oath shall be recorded in the office of the register of deeds and filed in the office of the secretary of state after approval as to form by the attorney general. The premiums on such bond and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof.

[1935 c. 72 s. 5; 1937 c. 435 s. 3] (8992-5)

**525.041 WRITTEN DECISION SHALL BE FILED WITHIN 90 DAYS; MANDATORY.** The decision of every issue of law or fact shall be in writing and shall be filed within 90 days after submission unless prevented by illness or casualty. This provision shall be construed as mandatory, and the county auditor shall not sign or issue a warrant for the salary of the judge, or any instalment thereof, unless the voucher for such warrant is accompanied by an affidavit of the judge that all matters submitted to him for decision 90 days or more prior to the filing of such affidavit have been decided as herein required, unless a decision has been prevented by illness or casualty in which case the reasons for delay shall be specifically stated.

Upon the filing of any appealable order, judgment, or decree, except in uncontested matters or where the final decision was announced at the hearing, the

court shall give notice by mail of such filing to each party, or his attorney, who appeared of record at the hearing.

[1935 c. 72 s. 6] (8992-6)

**525.05 JUDGE OR REFEREE; GROUNDS FOR DISQUALIFICATION.** The following shall be grounds for disqualification of any judge or referee from acting in any matter: (1) that he or his wife or any of his or her kin nearer than first cousin shall be interested as representative, heir, devisee, legatee, ward, or creditor in the estate involved therein; (2) that it involves the validity or interpretation of a will drawn or witnessed by him; (3) that he may be a necessary witness in such matter; (4) that it involves a property right in respect to which he has been engaged or is engaged as an attorney, or (5) that he was engaged in a joint enterprise for profit with the decedent at the time of death or that he is then engaged in a joint enterprise for profit with any person interested in such matter as representative, heir, devisee, legatee, ward, or creditor. When grounds for disqualification exist, the judge may, and upon proper petition of any person interested in the estate must, request the probate judge of another county to act in his stead in such matter.

[1935 c. 72 s. 7] (8992-7)

**525.051 SUBSTITUTION OF JUDGES.** When the disqualification, absence, or illness of the resident judge exists, or when in his opinion the interest of the public or of any person interested in any matter requires that the probate judge of another county act in the stead of the resident judge, any other judge may act upon the request of the resident judge, or in the event of his incapacity, upon the request of the presiding judge of the district court in the county wherein such matter is pending. Any order, judgment, decree, or other writing signed by such acting judge shall have the same force and effect as if signed by the resident judge. The reasonable and necessary expenses of the acting judge shall be paid by the county in which he is called to act.

[1935 c. 72 s. 8] (8992-8)

**525.052 INSANITY OF JUDGE.** When a verified petition of five voters of any county is presented to a judge of the district court stating that the probate judge of such county is insane and incapacitated to act by reason of mental disability, such district judge shall examine into such alleged insanity or mental disability in the manner provided by law for examinations of insane persons by probate judges. If, upon the examination, such probate judge is found to be insane or incapacitated to act by reason of mental disability, the district judge shall certify such findings to the governor, who shall thereupon declare the office of such probate judge vacant and fill the same by appointment.

[1935 c. 72 s. 9] (8992-9)

**525.053 DELIVERY TO SUCCESSOR.** When the term of office of any judge expires, he shall deliver to his successor all books, records, and papers in his possession relating to his office. Upon his failure to do so within five days after demand by his successor, he shall be guilty of a gross misdemeanor.

[1935 c. 72 s. 10] (8992-10)

**525.06 ANNUAL ASSEMBLAGE; RULES.** The judges of the probate courts shall assemble at the capitol on the second Wednesday after January 1st of each year at ten o'clock in the forenoon or at such other place and time as may have been designated at the preceding assemblage, and any 20 of them shall constitute a quorum. When so assembled such judges shall formulate and adopt rules and make such revision and amendment thereof as they may deem expedient conformably to law, and the same shall take effect from and after the publication thereof as directed by them. Such rules shall govern all the probate courts of this state, but, in furtherance of justice, the court may relax or modify them or relieve a party from the effect thereof on such terms as may be just. The reasonable expenses of the judges attending such meetings shall be paid by their respective counties.

[1935 c. 72 s. 11] (8992-11)

**525.07 ACTING AS COUNSEL PROHIBITED.** No judge, referee, clerk, deputy clerk, or employee of any probate court, or the law partner of any of them, shall be counsel or attorney in any action or proceedings for or against any devisee, legatee, heir, creditor, representative, or ward over whom, or whose estate, claim, or accounts such court has jurisdiction. Except in matters relating to commitments, none of them shall give counsel or advice, or draw or prepare any paper relating

to any matter which is or may be brought before such court, except orders, judgments, decrees, executions, warrants, certificates, or subpoenas issuing out of such court. No judge, referee, or clerk shall keep or hold his official office with any practicing attorney.

[1935 c. 72 s. 12] (8992-12)

**525.08 SALARIES.** The salaries of the judges, referees, clerks, reporters, and employees shall be as provided by law, but the salaries of the clerks and employees shall be fixed by the judge within the limits provided by law, notwithstanding the provisions of Laws 1935, Chapter 72, Section 196.

[1935 c. 72 s. 13] (8992-13)

**525.09 CLERKS; APPOINTMENT; POWERS.** The judge may appoint a clerk, deputy clerks, and employees as provided by law, to hold office during his pleasure, who shall perform the duties imposed by law and such judge. Such appointments shall be in writing and filed in such court. Before entering upon the duties of his office, each clerk and deputy clerk and, if ordered by the court, any employee shall execute a bond to the state in the amount of \$1,000 approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the register of deeds and filed in the office of the secretary of state after approval as to form by the attorney general. The premiums on such bonds and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. A clerk or deputy clerk may take acknowledgments, administer oaths, authenticate, exemplify, or certify copies of instruments, documents, or records of the court, and when so ordered may hear and report to the court the testimony of any witnesses and the interrogatories and objections of counsel.

[1935 c. 72 s. 14; 1937 c. 435 s. 4] (8992-14)

**525.095 CLERK MAY ISSUE ORDERS UNDER DIRECTION OF THE COURT.** The judge may authorize the clerk or any deputy clerk to issue orders for hearing petitions for general administration, for the probate of any will, for determination of descent, for sale, lease, mortgage, or conveyance of real estate, for the settlement and allowance of any account, for partial or final distribution, for commitment, orders limiting the time to file claims and fixing the time and place for the hearing thereon, and to issue notice of the entry of any order. The issuance of any such order or notice by the clerk or deputy clerk shall be prima facie evidence of his authority to issue it.

[1935 c. 72 s. 15; 1937 c. 435 s. 5] (8992-15)

**525.10 REFEREE; APPOINTMENT; BOND.** The judge of the probate court of any county in this state now or hereafter having a population of not less than 400,000 may appoint one referee in probate who shall be a resident of such county and an attorney at law duly admitted in this state. He shall hold office during the pleasure of the judge appointing him. Such appointment shall be in writing and filed in such court. Before entering upon the duties of his office, he shall execute a bond to the state in the amount of \$1,000 approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the register of deeds and filed in the office of the secretary of state after approval as to form by the attorney general. The premiums on such bond and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof.

[1935 c. 72 s. 16; 1937 c. 435 s. 6] (8992-16)

**525.101 COMPENSATION OF REFEREE.** Such referee shall receive from the county as compensation for his services a salary of \$3,600 per annum payable from the general funds of the county not otherwise appropriated, at the same time and in the same manner and subject to the provisions of law applicable to the compensation of the judge. The county shall furnish him with a suitable office in the court-house or in some other suitable place or places designated by the judge. The judge may assign to the referee from the court's clerks and employees such clerical help as may be necessary to enable him properly to discharge his duties.

[1935 c. 72 s. 17] (8992-17)

**525.102 REFERENCE.** After such appointment the judge by order may refer to the referee any matter, cause, or proceeding pending in such court. In all matters so referred the referee shall find the facts and report the findings to the

judge. In all matters referred and reported the referee may append his signature to the order or decree of the court; and whenever his signature shall be so appended, it shall constitute conclusive evidence that the matter was referred, heard, and reported in the manner required by law and the order of the court therein, provided that the failure of the referee to append his signature to any such order or decree shall not affect its validity.

[1935 c. 72 s. 18] (8992-18)

**525.103 DELIVERY OF BOOKS AND RECORDS.** When the term of office of such referee expires or is terminated, he shall deliver to his successor or to the judge all books and papers in his possession relating to his office. Upon his failure to do so within five days after demand by his successor or the judge, he shall be guilty of a gross misdemeanor.

[1935 c. 72 s. 19] (8992-19)

**525.11 REPORTER; APPOINTMENT AND DUTIES.** The judge may appoint a competent stenographer as reporter and secretary in all matters pertaining to his official duties to hold office during his pleasure. Such reporter shall make a complete record of all testimony given and all proceedings had before the court upon the trial of issue of fact except in commitment proceedings. He shall inscribe all questions in the exact language thereof, all answers thereto precisely as given by the witness or sworn interpreter, all objections made and the grounds thereof as stated by counsel, all rulings thereon, all exceptions taken, all admissions made, all oral stipulations, and all oral motions and orders. When directed by the judge, he shall make a record of any matter or proceeding and without charge shall read to or transcribe for such judge any record made by him. Upon completion of every trial or proceeding, such reporter shall file his stenographic record in the manner directed by the judge. Upon request of any person and payment of his fees by such person, he shall furnish a transcript. The reporter may take acknowledgments, administer oaths, and certify copies of his stenographic record or transcript thereof.

[1935 c. 72 s. 20] (8992-20)

**525.111 COMPENSATION; TRANSCRIPT FEES.** Where the salary of the reporter is not provided for by law, his compensation shall be paid by the representative as an expense of administration or guardianship, or by the party or parties presenting or contesting the proceedings reported, as the court may determine. In addition to the salary fixed by law or compensation fixed by the court, the reporter shall receive for transcripts furnished such fees as may be fixed by the court not exceeding those allowed by law to the district court reporters of the same county.

[1935 c. 72 s. 21] (8992-21)

**525.112 COURT REPORTERS FOR PROBATE COURT, HENNEPIN COUNTY.** The judge of probate of any county now having or which may hereafter have 400,000 inhabitants, or over, may appoint a competent stenographer as court reporter and secretary, who shall be paid a salary of \$3,000 per annum; and, in addition to this salary, the court reporter may also be paid such fees for transcripts of evidence made in relation to probate hearings, as the judge of probate shall fix and allow, and appoint two additional clerks who shall be competent stenographers, who shall each be paid a salary of \$1,200 per annum.

[1935 c. 373 s. 1; 1941 c. 179] (8992-21a)

**525.113 TO BE ADDITIONAL EMPLOYEE.** The reporter and clerk mentioned in section 525.112 shall be employed and appointed in addition to the clerk, deputy clerks, and employees now provided by law, to hold office during the pleasure of the judge of probate and shall perform the duties imposed by law and such judge, and their salary shall be paid from the county funds in the same manner as prescribed for the payment of other employees of such court.

[1935 c. 373 s. 2] (8992-21b)

**525.12 AUDITOR; APPOINTMENT.** The court may appoint an auditor in any matter involving an annual, partial, or final account, or the amount due on a claim or an offset thereto. Such appointment may be made with or without notice and on the court's own motion or upon the petition of the representative or of any person interested in the estate or guardianship.

[1935 c. 72 s. 22] (8992-22)

**525.121 POWERS.** The auditor shall have the same power as the court to set hearings, grant adjournments, compel the attendance of witnesses or the production

of books, papers, and documents, and to hear all proper evidence relating to such matter. He shall report his findings of fact to the court.

[1935 c. 72 s. 22] (8992-23)

**525.122 COMPENSATION OF AUDITOR.** The auditor shall be allowed such reasonable fees, disbursements, and expenses as may be determined by the court and shall be paid by the representative as expenses of administration or guardianship or by the person applying for such audit as the court may determine.

[1935 c. 72 s. 24] (8992-24)

## INTESTATE SUCCESSION

**525.13 ESTATE.** As used in sections 525.13 to 525.173, the word "estate" includes every right and interest of a decedent in property, real or personal, except such as are terminated or otherwise extinguished by his death.

[1935 c. 72 s. 25] (8992-25)

**525.14 DESCENT OF CEMETERY LOT.** Subject to the right of interment of the decedent therein, a cemetery lot or burial plot, unless disposed of as provided in section 306.29, shall descend free of all debts as follows:

(1) To his surviving spouse, a life estate with right of interment of such spouse therein, and remainder over to the person or association who would be entitled to the fee if there were no spouse;

(2) If there be no surviving spouse, then to his eldest surviving son;

(3) If there be no surviving son, then to his eldest surviving daughter;

(4) If there be no surviving daughter, then to his youngest surviving brother;

(5) If there be no surviving brother, then to his youngest surviving sister;

(6) If there be no surviving spouse, son, daughter, brother, nor sister of the decedent, then to the cemetery association or private cemetery in trust as a burial lot for the decedent and such of his relatives as the governing body thereof shall deem proper.

Such cemetery association or private cemetery, or, with its consent, any person to whom such lot shall so descend may grant and convey the same to any of the decedent's parents, brothers, sisters, or descendants.

A crypt or group of crypts or burial vaults owned by one person in a public or community mausoleum shall be deemed a cemetery lot.

Grave markers, monuments, memorials, and all structures lawfully installed or erected on any cemetery lot or burial plot shall be deemed to be a part of and shall descend with such lot or plot.

[1935 c. 72 s. 26] (8992-26)

**525.145 DESCENT OF HOMESTEAD.** Where there is a surviving spouse the homestead shall descend free from any testamentary or other disposition thereof to which such spouse has not consented in writing or by election to take under the will as provided by law, as follows:

(1) If there be no surviving child or issue of any deceased child, to the spouse;

(2) If there be children or issue of deceased children surviving, then to the spouse for the term of his natural life and the remainder in equal shares to such children and the issue of deceased children by right of representation.

Where there is no surviving spouse and the homestead has not been disposed of by will it shall descend as other real estate.

Where the homestead is disposed of by a will which does not otherwise provide and in all cases where the homestead descends to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death; in all other cases it shall be subject to the payment of the items mentioned in section 525.16. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce such lien or charge by an appropriate action in the district court.

[1935 c. 72 s. 27; 1937 c. 435 s. 7] (8992-27)

**525.15 ALLOWANCES TO SPOUSE.** When any person dies, testate or intestate,

(1) The surviving spouse shall be allowed from the personal property of which the decedent was possessed or to which he was entitled at the time of his death, the wearing apparel, and, as selected by him, furniture and household goods not exceeding \$500.00 in value, and other personal property not exceeding \$500.00 in value;

(2) If there be no surviving spouse, the minor children shall receive the property specified in clause (1) hereof as selected in their behalf;

(3) During administration, but not exceeding 18 months, unless an extension shall have been granted by the court, or, if the estate be insolvent, not exceeding 12 months, the spouse or children, or both, constituting the family of the decedent shall be allowed such reasonable maintenance as the court may determine;

(4) In the administration of an estate of a non-resident decedent, the allowances received in the domiciliary administration shall be deducted from the allowances under this section.

[1935 c. 72 s. 28] (8992-28)

**525.16 DESCENT OF PROPERTY.** Except as provided in sections 525.14 and 525.145, and subject to the allowances provided in section 525.15, and the payment of the expenses of administration, funeral expenses, expenses of last illness, taxes, and debts, the estate, real and personal, shall descend and be distributed as follows:

(1) Personal property: To the surviving spouse one-third thereof free from any testamentary disposition thereof to which such survivor shall not have consented in writing or by election to take under the will as provided by law;

(2) Real property: To the surviving spouse an undivided one-third of all real property of which the decedent at any time while married to such spouse as seized or possessed, to the disposition whereof by will or otherwise such survivor shall not have consented in writing or by election to take under the will as provided by law, except such as has been transferred or sold by judicial partition proceedings or appropriated to the payment of the decedent's debts by execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens;

(3) If a spouse and only one child or the issue of a deceased child survive, the share of the spouse under the provisions of clauses (1) and (2) hereof shall be one-half instead of one-third;

(4) Subject to the preceding provisions of this section, the whole estate, real and personal, except as otherwise disposed of by will shall descend and be distributed as follows:

(a) In equal shares to the surviving children and to the issue of deceased children by right of representation;

(b) If there be no surviving child nor issue of any deceased child, and if the intestate leave a surviving spouse, then to such spouse;

(c) If there be no surviving issue nor spouse, then to the father and mother in equal shares, or if but one survive, then to such survivor;

(d) If there be no surviving issue, spouse, father nor mother, then to the surviving brothers and sisters, if any, and to the issue of any deceased brother or sister in equal shares if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree;

(e) If there be no surviving issue, spouse, father, mother, brother, sister, nor issue of any deceased brother or sister, then in equal shares to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

(5) If a minor die leaving no spouse nor issue surviving, all of his estate that came to him by inheritance or will from his parent shall descend and be distributed to the other children of the same parent, if any, and to the issue of any deceased child of such parent in equal shares if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree; failing all such, it shall descend and be distributed by intestate succession as in other cases;

(6) If the intestate leave no spouse nor kindred, the estate shall escheat to the state.

[1935 c. 72 s. 29; 1937 c. 435 s. 8; 1939 c. 270 ss. 1, 2, 3] (8992-29)

**525.17 DEGREE OF KINDRED.** The degree of kindred shall be computed according to the rules of the civil law. Kindred of the half blood shall inherit equally with those of the whole blood in the same degree unless the inheritance comes to the intestate by descent, devise, or bequest from one of his ancestors, in which case



all those who are not of the blood of such ancestor shall be excluded from such inheritance.

[1935 c. 72 s. 30] (8992-30)

**525.171 POSTHUMOUS CHILD.** A posthumous child shall be considered as living at the death of its parent.

[1935 c. 72 s. 31] (8992-31)

**525.172 ILLEGITIMATE AS HEIR.** An illegitimate child shall inherit from his mother the same as if born in lawful wedlock, and also from the person who in writing and before a competent attesting witness shall have declared himself to be his father; but such child shall not inherit from the kindred of either parent by right of representation.

[1935 c. 72 s. 32] (8992-32)

**525.173 HEIRS TO ILLEGITIMATE.** If any illegitimate child dies intestate and without spouse or issue who inherit under the law, his estate shall descend to his mother, or in case of her prior decease to her heirs other than such child.

[1935 c. 72 s. 33] (8992-33)

## WILLS

**525.18 EXECUTION OF WILL.** Every person of sound mind, not a minor, may dispose of his estate, or any part thereof, or any right or interest therein, by his last will in writing, signed by him or by some person in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses.

[1935 c. 72 s. 34] (8992-34)

**525.181 COMPETENCY OF WITNESSES.** If a witness to a will is competent at the time of his attestation, his subsequent incompetency shall not prevent the admission to probate of such will, nor shall a mere charge on the real estate of the testator for the payment of his debts prevent a creditor from being a competent witness to his will.

[1935 c. 72 s. 35] (8992-35)

**525.182 NUNCUPATIVE WILLS.** Nuncupative wills shall not be valid unless made by a soldier in actual service or by a mariner at sea, and then only as to personal estate. To entitle such a will to probate, the testamentary words, or the substance thereof, must be reduced to writing within 30 days after they were spoken; the petition for probate must be filed within six months after they were spoken. In addition to the facts otherwise required, the petition shall allege the date, before whom the same were spoken, and by whom the same were reduced to writing. Such writing shall accompany the petition. No such will shall be admitted to probate except upon testimony of at least two credible and disinterested witnesses.

[1935 c. 72 s. 36] (8992-36)

**525.183 WILLS MADE ELSEWHERE.** A will made out of this state may be admitted to probate if executed according to the laws of this state, or if in writing, signed by the testator and valid according to the laws of the state or country in which it was made or of the testator's domicile.

[1935 c. 72 s. 37] (8992-37)

**525.184 BENEFICIARY A WITNESS.** A beneficial devise or bequest made in a will to a subscribing witness thereto shall be void unless there be two other competent subscribing witnesses who are not beneficiaries thereunder. If such witness would have been entitled to any share of the testator's estate in the absence of a will, then so much of such share as will not exceed the value of the devise or bequest shall be assigned to him from the part of the estate included in the void devise or bequest.

[1935 c. 72 s. 38] (8992-38)

**525.19 REVOCATION OF WILL.** No will in writing shall be revoked or altered otherwise than by some other will in writing; or by some other writing of the testator declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or by another person in his presence by his direction and consent. When so done by another person, the direction and consent of the testator and the facts of such injury or destruction

shall be proved by at least two witnesses. Nothing in this section shall prevent the revocation implied by law from subsequent change in the condition or circumstances of the testator.

[1935 c. 72 s. 39] (8992-39)

**525.191 REVOCATION BY MARRIAGE OR DIVORCE.** If after making a will testator marries, the will is thereby revoked. If after making a will the testator is divorced, all provisions in such will in favor of the testator's spouse so divorced are thereby revoked.

[1935 c. 72 s. 40] (8992-40)

**525.20 AFTER-BORN CHILD.** If any child of the testator, including a posthumous child, born after the making of a will has no provision made for him by the testator by will or otherwise, he shall take the same share that he would have taken if the testator had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake.

[1935 c. 72 s. 41] (8992-41)

**525.201 OMITTED CHILD.** If a testator omits to provide in his will for any of his children or the issue of a deceased child, they shall take the same share of his estate which they would have taken if he had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake.

[1935 c. 72 s. 42] (8992-42)

**525.202 APPORTIONMENT.** If the person takes a portion of a testator's estate under the provisions of section 525.20 or 525.21, such portion shall first be taken from the estate not disposed of by the will; if that be insufficient, so much as is necessary shall be taken from all the devisees and legatees in proportion to the value of what they respectively receive under such will. If the obvious intention of the testator in relation to some specific devise, bequest, or other provision of the will would thereby be defeated, then such specific devise, bequest, or provision may be exempted from such apportionment, and a different apportionment adopted in the discretion of the court.

[1935 c. 72 s. 43] (8992-43)

**525.203 DECEASED BENEFICIARY.** If a devise or bequest be made to a child or other blood relative of the testator who dies before the testator leaving issue who survive the testator, such issue shall take the same estate which such devisee or legatee would have taken if he had survived, unless a different disposition be made or required by the will.

[1935 c. 72 s. 44] (8992-44)

**525.21 QUANTITY OF ESTATE DEVISED.** Every devise of real estate shall convey all the estate of the testator therein subject to liens and encumbrances thereon unless a different intention appears from the will.

[1935 c. 72 s. 45] (8992-45)

**525.211 AFTER-ACQUIRED PROPERTY.** All property acquired by the testator after making his will shall pass thereby in like manner as if possessed by him at the time when he made his will, unless a different intention clearly appears from the will.

[1935 c. 72 s. 46] (8992-46)

**525.212 RENUNCIATION AND ELECTION.** If a will make provision for a surviving spouse in lieu of the rights in the estate secured by statute, such spouse shall be deemed to have elected to take under the will, unless he shall have filed an instrument in writing renouncing and refusing to accept the provisions of such will within six months after the filing of the certificate of probate. For good cause shown, the court may permit an election within such further time as the court may determine. No devise or bequest to a surviving spouse shall be considered as adding to the rights in the estate secured by sections 525.145 and 525.16 to such spouse, unless it clearly appears from the contents of the will that such was the testator's intent.

[1935 c. 72 s. 47] (8992-47)

**525.22 DEPOSIT OF WILLS.** A will in writing enclosed in a sealed wrapper upon which is endorsed the name and address of the testator, the day when, and the person by whom it is delivered, may be deposited in the probate court of the county where the testator resides. The court shall give a certificate of its deposit and shall retain such will. During the testator's lifetime, such will shall be delivered only to him or upon his written order witnessed by at least two subscribing witnesses and duly acknowledged. After the testator's death, the court shall open the will

publicly and retain the same. Notice shall be given to the executor named therein and to such other persons as the court may designate. If the proper venue is in another court, the will shall be transmitted to such court; but before such transmission a true copy thereof shall be made by and retained in the court in which the will was deposited.

[1935 c. 72 s. 48] (8992-48)

**525.221 DUTY OF CUSTODIAN.** After the death of a testator, the person having custody of his will shall deliver it to the court which has jurisdiction thereof. Every person who neglects to deliver a will after being duly ordered to do so shall be guilty of contempt of court.

[1935 c. 72 s. 49] (8992-49)

**525.222 PROBATE ESSENTIAL.** No will shall be effectual to pass either real or personal estate unless duly admitted to probate. Such probate shall be conclusive as to the due execution of a will.

[1935 c. 72 s. 50] (8992-50)

## PROBATE OF WILLS

**525.23 PETITION FOR PROBATE.** At any time after the death of the testator, any executor, devisee, or legatee named in a will, or any other person interested in the estate may petition the court of the proper county to have the will admitted to probate, whether the same is in his possession or not, is lost, is destroyed, or is without the state.

[1935 c. 72 s. 51] (8992-51)

**525.231 CONTENTS OF PETITION.** Every petition for the probate of a will shall show:

- (1) The jurisdictional facts;
- (2) The names, ages, and addresses of the heirs, legatees, and devisees of the decedent so far as known to the petitioner;
- (3) The probable value and general character of the real and personal property, and the probable amount of the debts;
- (4) The name and address, if known, of the person named as executor, and the name and address of the person for whom letters are prayed.

[1935 c. 72 s. 52] (8992-52)

**525.24 HEARING AND PROOF.** Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 525.83. If probate is not contested, the court may admit the will on the testimony of one of the subscribing witnesses; but, if contested, all the subscribing witnesses who are within the state and competent and able to testify shall be produced and examined. If the instrument is not allowed as the last will and if the estate should be administered, the court shall grant administration to the person or persons entitled thereto.

[1935 c. 72 s. 53] (8992-53)

**525.241 OBJECTIONS.** No person may contest the validity of a will unless the grounds of objection thereto are stated in writing and filed at or before the time of the hearing.

[1935 c. 72 s. 54] (8992-54)

**525.242 SECONDARY EVIDENCE.** If no subscribing witness competent to testify resides in the state at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the capacity of the testator and the execution of the will, and as evidence of such execution may admit proof of the handwriting of the testator and of the subscribing witnesses.

[1935 c. 72 s. 55] (8992-55)

**525.243 CERTIFICATE OF PROBATE.** When proved as herein provided, every will shall have endorsed thereon or annexed thereto a certificate by the court of such proof. Every will so certified and the record thereof, or a duly certified transcript of such record may be read in evidence in all the courts within this state without further proof.

[1935 c. 72 s. 56] (8992-56)

**525.244 WILL IN OPPOSITION.** If, after a petition for the probate of a will has been filed, another instrument in writing purporting to be the last will or codicil shall be presented, proceedings shall be had for the probate thereof, and thereupon the hearing on the petition theretofore filed shall be adjourned to the

time fixed for the hearing of the subsequent petition. At such time proof shall be had upon all of such wills, codicils, and all matters pertaining thereto, and the court shall determine which of such instruments, if any, should be allowed as the last will.

[1935 c. 72 s. 57] (8992-57)

**525.25 APPOINTMENT OF REPRESENTATIVE.** Upon the admission of the will to probate, the court shall appoint a representative and fix the amount of his bond as required by law. If any executor named in the will is found by the court to be suitable and competent to discharge the trust, he shall be appointed. If no executor was named in the will, or if no named executor is found by the court to be willing, suitable, and competent, the court shall appoint the person entitled to administration in case of intestacy as administrator with the will annexed. If any person appointed does not qualify within 20 days, the court may vacate his appointment and grant letters to the other executors. Upon the filing of the oath, acceptance and bond as required by law, letters shall issue.

[1935 c. 72 s. 58] (8992-58)

**525.251 NAMED EXECUTOR A MINOR.** When a person named as executor is a minor at the time of the admission of the will to probate, any other representative appointed and qualifying may administer the estate. When the minor attains majority, he may be appointed corepresentative.

[1935 c. 72 s. 59] (8992-59)

**525.252 EXECUTOR OF EXECUTOR SHALL NOT ADMINISTER.** The executor of an executor shall not administer as such executor on the estate of the first testator.

[1935 c. 72 s. 60] (8992-60)

## LOST AND DESTROYED WILLS

**525.26 PETITION AND HEARING.** The petition for the probate of a lost or destroyed will, or one which is without the state and cannot be produced in court shall set forth the provisions of the will in addition to the requirements of section 525.231. Such provisions in such particularity as the court may direct shall be embodied in the notice of hearing, which notice shall be given pursuant to section 525.83.

[1935 c. 72 s. 61] (8992-61)

**525.261 SUFFICIENCY OF PROOF.** No such will shall be established unless it is proved to have remained unrevoked nor unless its provisions are clearly and distinctly proved.

[1935 c. 72 s. 62; 1937 c. 435 s. 9] (8992-62)

**525.262 CERTIFICATION.** When such will is established, the provisions thereof shall be distinctly stated and certified by the court and filed and recorded. Letters shall issue thereon as in the case of other wills.

[1935 c. 72 s. 63] (8992-63)

## ESTATES OF NON-RESIDENTS

**525.27 WILLS PROVED ELSEWHERE.** Any will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved, may be filed and allowed in any county in which the testator left property upon which such will may operate.

[1935 c. 72 s. 64] (8992-64)

**525.271 ALLOWANCE.** Upon the filing of a duly authenticated copy of such will and of the order, judgment, or decree admitting it to probate, with the petition of the executor or any person interested in the estate for its allowance and for letters, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 525.83. If such will was admitted to probate by a court of competent jurisdiction and if the order, judgment, or decree of admission to probate is still in force, the court shall allow the will and appoint a representative as if the will were originally proved and allowed in such court.

[1935 c. 72 s. 65] (8992-65)

**525.272 ADMINISTRATION.** The estate of a non-resident decedent shall be administered in the same manner as an estate of a resident decedent. Upon the

payment of the expenses of administration, of the debts and other items here proved, and of the inheritance taxes, the residue of the personalty shall be distributed according to the terms of the will applicable thereto; or if the terms of the will be not applicable thereto, or if there be no will, it shall be distributed according to the law of the decedent's domicile; or the court may direct that it be transmitted to the domiciliary representative to be disposed of by him. The real estate not sold in the course of administration shall be assigned according to the terms of the will applicable thereto, or if the terms of the will be not applicable thereto, or if there be no will, it shall descend according to the laws of this state.

[1935 c. 72 s. 66] (8992-66)

**525.273 FOREIGN REPRESENTATIVE.** Upon the filing for record in the office of the register of deeds of the proper county of an authenticated copy of his letters or other record of his authority and a certificate that the same are still in force, a representative appointed by a court of competent jurisdiction in another state or country may assign, extend, release, satisfy, or foreclose any mortgage, judgment, or lien, or collect any debt secured thereby belonging to the estate represented by him. Real estate acquired by a foreign representative on foreclosure or execution sale shall be held, sold, mortgaged, or leased pursuant to section 525.38.

[1935 c. 72 s. 67; 1937 c. 435 s. 10] (8992-67)

### GENERAL ADMINISTRATION.

**525.28 PERSONS ENTITLED.** General administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, suitable and competent to discharge the trust, and in the following order:

The surviving spouse or next of kin or both, as the court may determine, or some person or persons selected by them or any of them.

If all such persons are incompetent or unsuitable or do not accept, or if the surviving spouse or next of kin do not file a petition therefor within 30 days after the death of the intestate, administration may be granted to one or more of the creditors, or to the nominee or nominees of such creditor or creditors. If the decedent was born in any foreign country or left heirs in any foreign country, and the surviving spouse or next of kin do not file a petition therefor within 30 days after his death, administration may be granted to the consul or other representative of such country, if he resides in this state and has filed a copy of his appointment with the secretary of state, or to the nominee or nominees of such consul or representative.

When the court determines that it is for the best interest of the estate and all persons interested therein, administration may be granted to any other person suitable and competent to discharge the trust whether interested in the estate or not.

If the person appointed does not file the required oath, acceptance, and bond within ten days after notice of such appointment, served in such manner as the court may direct, the court, with or without notice, may vacate the appointment and appoint such other person or persons as may be entitled to administer such estate.

[1935 c. 72 s. 68] (8992-68)

**525.281 CONTENTS OF PETITION.** Every petition for general administration shall show:

- (1) The jurisdictional facts;
- (2) The names, ages, and addresses of the heirs so far as known to the petitioner;
- (3) The probable value and general character of the real and personal property and the probable amount of the debts;
- (4) The name and address of the person for whom administration is prayed.

[1935 c. 72 s. 69] (8992-69)

**525.282 HEARING.** Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 525.83. Any person interested in the estate may contest the petition or oppose the appointment of the person for whom letters are prayed by filing written objections stating the ground thereof, at or before the time of the hearing. Upon proof of the petition, the court shall appoint an administrator and fix the amount

of his bond as required by law. Upon the filing of the oath, acceptance, and bond as required by law, letters shall issue.

[1935 c. 72 s. 70] (8992-70)

**525.29 SUBSEQUENT ADMISSION OF WILL.** If, after the appointment of a general administrator, a will is admitted to probate, the powers of such administrator shall cease, and he shall proceed to a final accounting according to law. The new representative shall continue the administration.

[1935 c. 72 s. 71] (8992-71)

**525.291 ADMINISTRATOR D.B.N.** If the sole or surviving representative dies or his authority is otherwise terminated before the estate is fully administered, the court with or without notice shall appoint a successor to administer the estate not already administered. Such successor shall have the same powers and duties as his predecessor.

[1935 c. 72 s. 72] (8992-72)

**525.292 ADMINISTRATOR C.T.A.** Where a will is admitted to probate and a representative other than the person named therein as executor has been appointed and has qualified, such representative shall have all the powers and perform all the duties of an executor including the power to sell, convey, mortgage, and lease real estate where the executor is empowered to do so by the terms of the will.

[1935 c. 72 s. 73] (8992-73)

## SPECIAL ADMINISTRATION

**525.30 APPOINTMENT.** Upon a showing of necessity or expediency, the court with or without notice may appoint a special administrator whether a petition for general administration or proof of will has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special administrator.

[1935 c. 72 s. 74] (8992-74)

**525.301 POWERS.** A special administrator shall collect the assets and conserve the estate, unless his powers are limited by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special administrator power to perform any or all acts in the administration of the estate, not exceeding the powers conferred by law upon general administrators.

[1935 c. 72 s. 75] (8992-75)

**525.302 INVENTORY AND APPRAISAL.** Within 14 days after appointment, a special administrator shall file an inventory and appraisal of the personal property according to the requirements of sections 525.33 and 525.331.

[1935 c. 72 s. 76] (8992-76)

**525.303 TERMINATION OF POWERS.** Upon the granting of letters testamentary or of general administration, the power of a special administrator shall cease unless otherwise expressly ordered by the court.

[1935 c. 72 s. 77] (8992-77)

**525.304 FINAL ACCOUNT AND DISCHARGE.** Upon the termination of his power, a special administrator shall file his final account with his petition for the settlement and allowance thereof. The court with or without notice shall adjust, correct, settle, and allow or disallow such account. Upon allowance of the account and upon the filing of vouchers for all disbursements, and the balance, if any, having been paid to the person entitled thereto, the court shall discharge such special administrator and his sureties.

[1935 c. 72 s. 78] (8992-78)

## DETERMINATION OF DESCENT

**525.31 ESSENTIALS.** When any person has been dead for more than five years and has left real estate or any interest therein, and no will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate nor administration had in this state; or when real estate or any interest therein has not been included in a final decree, any person interested in the estate or claiming an interest in such real estate may petition the probate court of the county of the decedent's

residence or of the county wherein such real estate, or any part thereof, is situated to determine its descent and to assign it to the persons entitled thereto.

[1935 c. 72 s. 79; 1941 c. 444 s. 1] (8992-79)

**525.311 CONTENTS OF PETITION.** Such petition shall show so far as known to the petitioner:

(1) The name of the decedent, the date and place of his death, his age and address at such date, and whether testate or intestate;

(2) The names, ages, and addresses of his heirs, executors, legatees, and devisees;

(3) That no will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate nor administration had in this state; or if a will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate or administration had, that real estate or some interest therein was not included in the final decree;

(4) A description of the real estate, and if a homestead, designated as such, the interest therein of the decedent, the value thereof at the date of his death, and the interest therein of the petitioner;

(5) If the decedent left a will which has not been admitted to probate in this state, such will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved shall be filed and the petition shall contain a prayer for its admission to probate.

If a will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate or if administration has been had, certified copies of such instruments in the prior administration as the court may direct shall be filed.

[1935 c. 72 s. 80; 1941 c. 444 s. 2] (8992-80)

**525.312 DECREE OF DESCENT.** Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 525.83. Upon proof of the petition and of the will if there be one, or upon proof of the petition and of an authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved if there be one, the court shall allow the same and enter its decree assigning the real estate to the persons entitled thereto pursuant to the will or such authenticated copy if there be one, otherwise pursuant to the law of intestate succession in force at the time of the decedent's death. No decree shall be entered until after the determination and payment of inheritance taxes.

[1935 c. 72 s. 81; 1937 c. 435 s. 11; 1941 c. 444 s. 3] (8992-81)

## BONDS

**525.32 CONDITION.** Every representative, except as provided by sections 525.551 and 48.82, before entering upon the duties of his trust shall file a bond in such amount as the court directs, with sufficient sureties, conditioned upon the faithful discharge of all the duties of his trust according to law.

[1935 c. 72 s. 82] (8992-82)

**525.321 JOINT OR SEPARATE BONDS.** When two or more persons are appointed joint representatives the court may approve a separate bond from each or a joint bond from all.

[1935 c. 72 s. 83] (8992-83)

**525.322 APPROVAL AND PROSECUTION.** Except as otherwise expressly provided, all bonds in proceedings in the probate court shall be approved by the judge and shall run to such judge and his successors in office. In case of breach of any condition thereof an action on the bond may be prosecuted by leave of the court in the name and for the benefit of any person interested.

[1935 c. 72 s. 84] (8992-84)

**525.323 INCREASE AND REDUCTION.** The court on its own motion or upon the petition of any person interested in the estate may require a bond in addition to or in lieu of any bond on file. Upon the settlement and allowance of an account, the liability under the new bond shall be limited to the property with which the representative is chargeable at the time of such settlement and allowance, and to

the acts and omissions of the representative occurring thereafter. When an account is settled and allowed and the bond is found to be more than sufficient, the court may reduce the amount of the bond or cancel any bond found to be unnecessary.

[1935 c. 72 s. 85] (8992-85)

**525.324 DISCHARGE ON SURETY'S APPLICATION.** Upon application of any surety, the court shall order the representative to account and to file a new bond. Upon the settlement and allowance of the account and the filing of the new bond, the surety shall be discharged.

[1935 c. 72 s. 86] (8992-86)

#### MANAGEMENT OF ESTATE; INVENTORY AND APPRAISAL

**525.33 CONTENTS OF INVENTORY.** Within one month after his appointment unless a longer time has been granted by the court, every representative shall make and exhibit to the court a verified inventory of all the estate of the decedent or ward which shall have come to his possession or knowledge. Such property shall be classified therein as follows: (1) real estate, with plat or survey description, and if a homestead, designated as such, (2) furniture and household goods, (3) wearing apparel, (4) corporation stocks described by certificate numbers, (5) mortgages, bonds, notes, and other written evidence of debt, described by name of debtor, recording data, or other identification, (6) all other personal property accurately identified. All encumbrances, liens, and other charges on any item shall be stated.

[1935 c. 72 s. 87] (8992-87)

**525.331 APPRAISAL.** If the inventory lists no property other than moneys of the United States, no appraisal shall be required; otherwise, the property shall be appraised at its full and fair value as of the date of death, or in a guardianship as of the date of the appointment of the guardian, by two or more disinterested persons appointed by the court. Within two months after appointment unless a longer time has been granted by the court, the appraisers shall set down in figures opposite each item after deducting the encumbrances, liens, and charges, the net value thereof and show the total amount of each class, and of all classes, and forthwith deliver such inventory and appraisal certified by them, to the representative who shall immediately file the same. Such appraisers shall be allowed such reasonable fees, necessary disbursements, and expenses as may be fixed by the court and be paid by the representative as expenses of administration or guardianship.

[1935 c. 72 s. 88] (8992-88)

#### COLLECTION OF ASSETS

**525.34 POSSESSION.** Every representative shall be entitled to the possession of and charged with all property of the decedent which has not been set apart for the surviving spouse or children. He shall collect the rents and earnings thereon until the estate is settled or until delivered by order of the court to the heirs, legatees, or devisees. He shall keep in tenantable repair all buildings and fixtures under his control. He may, by himself or with the heirs or devisees, maintain an action for the possession of the real estate or to quiet title to the same.

[1935 c. 72 s. 89] (8992-89)

**525.35 LIMITATION; LIABILITY OF REPRESENTATIVE.** No representative shall make a profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate, but he shall account for the excess when he sells for more than the appraisal and shall not be responsible for the loss when he sells for less if such sale appears to be beneficial to the estate. He shall not be accountable for debts due the decedent which remain uncollected without fault on his part; but if he neglects or unreasonably delays to raise money by collecting debts or selling property, or neglects to pay over the money in his hands and by reason thereof the value of the estate is lessened, or unnecessary costs, interest, or penalties accrue, or the persons interested suffer loss, the same shall be deemed waste and the representative shall be charged in his account with the damages sustained. He shall not purchase any claim against the estate nor shall he purchase directly or indirectly or be interested in the purchase of any property sold by him.

[1935 c. 72 s. 90] (8992-90)



**525.36 ACCORD WITH DEBTOR.** When it appears for the best interest of the estate the representative may on order of the court effect a fair and reasonable compromise with any debtor or other obligor.

[1935 c. 72 s. 91] (8992-91)

**525.37 FORECLOSURE OF MORTGAGES.** The representative shall have the same right to foreclose a mortgage, lien, or pledge or collect the debt secured thereby as the decedent would have had, if living, or the ward would have had, if competent, and he may complete any such proceeding commenced by such decedent or ward.

[1935 c. 72 s. 92] (8992-92)

**525.38 REALTY ACQUIRED.** When a foreclosure sale or a sale on execution for the recovery of a debt due the estate is had or redemption is made the representative shall receive the money paid and execute the necessary satisfaction or release. If bid in by the representative or if bid in by the decedent or ward and the redemption period expired during the administration of the estate or guardianship without redemption, the real estate shall be treated as personal property, but any sale, mortgage, or lease thereof shall be made pursuant to sections 525.48 to 525.702, unless otherwise provided in the will. If not so sold, mortgaged, or leased (the real estate, or if so sold, mortgaged, or leased) the proceeds shall be assigned or distributed to the same persons and in the same proportions as if it had been part of the personal estate of the decedent, unless otherwise provided in the will.

[1935 c. 72 s. 93; 1937 c. 435 s. 12] (8992-93)

**525.39 PROPERTY SET APART.** After the inventory and appraisal has been filed the surviving spouse or, in case there be none, the children, or when they are minors, their guardian, may petition the court to set apart the homestead and the personal property allowed in section 525.15. Such petition shall show the names, ages, and relationship of the parties, a description of the homestead claimed and of the personal property selected, and the appraised value thereof. Upon proof of such petition, the court shall set apart such homestead and personal property. The property so set apart shall be delivered by the representative to the persons entitled thereto, and shall not be treated as assets in his hands, but the homestead shall be included in the partial or final decree of distribution.

[1935 c. 72 s. 94] (8992-94)

**525.391 PROPERTY FRAUDULENTLY CONVEYED.** When the property available for the payment of debts is insufficient to pay the same in full, the representative may recover any property which the decedent may have disposed of with intent to defraud his creditors, or by conveyance or transfer which for any reason is void as to them. Upon the application of any creditor and upon making the payment of or providing security for the expenses thereof as directed by the court, the representative shall prosecute all actions necessary to recover the property.

[1935 c. 72 s. 95] (8992-95)

**525.392 PROPERTY CONVERTED.** If any person embezzles, alienates, or converts to his own use any of the personal estate of a decedent or ward before the appointment of a representative, such person shall be liable for double the value of the property so embezzled, alienated, or converted.

[1935 c. 72 s. 96] (8992-96)

**525.393 DISPOSAL BY CORONER.** When personal property of a decedent has come into the custody of any coroner and has not been surrendered as hereinafter provided and no will has been admitted to probate or no administration has been had within three months after the decedent's death, the coroner, after the expiration of said time, shall file in the probate court an inventory of all such property and a finger-print of each finger of each hand of the decedent. Wearing apparel and such other property as the coroner determines to be of nominal value, may be surrendered by the coroner to the spouse or to any blood relative of the decedent. If no will is admitted to probate nor administration, had within six months after death, the coroner shall sell the same at public auction upon such notice and in such manner as the court may direct. He shall be allowed reasonable expenses for the care and sale of the property, and shall deposit the net proceeds of such sale with the county treasurer in the name of the decedent, if known. The treasurer shall give the coroner duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. If a representative shall qualify

within six years from the time of such deposit, the treasurer upon order of the court shall pay the same to such representative.

[1935 c. 72 s. 97; *Ex. 1936 c. 48*] (8992-97)

**525.40 CONTINUATION OF BUSINESS.** Upon a showing of advantage to the estate the court, with or without notice, may authorize a representative to continue and operate any business of a decedent or ward for the benefit of his estate, under such conditions, restrictions, regulations, and requirements, and for such period of time as the court may determine.

[1935 c. 72 s. 98] (8992-98)

**525.401 ABANDONMENT OF PROPERTY.** When any property is valueless, or is so encumbered, or is in such condition that it is of no benefit to the estate, the court, upon such notice as it may direct to be given, may order the representative to abandon the same.

[1935 c. 72 s. 99] (8992-99)

### CLAIMS

**525.41 NOTICE TO CREDITORS.** In the order for hearing a petition for the probate of a will or for general administration or in a subsequent order, the court shall limit the time for creditors to file claims and fix the time and place for the hearing on such claims, notice of which shall be given pursuant to section 525.83. The time so limited shall be four months from the date of the filing of such order. If it appears from the petition that the decedent left no property except such as may be allowed to the spouse and children under section 525.15, or such as is exempt from the claims of creditors, or such as may be recovered in an action for death by wrongful act, or if more than five years have elapsed since the decedent's death, no order in respect to claims need be made.

[1935 c. 72 s. 100] (8992-100)

**525.411 FILING OF CLAIMS.** All claims against a decedent arising upon contract, whether due or not due, shall be barred forever unless filed in court within the time limited. For cause shown and upon notice to the representative the court may receive, hear, and allow a claim presented before the final settlement and allowance of the representative's account and within one year after the date of the filing of the order to file claims.

Contingent claims arising upon contract which do not become absolute and capable of liquidation within the time limited shall not be filed. Any such contingent claim which becomes absolute and capable of liquidation after the expiration of the time limited but before the settlement and allowance of the final account may be filed and heard on notice to the representative, if the court in its discretion shall so order, notwithstanding the provisions of section 525.431. If allowed it shall be paid as other claims, but only out of the assets with which the representative is chargeable at the time of the filing of such claim. No such claim shall be so filed or allowed unless administration of the estate was commenced within five years after the death of the decedent.

Claims shall be itemized and verified and shall show the address of the claimant and all payments and offsets known to the claimant. Any such claim may be pleaded as an offset or counter-claim in any action brought against the claimant by the representative. On or before the hearing on claims, the representative shall file a statement of all offsets claimed.

[1935 c. 72 s. 101] (8992-101)

**525.412 JOINT DEBTOR.** When two or more persons are indebted on any joint contract, or upon a judgment founded on a joint contract, and one of them dies, his estate shall be liable therefor, and the amount thereof may be allowed by the court the same as though the contract had been joint and several or the judgment had been against him alone, but without prejudice to right to contribution.

[1935 c. 72 s. 102] (8992-102)

**525.413 CLAIMS BARRED.** No claim or offset thereto shall be allowed which was barred by the statute of limitations during the decedent's lifetime.

[1935 c. 72 s. 103; 1939 c. 270 s. 4] (8992-103)

**525.42 ADJUDICATION ON CLAIM.** Upon the adjudication of any claim, the court shall make its order allowing or disallowing the same, which order shall have the effect of a judgment. Such order shall show the date of adjudication, the amount

allowed, the amount disallowed, and shall be attached to the claim and the offsets, if any. An allowed claim shall bear interest at the legal rate.

[1935 c. 72 s. 104] (8992-104)

**525.421 EXECUTION ON OFFSET.** When a balance is allowed against a claimant, the court may issue execution for such balance, which shall be collected in the same manner as an execution issued out of the district court.

[1935 c. 72 s. 105] (8992-105)

**525.43 ACTIONS PENDING.** All actions wherein the cause of action survives may be prosecuted to final judgment, notwithstanding the death of any party, and in such case the representative may be substituted therein in the stead of the deceased party. If judgment be rendered against the representative, it may be certified to the probate court and shall be then paid in the same manner as other claims against the estate. The defendant in any action commenced by a decedent or representative may set off a claim against the decedent's estate notwithstanding such claim has not been filed in the probate court.

[1935 c. 72 s. 106] (8992-106)

**525.431 ACTIONS PRECLUDED.** No action at law shall lie against a representative for the recovery of money upon any claim required to be filed by section 525.411. Except as provided in section 525.411 with reference to contingent claims, no claim against a decedent shall be a charge upon his estate unless filed in the probate court within five years after his death and within the time limited under section 525.41 or extended under section 525.411. Nothing in this section shall be construed as preventing an action to enforce a lien existing at the date of decedent's death nor as affecting the rights of a creditor to recover from the next of kin, legatees, or devisees to the extent of the assets received, upon any claim not required to be filed by section 525.411, or upon any contingent claim arising upon contract which did not become absolute and capable of liquidation until after the time limited under section 525.41 or extended under section 525.411 or until five years after the death of the decedent.

[1935 c. 72 s. 107] (8992-107)

**525.44 PRIORITY OF DEBTS.** If the applicable assets of the estate be insufficient to pay the following in full, the representative shall make payment in this order:

- (1) Expenses of administration;
- (2) Funeral expenses;
- (3) Expenses of last illness;
- (4) Debts having preference by laws of the United States;
- (5) Taxes;
- (6) Other debts duly proved.

[1935 c. 72 s. 108] (8992-108)

**525.441 SECURED DEBTS.** When a claimant holds any security for his debt, he may file his claim, which may be allowed conditioned upon the claimant surrendering the security to the representative or exhausting the security. In either case, a report thereof shall be filed within the time fixed by the court. Upon his failure to comply with the order, the claim shall be disallowed. Upon his compliance with the order, the court shall make a final order on such claim, either allowing it in full if the security has been surrendered, or for any remaining amount found to be due on the debt if the security has been exhausted. The claim so allowed shall be paid as other debts duly proved.

[1935 c. 72 s. 109] (8992-109)

**525.442 ENCUMBERED ASSETS.** When any assets of the estate are encumbered by mortgage, pledge, or otherwise, the representative may pay such encumbrance or any part thereof, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate and if the court, with or without notice, shall have so ordered. No such payment shall increase the share of the devisee, legatee, or heir entitled to receive such encumbered assets, unless otherwise provided in the will.

[1935 c. 72 s. 110] (8992-110)

**525.45 PREFERENCES PROHIBITED.** No preference shall be given in the payment of any debt over any other debt of the same class, nor shall a debt due and payable be entitled to preference over debts not due.

[1935 c. 72 s. 111] (8992-111)

**525.46 PAYMENT UNDER WILL.** When a will designates the property to be appropriated for the payment of debts or other items, it shall be applied to such purpose.

[1935 c. 72 s. 112] (8992-112)

#### ACCOUNTING AND DISTRIBUTION

**525.47 DURATION OF ADMINISTRATION.** Every executor, general administrator, or administrator with the will annexed shall have one year from the date of his appointment for the settlement of the estate. A special administrator or an administrator de bonis non shall have such time not exceeding one year as the court may determine. For cause shown the period herein limited may be extended by the court, not exceeding one year at a time. The representative shall not be disqualified thereafter in any way, unless removed; but he shall not be relieved from any loss, liability, or penalty incurred by his failure to settle the estate within the time limited.

[1935 c. 72 s. 113] (8992-113)

**525.48 FILING OF ACCOUNT.** Within the time limited every representative shall file a verified account of his administration and petition the court to settle and allow his account and to assign the estate to the persons entitled thereto. The representative shall also account at such other times as the court may require; the hearing on such account shall be had upon such notice as the court may direct.

[1935 c. 72 s. 114] (8992-114)

**525.481 HEARING AND DECREE.** Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 525.83, except as provided in sections 525.304, 525.48 and 525.51. Unless otherwise ordered, the representative shall, and other persons may, be examined relative to the account and the distribution of the estate. If all taxes payable by the estate have been paid so far as there are funds to pay them and the account is correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed.

Upon such settlement and allowance the court shall determine the persons entitled to the estate and assign the same to them by its decree. The decree shall name the heirs and the distributees, describe the property and state the proportion or part thereof to which each is entitled. In the estate of a testate decedent, no heirs shall be named in the decree unless all of the heirs be ascertained. No final decree shall be entered until after the determination and payment of inheritance taxes except as provided in section 525.84.

If all of the creditors have consented, in writing, the court, with or without notice, may assign the estate, if insolvent, without conversion thereof into money, to such creditors in the proportions to which each is entitled.

If any liquidated demand for money arising on contract or if any unsatisfied judgment for the payment of money, whether or not unenforceable because of lapse of time or discharge in bankruptcy, exists in favor of decedent at the time of his death against an heir, legatee, or devisee, and not forgiven or otherwise specifically disposed of in the will, or if any judgment recovered by the representative against an heir, legatee, or devisee has not been paid during administration, the amount thereof shall be considered a part of the estate for purposes of distribution and taken by such heir, legatee, or devisee as a part of his share of the personalty.

If such amount exceeds such beneficiary's share of the personalty, the real property assigned to him shall be subjected in the decree to a lien in favor of the other heirs or beneficiaries in accordance with their respective shares.

If such demand or judgment became unenforceable prior to decedent's death, no interest after it became unenforceable shall be included and the total amount charged against such heirs, legatee, or devisee shall in no event exceed the value of his share of the estate. In the event of an escheat of part of the estate no such lien shall be imposed upon any other part of the estate in favor of the State of Minnesota.

Any beneficiary hereunder shall not be required to pay any inheritance tax and no inheritance tax shall be payable as to him on that part of the estate created by the set-off hereinbefore provided and inherited by the beneficiary, which the beneficiary would not otherwise have been required by law to pay because the demand so

set off was unenforceable as to the beneficiary because of lapse of time or a discharge in bankruptcy.

Upon its own motion or upon the request of any party, without the determination or payment of inheritance taxes, the court may enter into an interlocutory decree, determining the persons entitled to the estate, naming the heirs and distributees describing the property and stating the proportion or part thereof to which each is entitled. Such interlocutory decree shall be final as to the persons entitled to distribution, and as to the part or portion of the estate each is entitled to receive, but it shall not have the effect of assigning the estate to such persons.

[1935 c. 72 s. 115; 1937 c. 435 s. 13; 1939 c. 270 s. 5] (8992-115)

**525.482 PARTIAL DISTRIBUTION.** A partial distribution of an estate may be made before final settlement in the manner and upon the notice provided for final distribution. No decree of partial distribution shall be entered until after the determination and payment of inheritance taxes on the property thereby distributed. Such decree shall be final as to the persons entitled to such distribution and as to their proportions, and except where such decree includes only specific bequests or devises, as to the persons entitled to, and their proportions of the whole estate. No distribution shall be made until after the expiration of the time limited for the filing of claims, nor until a bond has been filed to secure the payment of unpaid claims and bequests, and the unpaid expenses of the administration, funeral, and last illness, and taxes.

[1935 c. 72 s. 116] (8992-116)

**525.483 RECORDING DECREE.** A certified copy of any decree of distribution may be filed for record in the office of the register of deeds of any county. It shall not be necessary to pay real estate taxes in order to record such certified copy, but the same shall be first presented to the county auditor for entry upon his transfer record and shall have noted thereon "Transfer entered" over his official signature. Upon request, the court shall furnish a certified copy of any decree of distribution, omitting the description of any property except that specified in the request, but indicating omissions by the words "other property omitted." Such copy and its record shall have the same force and effect as to property therein described as though the entire decree had been so certified and recorded.

[1935 c. 72 s. 117] (8992-117)

**525.49 ALLOWANCE TO REPRESENTATIVE.** Every representative shall be allowed his necessary expenses incurred in the execution of his trust and shall have such compensation for his services as the court shall deem just and reasonable. An attorney performing services for the estate at the instance of the representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Where, upon demand the representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against him on behalf of the estate and any party interested shall then by his own attorney prosecute or pursue and recover such fund or asset for the benefit of the estate, such attorney shall be allowed such compensation out of the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made. If a decedent by will makes provision for the compensation of his executor, that shall be taken as his full compensation unless he files a written instrument renouncing all claim for the compensation provided for in the will. Such amounts shall be allowed as credits to the representative in his account or at any time during administration, the representative may apply to the court by petition for an order directing the payment of his compensation (in whole or in part) out of the estate, and any attorney having rendered services, as aforesaid, may by petition apply to the court for an order directing the payment to him (in whole or in part) of such attorney's fees out of the estate. Upon payment by the representative of the whole amount allowed his attorney by the court the representative shall be fully released and discharged from all liability on account of such attorney's services.

When any person named as executor in a will or codicil defends it or prosecutes any proceedings in good faith and with just cause, for the purpose of having it admitted to probate, whether successful or not, or if any person successfully oppose the allowance of any will or codicil, he shall be allowed out of the estate his necessary expenses and disbursements in such proceedings together with such compensation for his services and those of his attorneys as the court shall deem just and proper.

[1935 c. 72 s. 118; 1939 c. 270 s. 6] (8992-118)

**525.491 ATTORNEY'S LIEN.** When any attorney at law has been retained to appear for any heir, devisee, or legatee, such attorney may perfect his lien upon the client's interest in the estate for compensation for such services as he may have rendered respecting such interest, by serving upon the representative before the decree of distribution, is made, a notice of his intent to claim a lien for his agreed compensation, or the reasonable value of his services, and by filing such notice with proof of service thereof. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided.

[1935 c. 72 s. 119; 1939 c. 270 s. 7] (8992-119)

**525.50 RESIGNATION OF REPRESENTATIVE.** A representative may resign his trust at any time, but his resignation shall not be operative until the court shall have examined and allowed his final account and has made an order accepting such resignation.

[1935 c. 72 s. 120] (8992-120)

**525.501 REMOVAL OF REPRESENTATIVE.** When a representative becomes insane or otherwise mentally incompetent, or unsuitable, incompetent, or incapable of discharging his trust, or has mismanaged the estate, or has failed to perform any duty imposed by law or by any lawful order of the court, or has absconded, or has ceased to be a resident of this state, the court may remove him. The court on its own motion may, and on the petition of any person interested in the estate shall, order the representative to appear and show cause why he should not be removed. Service of such order may be made either upon the representative or his sureties, personally or by mailing a copy to him or any of them at the address given in the file, or in such other manner as the court may direct.

[1935 c. 72 s. 121; 1937 c. 435 s. 14] (8992-121)

**525.502 DISCHARGE UPON RESIGNATION OR REMOVAL.** Notwithstanding the resignation of a representative or his removal by the court, he and his surety shall not be discharged from liability until a successor has been appointed and qualified and has receipted for the unadministered property.

[1935 c. 72 s. 122] (8992-122)

**525.503 ACCOUNT OF DECEASED OR INSANE REPRESENTATIVE.** When a sole or the last surviving representative dies, or becomes insane or otherwise mentally incompetent, his representative, upon appointment, shall file an account and petition for the settlement and allowances thereof, and if proper, for distribution. If the estate has not been fully administered, the surety shall not be discharged until a successor has been appointed and qualified and receipted for the unadministered property.

[1935 c. 72 s. 123] (8992-123)

**525.504 DISCHARGE OF REPRESENTATIVE.** When any representative has paid or transferred to the persons entitled thereto all of the property in the estate, paid all taxes required to be paid by him and has filed proof thereof, and has complied with all the orders and decrees of the court and with the provisions of law, and has otherwise fully discharged his trust, the court shall finally discharge him and his sureties. Whenever any bequest or devise to a testamentary trustee amounts to more than \$500.00 and the will contains no express waiver, the representative shall not be discharged until a trustee has qualified in a court of competent jurisdiction and until proof of such qualification and a receipt by the trustee have been filed. No representative who has received any funds for death by wrongful act shall be discharged until he has filed a certified copy of the order, judgment, or decree of distribution of the court wherein such funds were recovered, and vouchers from the persons entitled to such funds, or copies thereof, certified by the clerk of such court.

When a minor child shall receive personal property not to exceed the sum of \$200.00, the judge of probate court may order and direct representatives of estates to make payment thereof to the parent or parents, custodian, or the person, corporation, or institution with whom such minor child may be, for the benefit, support, maintenance, and education of such minor child, or may direct the deposit thereof in a savings bank in the name of such minor child, and when so deposited in a savings bank, the book showing such deposit to be retained by the probate court,

and no funds shall be withdrawn from such savings bank until such minor child shall have reached majority, unless by order of the probate court.

[1935 c. 72 s. 124; 1937 c. 435 s. 15] (8992-124)

**525.51 SUMMARY PROCEEDINGS.** In a special administration, general administration, or in the administration of the estate of a person dying testate, if the court has determined that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had therefor, or if there be no property except such as has been recovered for death by wrongful act, or such as is exempt from all debts and charges in the probate court, or such as may be appropriated for the payment of the allowances to the spouse and children mentioned in section 525.15, expenses of administration, funeral expenses, expenses of last illness, debts having preference under laws of the United States, and taxes, the representative by order of the court may pay the same in the order named, and file his final account with his petition for the settlement and allowance thereof. Thereupon the court with or without notice may adjust, correct, settle, allow, or disallow such account, and if the account be allowed, summarily determine the heirs, legatees and devisees in its final decree assigning to them their share or part of the property with which the representative is charged upon the allowance of his final account, and close the administration.

If upon hearing of a petition for summary assignment or distribution, for special administration, general administration, or for the probate of a will, the court determines that there is no need for the appointment of a representative and that the administration should be closed summarily for the reason that all of the property in the estate is exempt from all debts and charges in the probate court, a final decree may be entered, with or without notice, assigning such property to the persons entitled thereto pursuant to the terms of the will, or if there be none, pursuant to the law of intestate succession in force at the time of the decedent's death.

[1935 c. 72 s. 125; 1937 c. 435 s. 16] (8992-125)

**525.52 UNCLAIMED MONEY.** If any part of the money on hand has not been paid over because the person entitled thereto cannot be found or refuses to accept the same, or for any other good and sufficient reason the same has not been paid over, the court may direct the representative to deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. If the money on hand exceeds the sum of \$2,000, the court may direct the representative to purchase with the money bearer bonds of the United States government or of the State of Minnesota, or any of its political subdivisions, which bonds shall be deposited with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court, and the county treasurer shall collect the interest on these bonds as it becomes due, and the money so collected or deposited shall be credited to the county revenue fund. Upon application to the probate court within 21 years after such deposit, and upon notice to the county attorney and county treasurer, the court may direct the county auditor to issue to the person entitled thereto his warrant for the amount of the money so on deposit including the interest collected on bonds and, in the case of bonds, the county auditor shall issue to the person entitled thereto his order upon the county treasurer to deliver the bonds. No interest shall be allowed or paid thereon, except as herein provided, and if not claimed within such time no recovery thereof shall be had. The county treasurer, with the approval of the probate court, may make necessary sales, exchanges, substitutions, and transfers of bonds deposited, as aforesaid, and may present the same for redemption and invest the proceeds in other bonds of like character.

[1935 c. 72 s. 126; 1941 c. 231] (8992-126)

## ADVANCEMENTS

**525.53 ADVANCEMENT.** Any property given by an intestate in his lifetime to a child or other lineal descendant when expressed in the gift or grant as an advancement or charged in writing by the intestate as such, or so acknowledged by the child or other descendant, shall be deemed an advancement to such heir and treated as part of the estate of such intestate in the distribution of the same, and

shall be taken by such heir toward his share of the estate. When the amount advanced exceeds the share of such heir he shall receive nothing in the distribution, but he shall not be required to refund any part of such advancement. When the amount so received is less than his share he shall be entitled to enough more to make up his full share. When a child or other lineal descendant to whom an advancement has been made dies before the intestate, leaving issue, such advancement shall be deducted in the distribution of the estate as though made directly to such issue.

[1935 c. 72 s. 127] (8992-127)

**525.531 VALUATION.** When such advancement is made in real estate, the value thereof for the purpose of distribution shall be considered a part of the real estate to be divided, and when it is in personal estate, as a part of the personal estate; and when in either case it exceeds the share of real or personal estate, respectively, that would have come to such heir, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to that of other heirs entitled to a like amount with him. When the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the heir receiving it, that shall be its value in the distribution; otherwise, it shall be estimated according to its value when given, as nearly as can be ascertained. All questions as to advancements made, or alleged to have been made, by the intestate to any heir shall be heard and determined by the court at the time of settlement, and every such advancement shall be specified in the decree distributing and assigning the estate. For the purpose of determining what proportion any one who has received an advancement is entitled to the court shall ascertain the value of the entire residue of such estate, by ordering an appraisal or in such other manner as it may deem best.

[1935 c. 72 s. 128] (8992-128)

#### GUARDIANSHIPS

**525.54 PERSONS SUBJECT TO GUARDIANSHIP.** The court may appoint one or two persons suitable and competent to discharge the trust as guardians of the person or estate or of both of any person who is a minor, or who because of old age, or imperfection or deterioration of mentality is incompetent to manage his person or estate, or of any person who because of excessive intoxication, gambling, idleness, or debauchery, so spends or wastes his estate or injures his person as to be likely to expose himself or his family to want or suffering, provided such person is a resident of the county or being a non-resident of this state has property in the county. No guardian of the person of any minor shall be appointed while proceedings for his care and custody are pending in any juvenile court of this state. Nothing herein contained shall diminish the power of any court to appoint a guardian to serve or protect the interest of any minor or other person under disability in any proceedings therein, nor abridge the rights of the father and mother, if suitable and competent, as the natural guardians of their minor children.

[1935 c. 72 s. 129] (8992-129)

**525.541 PETITIONERS.** Any person may petition for the appointment of a guardian or guardians for any person believed to be subject to guardianship, provided that the petition of a person over the age of 14 years for the appointment of a guardian or guardians of his own person or estate, and the petition of any person nominated by the will of a deceased parent with the written consent of the other parent if living and not under disability, for the appointment of a guardian or guardians for their minor child shall have priority over the petition of any other person. When any minor under guardianship attains the age of 14 years, he may petition for the appointment of a guardian or guardians nominated by him in lieu of the guardians theretofore appointed.

[1935 c. 72 s. 130] (8992-130)

**525.542 CONTENTS OF PETITION.** The petition shall show (1) the name and address of the person for whom a guardian is sought, (2) the date and place of his birth, (3) if he be a minor, the names and addresses of his parents, or if the parents be dead or have abandoned the minor, the names and addresses of his custodians and of any person named as testamentary guardians in the will of a decedent, (4) if he be not a minor, the names and addresses of his nearest kindred, (5) if he



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be married, the name and address of his spouse, (6) the reasons for the guardianship, (7) the probable value and general character of his real and personal property and the probable amount of his debts, (8) the names, ages, addresses, and occupation of the proposed guardians.

[1935 c. 72 s. 131 (8992-131)]

**525.543 LIS PENDENS.** After the filing of the petition, a certified copy thereof may be filed for record in the office of the register of deeds of any county in which any real estate owned by the ward is situated and if a resident of this state, in the county of his residence. If a guardian be appointed on such petition, all contracts except for necessities, and all transfers of real or personal property made by the ward after such filing and before the termination of the guardianship shall be void.

[1935 c. 72 s. 132] (8992-132)

**525.55 NOTICE OF HEARING.** If the petition be made by the person for whom a guardian is sought, or by a parent, custodian, or testamentary guardian of a minor under the age of 14 years, the court may hear the same with or without notice. In all other cases, upon the filing of the petition the court shall fix the time and place for the hearing thereof. At least 14 days prior to such time, personal service shall be made upon the ward. If he have a spouse, custodian, or if there be a testamentary guardian named in the will of a decedent, notice shall be given to such persons and to such of the nearest kindred and in such manner as the court may direct. If he be an inmate of any hospital or asylum, notice by mail shall be given to the superintendent thereof. If he be a non-resident or if after diligent search he cannot be found in this state, notice shall be given in such manner and to such persons as the court may determine.

[1935 c. 72 s. 133] (8992-133)

**525.551 HEARING; APPOINTMENT.** Upon proof of the petition, the court shall appoint one or two persons suitable and competent to discharge the trust as general guardians of the person or estate or of both. Upon the filing of a bond in such amount as the court may direct and an oath according to law, or upon the filing of an acceptance of the trust pursuant to section 48.82, letters of guardianship shall issue. If there be no personal property, the court may waive the filing of a bond, but if the guardian receives or becomes entitled to any such property he shall immediately file a report thereof and a bond in such amount as the court may direct.

[1935 c. 72 s. 134] (8992-134)

**525.56 GUARDIAN'S DUTIES.** A guardian shall be subject to the control and direction of the court at all times and in all things. A general guardian of the person shall have charge of the person of the ward. A general guardian of the estate shall

(1) Pay the reasonable charges for the support, maintenance, and education of the ward in a manner suitable to his station in life and the value of his estate; but nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children;

(2) Pay all just and lawful debts of the ward and the reasonable charges incurred for the support, maintenance, and education of his wife and children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is, or may become legally entitled to support from the ward;

(3) Possess and manage the estate, collect all debts and claims in favor of the ward, or, with the approval of the court, compromise the same, and invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate, in such securities as are authorized by section 50.14 and approved by the court, except as provided in section 48.84.

[1935 c. 72 s. 135; 1941 c. 395] (8992-135)

**525.57 TRANSFER OF VENUE.** When it is for the best interest of the ward or his estate the venue may be transferred to another county. Upon the filing of a petition by any person interested in the ward or in his estate the court shall fix the time and place for the hearing thereof, notice of which shall be given to such persons and in such manner as the court may direct. Upon proof that a transfer of venue is for the best interest of the ward or his estate, and upon the settlement and allowance of the guardian's accounts to the time of such hearing, the court

shall transmit the entire file to the court of such other county in which all subsequent proceedings shall be had.

[1935 c. 72 s. 136] (8992-136)

**525.58 FILING OF ACCOUNTS.** Except where expressly waived by the court, every guardian annually shall file a verified account covering the period from the date of appointment or his last account. At the termination of the guardianship, or upon the guardian's removal or resignation, he or his surety, or in the event of his death or disability, his representative or surety shall file a verified final account with a petition for the settlement and allowance thereof. Every account shall show in detail all property received and disbursed, the property on hand, the present address of the ward and of the guardian, and unless the guardian be a corporation, the amount of the bond, the names and addresses of all sureties thereon, that each unincorporated surety is a resident of this state, is not under disability, and is worth the amount in which he justified.

[1935 c. 72 s. 137] (8992-137)

**525.581 NOTICE OF HEARING ON ACCOUNT.** The court on its own motion may, or upon the petition of the guardian or any person interested in the ward or his estate shall, fix the time and place for the hearing on any account, notice of which shall be given in such manner and to such persons as the court may direct. Wherever any funds have been received from the veterans' administration, notice by mail shall be given to the regional office having charge thereof.

[1935 c. 72 s. 138] (8992-138)

**525.582 ADJUDICATION ON ACCOUNT.** Unless otherwise ordered, the guardian shall, and other persons may, be examined on the hearing. If the account be correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed. The order of settlement and allowance shall show the amount of the personal property remaining. Upon settlement of the final account, and upon delivery of the property on hand to the person entitled thereto, the court shall discharge the guardian and his sureties. Any person for whom a guardian has been appointed and who has become of age or has been restored to capacity may show to the court that he has settled with his guardian and may petition for the guardian's discharge without further hearing. Upon such petition, the court may discharge the guardian and his sureties.

[1935 c. 72 s. 139] (8992-139)

**525.59 SUCCEEDING GUARDIAN.** If a guardian dies, resigns, or is removed, the court with or without notice may appoint a successor.

[1935 c. 72 s. 140] (8992-140)

**525.591 SPECIAL GUARDIAN.** Upon a showing of necessity or expediency, the court with or without notice may appoint a special guardian of the person or estate or both of any person designated in section 525.54, whether a petition for general guardianship has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special guardian. A special guardian of the person shall have charge of the person of the ward. A special guardian of the estate shall collect the assets and conserve the estate, unless his powers are limited by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special guardian power to perform any or all acts in the administration of the guardianship, not exceeding the powers conferred by law upon general guardians.

Within 14 days after appointment, a special guardian of the estate shall file an inventory and appraisal of the personal property according to the requirements of sections 525.33 and 525.331. Upon the granting of letters of general guardianship, the power of a special guardian shall cease, and he shall proceed forthwith to a final accounting. When a special guardian has been appointed to protect the ward's interest in any matter wherein the interest of the general guardian appears to conflict with that of the ward, or to protect the ward's interest upon suspension of an order of removal of a general guardian by appeal, the power of such special guardian shall not cease until terminated by the court.

[1935 c. 72 s. 141] (8992-141)

**525.60 TERMINATION.** A guardianship of a minor shall terminate upon his death or upon his attainment of legal age. The marriage of a female ward under guardianship as a minor only and not under a juvenile court guardianship shall terminate the guardianship of her person but not of her estate, provided that such

guardianship shall not affect her capacity to join with her husband in instruments involving his interest in real estate. The guardianship of a ward other than a minor shall terminate upon his death or upon his restoration to capacity. When there is no further need for any guardianship, the court may terminate the same upon such notice as it may direct.

[1935 c. 72 s. 142] (8992-142)

**525.61 RESTORATION TO CAPACITY.** Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feeble-minded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the director of social welfare if he was under the control of the director and has not been discharged by the director, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

In proceedings for the restoration of an insane or inebriate person, the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each doctor so appointed the sum of \$5.00 per day for his service and 15 cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred.

[1935 c. 72 s. 143; 1939 c. 270 s. 8] (8992-143)

**525.611 DISCHARGE OF GUARDIAN OF FEEBLE-MINDED OR EPILEPTIC PERSONS.** When it appears to the director of social welfare that a person committed to his guardianship as a feeble-minded or epileptic person is no longer in need of guardianship or supervision for his own or the public welfare, the director may petition the court of commitment, or the court to which the venue has been transferred, for his discharge as such guardian, stating facts in support of his petition.

[1937 c. 255 s. 1] (8992-143a)

**525.612 PETITION; HEARING.** Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court may direct. Upon proof of the petition the court shall make an order discharging the director of social welfare as the guardian of such person.

[1937 c. 255 s. 2] (8992-143b)

## SALES, LEASES, AND MORTGAGES OF REALTY

**525.62 MORTGAGE AND LEASE.** As used in sections 525.62 to 525.702, the word "mortgage" includes an extension of an existing mortgage, subject to the provisions of section 525.691; the word "lease," unless the context otherwise indicates, means a lease for more than three years.

[1935 c. 72 s. 144] (8992-144)

**525.621 LEASE FOR THREE YEARS OR LESS.** The court, with or without notice, may direct a lease for three years or less of any real estate (including a homestead if the written consent of the spouse has been filed) when it appears

to be for the best interest of the estate and of the persons interested in such real estate.

[1935 c. 72 s. 145] (8992-145)

**525.63 REASONS FOR SALE, MORTGAGE, LEASE.** The court may direct a sale, mortgage, or lease of any real estate of a decedent when the personal property is insufficient to pay the allowances to the spouse and children, expenses of administration, funeral expenses, expenses of last illness, taxes, debts, and bequests, or when it shall determine such sale, mortgage, or lease to be for the best interests of the estate and of the persons interested in such real estate. The proceeds of any such sale, mortgage, or lease which may be available for distribution shall be distributed to the same persons and in the same shares as if it had remained real estate.

The court may direct a sale, mortgage, or lease of any real estate of a ward when the personal property is insufficient to pay his debts and other charges against his estate, or to provide for the support, maintenance, and education of the ward, his wife, and children, or when it shall determine such sale, mortgage, or lease to be for the best interest of the ward.

The homestead of a decedent when the spouse takes any interest therein or the homestead of a ward shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed. Unless the written consent of all persons who take any interest therein has been filed, the homestead of a decedent shall not be mortgaged except for the purpose of extending, renewing, or satisfying an existing mortgage and paying the taxes, assessments, liens, encumbrances, repairs, and incidental expenses or other items necessary to procure such mortgage.

[1935 c. 72 s. 146] (8992-146)

**525.64 PETITION, NOTICE, HEARING.** A representative may file a petition to sell, mortgage, or lease alleging briefly the facts constituting the reasons for the application and describing the real estate involved therein. The petition may include all the real estate of the decedent or ward or any part or parts thereof. It may apply for different authority as to separate parcels. It may apply in the alternative for authority to sell, mortgage, or lease. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall state briefly the nature of the application made by the petition and shall be given pursuant to section 525.83. Upon the hearing, the court shall have full power to direct the sale, mortgage, or lease of all the real estate described in the petition, or to direct the sale, mortgage, or lease of any one or more parcels thereof, provided that any such direction shall be within the terms of the application made by the petition.

[1935 c. 72 s. 147; 1937 c. 435 s. 17] (8992-147)

**525.641 ORDER FOR SALE, MORTGAGE, LEASE.** The order shall describe the real estate to be sold, mortgaged, or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, or leased. If the order be for a sale, it shall direct whether the real estate shall be sold at private sale or public auction. When the purpose of a sale, mortgage, or lease is to pay debts, bequests, or other items, the real estate shall be sold, mortgaged, or leased in the following sequence: (1) real estate devised charged with the payment of such debts, bequests, or other items, (2) real estate not specifically devised, (3) real estate specifically devised but not so charged. An order to mortgage shall fix the maximum amount of the principal and the maximum rate of interests and shall direct the purpose for which the proceeds shall be used. An order for sale, mortgage, or lease shall remain in force until terminated by the court, but no private sale shall be made after one year from the date of the order unless the real estate shall have been reappraised under order of the court within three months preceding the sale.

[1935 c. 72 s. 148; 1937 c. 435 s. 18] (8992-148)

**525.642 TERMS OF SALE.** The court may order a sale of real estate for cash, part cash and a purchase-money mortgage of not more than 50 per cent of the purchase price, or on contract for deed. The initial payment under a sale on contract shall not be less than ten per cent of the total purchase price, and the unpaid purchase price shall bear interest at a rate of not less than four per cent per annum and shall be payable in reasonable monthly, quarterly, semiannual, or annual payments, and the final instalment shall become due and payable not later than ten years from the date of the contract. Such contract shall provide

for conveyance by quitclaim deed, which deed shall be executed and delivered upon full performance of the contract without further order of the court. In the event of termination of the interest of the purchaser and his assigns in such contract, the real estate may be resold under the original order and a reappraisal within three months preceding the sale. A sale of the vendor's interest in real estate sold by the representative on contract may be made under order of the court, with or without notice, upon an appraisal of such interest within three months preceding the sale; no such sale shall be made for less than its value as fixed by such appraisal.

[1935 c. 72 s. 149; 1937 c. 435 s. 19] (8992-149)

**525.65 PUBLIC SALE.** If a sale at public auction be ordered, three weeks' published notice of the time and place of sale shall be given. Proof of publication shall be filed before the confirmation of the sale. Such publication and sale may be made in the county where the real estate is situated or in the county of the probate proceedings. If the parcels to be sold are contiguous and lie in more than one county, notice may be given and the sale may be made in either of such counties or in the county of the probate proceedings. The representative may adjourn the sale from time to time, if for the best interests of the estate and the persons concerned, but not exceeding three months in all. Every adjournment shall be announced publicly at the time and place fixed for the sale and, if for more than one day, further notice thereof shall be given as the court may direct.

[1935 c. 72 s. 150] (8992-150)

**525.651 PRIVATE SALE.** If a private sale be ordered, the real estate shall be reappraised by two or more disinterested persons under order of the court, which reappraisal shall be filed before the confirmation of the sale. No real estate shall be sold at private sale for less than its value as fixed by such appraisal.

[1935 c. 72 s. 151] (8992-151)

**525.652 ADDITIONAL BOND.** If the bond of the representative be insufficient, before confirmation of a sale or lease, or before execution of a mortgage, he shall file an additional bond in such amount as the court may require.

[1935 c. 72 s. 152] (8992-152)

**525.66 SALE OF CONTRACT INTEREST.** When a person entitled under contract of purchase to any interest in real estate dies, or when a ward is entitled under contract of purchase to any interest in real estate, such interest may be sold for the same reasons and in the same manner as other real estate of a decedent or ward. Before confirmation, the court may require the filing of a bond conditioned to save the estate harmless. Upon confirmation, the representative shall assign the contract and convey by quitclaim deed. The proceeds of such sale in the estate of a decedent shall be disposed of in the same manner as the proceeds of sales of real estate of which the decedent was seised.

[1935 c. 72 s. 153] (8992-153)

**525.661 SALE SUBJECT TO CHARGE.** When the estate of a decedent or ward is liable for any charge, mortgage, lien, or other encumbrance upon the real estate therein, the court may refuse to confirm the sale or lease until after the filing of a bond in such amount as the court may direct conditioned to save the estate harmless.

[1935 c. 72 s. 154] (8992-154)

**525.662 CONFIRMATION.** Upon making a sale or lease, the representative shall file his report thereof. Upon proof of compliance with the terms of the order, the court may confirm the sale or lease and order the representative to execute and deliver the proper instrument.

[1935 c. 72 s. 155] (8992-155)

**525.67 EMINENT DOMAIN PROCEEDINGS.** When any real estate of a decedent or ward is desired by any person, firm, association, corporation, or governmental agency having the power of eminent domain, the representative may agree, in writing, upon the compensation to be made for the taking, injuring, damaging, or destroying thereof, subject to the approval of the court. When such agreement has been made, the representative shall file a petition, of which the agreement shall be a part, setting forth the facts relative to the transaction. The court, with or without notice, shall hear, determine, and act upon the petition. If the court approves the agreement, the representative, upon payment of the

agreed compensation, shall convey the real estate sought to be acquired and execute any release which may be authorized.

[1935 c. 72 s. 156] (8992-156)

**525.68 PLATTING.** When it is for the best interests of the estate of a decedent or ward, real estate may be platted by the representative under such conditions and upon such notice as the court may order.

[1935 c. 72 s. 157] (8992-157)

**525.69 CONVEYANCE OF VENDOR'S TITLE.** When any person legally bound to make a conveyance or lease dies before making the same, or when any ward is legally bound to make a conveyance or lease, the court, with or without notice, may direct the representative to make the conveyance or lease to the person entitled thereto. The petition may be made by any person claiming to be entitled to such conveyance or lease, or by the representative, or by any person interested in the estate or claiming an interest in such real estate or contract, and shall show the description of the land and the facts upon which such claim for conveyance or lease is based. Upon proof of the petition, the court may order the representative to execute and deliver an instrument of conveyance or lease upon performance of the contract.

[1935 c. 72 s. 158; 1937 c. 435 s. 20] (8992-158)

**525.691 MORTGAGE EXTENSION.** A representative without order of the court may make an extension of an existing mortgage for a period of five years or less, if the extension agreement contains the same prepayment privileges and the rate of interest does not exceed the lowest rate in the mortgage extended.

[1935 c. 72 s. 159] (8992-159)

**525.692 LIABILITY ON MORTGAGE NOTE.** No representative shall be liable personally on any mortgage note or by reason of the covenants in any instrument or conveyance executed by him in his representative capacity.

[1935 c. 72 s. 160] (8992-160)

**525.693 TITLE FREE FROM TAX LIEN.** The lien of the state for inheritance taxes payable by a representative shall not extend to any right acquired by a purchaser, mortgagee, or lessee through any conveyance made by such representative under a power contained in a will or under order of the court.

[1935 c. 72 s. 161] (8992-161)

**525.70 VALIDITY OF PROCEEDINGS.** No sale, mortgage, lease, or conveyance by a representative shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the same had jurisdiction of the estate.

[1935 c. 72 s. 162] (8992-162)

**525.701 CERTAIN DEEDS VALIDATED.** All deeds for the conveyance of real estate made and executed by an administrator or executor of the estate of a deceased person, pursuant to the order of any probate court of this state authorizing and directing the making and execution of such instrument, where the execution thereof was otherwise valid, and in which instrument the description of the property conveyed does not correspond with the description set forth in the order of the probate court authorizing and directing the making and execution of such instrument, the same are hereby validated and legalized, and such conveyances are hereby made valid as to the property described in the order of the probate court authorizing and directing the making and execution of such instrument.

[Ex. 1936 c. 58 s. 1] (8992-162a)

**525.702 LIMITATION OF ACTION.** No proceeding to have declared invalid the sale, mortgage, lease, or conveyance by a representative shall be maintained by any person claiming under or through the decedent or ward unless such proceeding is begun within five years immediately succeeding the date of such sale, mortgage, lease, or conveyance, provided, that in case of real estate sold by a guardian, no action for its recovery shall be maintained by or under the ward unless it is begun within five years next after the termination of the guardianship; and that, in cases of fraud, minors and others under legal disability to sue when the right of action first accrues may begin such action at any time within five years after the disability is removed.

[1935 c. 72 s. 163] (8992-163)

## APPEALS

**525.71 APPEALABLE ORDERS.** An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court:

- (1) An order admitting, or refusing to admit, a will to probate;
- (2) An order appointing, or refusing to appoint, or removing, or refusing to remove, a representative other than a special administrator or special guardian;
- (3) An order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate;
- (4) An order directing, or refusing to direct, a conveyance or lease of real estate under contract;
- (5) An order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counter-claim, in whole or in part, when the amount in controversy exceeds \$100.00;
- (6) An order setting apart, or refusing to set apart, property, or making, or refusing to make, an allowance for the spouse or children;
- (7) An order determining, or refusing to determine, venue; an order transferring, or refusing to transfer, venue;
- (8) An order directing, or refusing to direct, the payment of a bequest or distributive share when the amount in controversy exceeds \$100.00;
- (9) An order allowing, or refusing to allow, an account of a representative or any part thereof when the amount in controversy exceeds \$100.00;
- (10) An order adjudging a person in contempt;
- (11) An order vacating a previous appealable order, judgment, or decree; an order refusing to vacate a previous appealable order, judgment, or decree alleged to have been procured by fraud or misrepresentation, or through surprise or excusable inadvertence or neglect;
- (12) A judgment or decree of partial or final distribution;
- (13) An interlocutory decree entered pursuant to section 525.481;
- (14) An order granting or denying restoration to capacity;
- (15) An order made pursuant to section 525.49 directing, or refusing to direct, the payment of representatives' fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to take such appeal;
- (16) An order determining, or refusing to determine, inheritance taxes upon a hearing on a prayer for reassessment and redetermination; but nothing herein contained shall abridge the right of direct review by the supreme court;
- (17) An order extending the time for the settlement of the estate beyond five years from the date of the appointment of the representative.

[1935 c. 72 s. 164; 1939 c. 270 s. 9; 1941 c. 411] (8992-164)

**525.711 VENUE.** Such appeal shall be to the district court of the county of the probate court which made the order, judgment, or decree appealed from, except that an appeal taken from any order, judgment, or decree (other than one determining or refusing to determine venue or transferring or refusing to transfer venue) made before the transfer of venue shall be taken to the district court of the county to which the transfer was made.

[1935 c. 72 s. 165] (8992-165)

**525.712 REQUISITES.** Such appeal may be taken by any person aggrieved within 30 days after service of notice of the filing of the order, judgment, or decree appealed from, or if no such notice be served, within six months after the filing of such order, judgment, or decree. To render the appeal effective (1), the appellant shall serve upon the adverse party or his attorney or upon the probate judge for the adverse person who did not appear, a written notice of appeal specifying the order, judgment, or decree appealed from, and file in the probate court such notice with proof of service thereof; (2) pay to the probate court an appeal fee of \$3.00 to apply on the fee for the return; and (3) the appellant, other than the state, the veterans' administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, to pay all costs and disbursements, and to abide the order of the court therein.

The notice of the order, judgment, or decree appealed from, the notice of appeal, and the bond if required, shall be served as in civil actions in the district court.

When a party in good faith gives due notice of appeal and omits through mistake to do any other act necessary to perfect the appeal, the district court may permit an amendment on such terms as may be just.

[1935 c. 72 s. 166; 1937 c. 435 s. 21] (8992-166)

**525.713 RETURN.** When an appeal has been effected, the probate court upon payment of the remainder of its fee, if any, forthwith shall return to the district court a certified transcript of the order, judgment, or decree appealed from, the notice of appeal with proof of service thereof, and the bond if required. If the required fee for the return be not paid within 20 days after the appeal has been effected, the district court may dismiss the appeal. If the appeal be taken under section 525.71, clause (10), such transcript shall contain copies of such other documents, papers, and exhibits as the probate court may consider necessary. The district court may require a further or amended return.

[1935 c. 72 s. 167; 1937 c. 435 s. 22] (8992-167)

**525.714 SUSPENSION BY APPEAL.** Such appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the district court shall otherwise order. The district court may require the appellant to give additional bond for the payment of damages which may be awarded against him in consequence of such suspension, in case he fails to obtain a reversal of the order, judgment, or decree so appealed from. Nothing herein contained shall prevent the probate court from appointing special representatives nor prevent special representatives from continuing to act as such.

[1935 c. 72 s. 168] (8992-168)

**525.72 TRIAL.** Within 20 days after perfection of the appeal, the appellant shall file with the clerk of the district court, and serve upon the adverse party or his attorney a clear and concise statement of the proposition, both of law and of fact, upon which he will rely for reversal of the order, judgment, or decree appealed from; within 20 days after such service the adverse party may serve and file his answer thereto and the appellant, within 20 days thereafter, may serve and file a reply. If there be no reply, allegations of new matter in the answer shall be deemed denied. Demurrers shall not be permitted. The district court may allow or require any pleading to be amended, grant judgment on the pleadings, or, if the appellant fail to comply with the provisions hereof, dismiss the appeal.

After issues are so formed, the case may be brought on for trial by either party by the filing and service upon the attorney for the adverse party, or if he have none, then upon the clerk for him, of a notice of trial or note of issue, in accordance with the practice in the district court. Thereupon the cause shall be placed upon the calendar, tried, and determined in the same manner as if originally commenced in that court. All appeals other than those from the allowance or disallowance of a claim shall be tried by the court without a jury, unless the court orders the whole issue, or some specific question of fact involved therein, to be tried by a jury or referred.

[1935 c. 72 s. 169] (8992-169)

**525.73 AFFIRMANCE; REVERSAL.** When the appellant fails to prosecute his appeal, or the order, judgment, or decree appealed from or reviewed on certiorari is sustained, judgment shall be entered in the district court affirming the decision of the probate court. Upon the filing in the probate court of a certified transcript of such judgment, the probate court shall proceed as if no appeal had been taken. If the order, judgment, or decree reviewed is reversed or modified, the district court shall remand the case to the probate court with directions to proceed in conformity with its decision. Upon the filing in the probate court of a certified transcript of such judgment, it shall proceed as directed by the district court.

[1935 c. 72 s. 170] (8992-170)

**525.731 JUDGMENT; EXECUTION.** The party prevailing on the appeal shall be entitled to costs and disbursements to be taxed as in a civil action. If judgment be rendered against the estate, they shall be an adjudicated claim against it. If judgment be rendered against an appellant other than the state, the veterans' administration, or representative appealing on behalf of the estate, judgment shall be entered against the appellant and the sureties on his appeal bond and execution may issue thereon.

[1935 c. 72 s. 171] (8992-171)

**525.74 DIRECT APPEAL TO SUPREME COURT.** A party aggrieved may appeal direct to the supreme court from an order determining or refusing to



determine inheritance taxes upon a hearing on a prayer for reassessment and redetermination. Within 30 days after service of notice of the filing of such order, the appellant shall serve a notice of appeal upon all parties adversely interested or upon their attorneys and upon the probate judge. An appellant, other than the state, the veterans' administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, pay all costs and disbursements and abide the order of the court therein. The notice of appeal with proof of service and the bond, if required, shall be filed in the probate court within ten days after the service of such notice and the appellant shall pay to such court the sum of \$15.00, of which \$10.00 shall be transmitted to the clerk of the supreme court, as provided by law for appeals in civil actions.

Such appeal shall stay all proceedings on the order appealed from. When a party in good faith gives due notice of appeal from such order and omits through mistake to do any other act necessary to perfect the appeal, or to stay proceedings, the court may permit an amendment on such terms as may be just. Upon perfection of the appeal, the probate court shall transmit to the clerk of the supreme court the \$10.00 aforementioned together with a certified copy of the notice of appeal and bond, if required. The filing thereof shall vest in the supreme court jurisdiction of the cause, and records shall be transmitted to the supreme court, and records and briefs shall be printed, served, and filed, and such appeal shall be heard and disposed of as in the case of appeals in civil actions from the district court. If a settled case be necessary, the probate court may settle a case upon the application of any party. The notice of the hearing upon such application and the case proposed to be settled shall be served on all other parties interested in the appeal at least eight days prior to the hearing.

[1935 c. 72 s. 172] (8992-172)

#### COMMITMENTS

**525.75 VOLUNTARY HOSPITALIZATION.** Any insane, inebriate, feeble-minded, or epileptic person desiring to receive treatment at a state institution may be admitted upon his own application, in such manner and upon such conditions as the director of social welfare may determine. During the time of such treatment and until the expiration of three days after such person in writing demands his release, the superintendent of such institution is authorized and empowered to detain him as though he had been duly committed. If any such person demands his release, the superintendent if he deems such release not to be for the best interest of such person, his family, or the public, shall file a petition for commitment in the probate court of the county wherein such institution is located, within three days after such demand.

[1935 c. 72 s. 173] (8992-173)

**525.751 INSTITUTION OF PROCEEDINGS.** Unless otherwise indicated by the context, the word "patient" as used in sections 525.75 to 525.79 means any person for whose commitment as an insane, inebriate, feeble-minded, or epileptic person proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending.

The person, hospital, or institution ordered by the court to make such apprehension, conveyance, or confinement, may execute the order on any day and at any time thereof, by using all necessary means, including the breaking open of any door, window or other part of the building, vehicle, boat or other place in which the patient is located, and the imposition of necessary restraint upon the person of such patient.

Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless

other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the director of social welfare shall have consented thereto.

[1935 c. 72 s. 174; 1939 c. 270 s. 10] (8992-174)

**525.752 EXAMINATION.** The patient shall be examined at such time and place and upon notice to such persons and served in such manner as the court may determine. If he be obviously inebriate, feeble-minded, or epileptic, and if the county attorney consent thereto in writing, the examination may be made by the court; otherwise the court shall appoint two duly licensed doctors of medicine, or in feeble-minded proceedings two persons skilled in the ascertainment of mental deficiency, to assist in the examination. Upon the filing of a petition for the commitment of a feeble-minded or epileptic patient, the court shall fix the time and place for the hearing thereof, of which ten days' notice by mail shall be given to the director of social welfare, and to such other persons and in such manner as the court may direct.

The examiners and the court shall report their findings upon such forms as may be prescribed by the director, one of which shall be filed in court and another shall be transmitted to the director. The court shall determine the nature and extent of the property of the patient committed and of the persons upon whom liability is imposed by law for his care and support, making such findings upon any such forms as may be prescribed by the director, one of which shall be filed in court and another shall be transmitted to the director.

[1935 c. 72 s. 175] (8992-175)

**525.753 COMMITMENT.** If the patient is found to be insane or inebriate, the court shall issue to the sheriff or any other person a warrant in duplicate, committing the patient to the custody of the superintendent of the proper state hospital, or to the superintendent or keeper of any private licensed institution for the care of inebriates or insane persons; provided, however, that such patients are required to pay the necessary hospital charge. If such patient be entitled to care in any institution of the United States in this state, such warrant shall be in triplicate, committing him to the joint custody of the superintendents of the proper state and federal institution. If such federal institutions be unable or unwilling to receive the patient at the time of commitment, he subsequently may be transferred to it upon its request. Such transfer shall discharge his commitment to the state institution and constitute a sole commitment to the federal institution.

If the patient is found to be feeble-minded or epileptic, the court shall appoint the director of social welfare guardian of his person and commit him to the care and custody of the director.

When a defendant in a criminal proceeding has been examined in the probate court, pursuant to an order of the state or federal district court, the probate court shall transmit its findings and return the defendant to such district court, unless otherwise ordered. A duplicate of the findings shall be filed in the probate court but there shall be no petition, property or report, nor commitment, unless otherwise ordered.

[1935 c. 72 s. 176; 1937 c. 435 s. 23] (8992-176)

**525.754 PAYMENT OF FEES AND MILEAGE.** In each proceeding the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law, to each examiner the sum of \$5.00 per day for his services and 15 cents for each mile traveled, to the person to whom the warrant of apprehension is issued the sum of \$3.00 per day and actual disbursements for the travel, board, and lodging of the patient, of himself, and of authorized assistants, and to the person conveying the patient to the place of detention the sum of \$3.00 per day and actual disbursements for the travel, board, and lodging of the patient, of himself and of authorized assistants, and to the patient's counsel when appointed by the court, the sum of \$10.00 per day. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof.

When the settlement of the patient is found to be in another county, the court shall transmit to the county auditor a statement of the expenses of the apprehension, confinement, examination, commitment, and conveyance to the place of detention. Such auditor shall transmit the same to the auditor of the county of the patient's

settlement and such claim shall be paid as other claims against such county. If the auditor to whom such claim is transmitted shall deny the same, he shall transmit it with his objections to the director of social welfare which shall determine the question of settlement and certify his findings to each auditor. If the claim be not paid within 30 days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.

[1935 c. 72 s. 177] (8992-177)

**525.76 RELEASE BEFORE COMMITMENT.** Before the delivery of the warrant of commitment, the court may release an insane or inebriate patient to any person who files a bond to the state in such amount as the court may direct, conditioned upon the care and safe-keeping of the patient; but no person against whom a criminal proceeding is pending or who is dangerous to the public shall be so released.

[1935 c. 72 s. 178] (8992-178)

**525.761 RELEASE AFTER COMMITMENT.** Any insane, inebriate, feeble-minded, or epileptic patient committed to the director of social welfare or any institution under his control, may be released to any person if the director consent thereto or if a bond to the state be filed with the director in such amount as he may fix, conditioned upon the care and safe-keeping of the patient and the payment of all expenses, damages, and other items arising from any act of such patient.

[1935 c. 72 s. 179] (8992-179)

**525.762 DETENTION.** Upon delivery of an insane or inebriate patient to the institution to which he has been committed, the superintendent thereof shall retain the duplicate warrant and endorse his receipt upon the original which shall be filed in the court of commitment. Upon such filing, the court shall transmit a copy of the warrant with all endorsements to the director of social welfare. After such delivery, the patient shall be under the care, custody, and control of the director until discharged by him or by a court of competent jurisdiction; but no patient found by the committing court to be dangerous to the public shall be released from custody by the director or any institution except upon order of a court of competent jurisdiction. When a patient is paroled, discharged, transferred to another institution, dies, escapes, or is returned, the institution having charge of the patient shall file notice thereof in the court of commitment.

Upon commitment of a feeble-minded or epileptic patient, the director may place him in an appropriate home, hospital, or institution, or exercise general supervision over him anywhere in the state outside any institution, through any child welfare board or other appropriate agency thereto authorized by the director.

[1935 c. 72 s. 180; 1937 c. 31 s. 1] (8992-180)

**525.763 COMMISSIONER MAY ACT.** When the probate judge is unable to act upon any petition for the commitment of any patient, the court commissioner may act in the place of such judge.

[1935 c. 72 s. 181] (8992-181)

**525.77 MALICIOUS PETITION.** Whoever for a corrupt consideration or advantage, or through malice, shall make or join in or advise the making of any false petition or report, or shall knowingly or wilfully make any false representation for the purpose of causing such petition or report to be made, shall be guilty of a felony and punished by imprisonment in the state prison for not more than one year or by a fine of not more than \$500.00.

[1935 c. 72 s. 182] (8992-182)

**525.78 RESTORATION OF FEEBLE-MINDED AND EPILEPTICS.** The director of social welfare may petition the court of commitment, or the court to which the venue has been transferred, for the restoration to capacity of a feeble-minded or epileptic patient. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court may direct. Upon proof of the petition, the court shall restore the patient to capacity.

Upon the filing of such petition by any person other than the director and upon payment by the petitioner to the director all expenses in connection with the hearing in such amount as may be fixed by the director for the transportation, board, and lodging of the patient and authorized attendants, the court shall fix the time and place for the hearing thereof, ten days' notice of which shall be given to the director and to such other persons and in such manner as the court may direct. Any person may oppose such restoration. Upon proof that the patient is

not feeble-minded or epileptic, the court shall order him restored to capacity at the expiration of 30 days from the date of service of such order upon the director. If restoration be denied, the patient shall be remanded to the director; if restoration be granted, he shall be so remanded for the 30 days aforesaid.

The court may appoint two duly licensed doctors of medicine or two persons skilled in the ascertainment of mental deficiency to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each person so appointed the sum of \$5.00 per day for his services and 15 cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.

[1935 c. 72 s. 183; 1939 c. 270 s. 11] (8992-183)

**525.79 APPEAL.** Notwithstanding the provisions of sections 525.71 to 525.74, there shall be no appeal from an order granting or denying the petition of any person, other than the director of social welfare, for the restoration to capacity of a feeble-minded or epileptic patient, except as provided in this section. The director of social welfare may appeal to the district court in the manner prescribed by sections 525.71 to 525.74 for appeals by the state. Such appeal shall suspend the operation of the order appealed from until final determination of the appeal.

Any person aggrieved, other than the director of social welfare, upon payment by him to the director of all expenses in connection with the hearing in the district court in such amount as may be fixed by the director for the transportation, board, and lodging of the patient and authorized attendants, may appeal to the district court in the manner prescribed by sections 525.71 to 525.74. Such appeal shall not suspend the operation of the order appealed from until reversed or modified by the district court. Upon perfection of the appeal, the return shall be filed forthwith. The district court shall give the appeal precedence over every other proceeding therein, and hear the matter de novo, without a jury, and in a summary manner. Upon determination of the appeal, judgment shall be entered pursuant to the provisions of sections 525.71 to 525.74.

[1935 c. 72 s. 184] (8992-184)

## GENERAL PROVISIONS

**525.80 REPRESENTATIVE AND MINOR.** As used in this chapter, the word "representative," unless the context otherwise indicates, includes executors, general administrators, special administrators, administrators with the will annexed, administrators de bonis non, general guardians, and special guardians. The word "minor" means a person under the age of 21 years.

[1935 c. 72 s. 185; 1937 c. 435 s. 24] (8992-185)

**525.81 PETITION VERIFIED; DEFECT OF FORM SHALL NOT INVALIDATE.** Every application shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or in the statement of facts in any petition shall invalidate any proceedings.

[1935 c. 72 s. 186] (8992-186)

**525.82 VENUE.** Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of his death; if the decedent was not a resident of this state, proceedings may be had in any county wherein he left any property or into which any property belonging to his estate may have come. Proceedings for the appointment of a guardian shall be had in the county of the ward's residence, or if he be a non-resident of this state, proceedings may be had in any county in which his property is situated. Such proceedings first legally commenced shall extend to all of the property of the decedent or ward in this state.

If proceedings are instituted in more than one county, they shall be stayed except in the county where first legally commenced until final determination of venue. If the proper venue be determined to be in another county, the court, after making and retaining a true copy of the entire file, shall transmit the original to the proper county and proceedings shall be commenced anew in such proper county.

[1935 c. 72 s. 187] (8992-187)

**525.83 NOTICE.** When notice of hearing is required by any provision of this chapter by reference to this section, such notice shall be given once a week for three

consecutive weeks in a legal newspaper designated by the petitioner in the county wherein the proceedings are pending; or, if no such designation be made, in any legal newspaper in such county; or, if the city or village of the decedent's residence is situated in more than one county, in any legal newspaper in such city or village. The first publication shall be had within two weeks after the date of the order fixing the time and place for the hearing.

At least 14 days prior to the date fixed for the hearing the petitioner, his attorney or agent, shall mail a copy of the notice to each heir, devisee, and legatee whose name and address are known to him and, in the case of notice required by sections 525.24 and 525.282, shall mail two copies of the notice to the commissioner of taxation at St. Paul, Minnesota; and, if the decedent was born in any foreign country, or left heirs, devisees, or legatees in any foreign country, to the consul or representative referred to in section 525.28 or, if there be none, to the chief diplomatic representative of such country at Washington, D. C., or to the secretary of state at St. Paul, Minnesota, who shall forward the same to such representative.

Proof of such publication and mailing shall be filed before the hearing. No defect in any notice nor in the publication or service thereof shall invalidate any proceedings.

[1935 c. 72 s. 188; 1941 c. 422] (8992-188)

**525.84 ERRONEOUS ESCHEAT.** When a final decree has been made determining that any property has escheated to the state because the decedent left surviving no spouse nor kindred or because of the failure of a devisee or legatee to receive under a will admitted to probate, or when application is made to prove a will disposing of property escheated to the state, upon the petition of the representative or any person interested in the estate and upon 20 days' notice to the attorney general and to such other persons as the court may direct, the court may vacate the final decree, admit the will to probate as provided by law, and enter a final decree assigning the escheated property to the persons entitled thereto.

[1935 c. 72 s. 189] (8992-189)

**525.841 ESCHATE RETURNED.** After the determination of the inheritance tax, the state auditor shall recommend in writing to the legislature an appropriation for payment, or if the escheat was of realty, a conveyance thereof to the persons designated in such final decree. After such appropriation or authorization for conveyance by the legislature, and upon payment of the inheritance tax, the auditor shall draw his warrant on the state treasurer, or execute a proper conveyance of the realty, to the persons designated in such final decree.

[1935 c. 72 s. 190] (8992-190)

**525.85 DISCLOSURE PROCEEDINGS.** Upon the filing of a petition by the representative or any person interested in the estate, alleging that any person has concealed, converted, embezzled, or disposed of any property belonging to the estate of a decedent or that any person has possession or knowledge of any will or codicil of such decedent, or of any instruments in writing relating to such property, the court, upon such notice as it may direct may order such person to appear before it for disclosure. Refusal to appear or submit to examination, or failure to obey any lawful order based thereon shall constitute contempt of court.

[1935 c. 72 s. 191] (8992-191)

**525.86 NO ABATEMENT.** No action or proceedings commenced by a representative shall abate by reason of the termination of his authority.

[1935 c. 72 s. 192] (8992-192)

**525.87 MURDERER DISINHERITED.** No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organizations, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such

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beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued.

[1935 c. 72 s. 193] (8992-193)

**525.88 STATE PATENTS.** Where patents for public lands have been or may be issued, in pursuance of any law of this state, to a person who has died before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentees as if the patent had been issued to the deceased person during life.

[1935 c. 72 s. 194] (8992-194)

**525.881 FEDERAL PATENTS.** When any person holding a homestead or tree claim entry under the laws of the United States has died before making final proof and final proof has afterwards been made by his heirs, devisees, or representatives, and a patent has been granted to his "heirs" or "devisees," the district court of the county in which the real estate so patented is situated, may determine who are such heirs or devisees, and may determine their respective shares in such homestead or tree claim. The provisions of the code of civil procedure relating to the determination of adverse claims to real estate in so far as the same may be applicable, shall pertain to and govern the procedure in the action provided for in this section.

[1921 c. 36 s. 2; 1935 c. 72 s. 195] (8992-195)

**525.89 CITATION.** This chapter may be cited as the Minnesota probate code.

[1935 c. 72 s. 199] (8992-199)