

# MINNESOTA STATUTES 1979 SUPPLEMENT

## 524.3-1001 UNIFORM PROBATE CODE

the power to settle and distribute the estate and discharge the personal representative without regard to tax obligations.

(b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

[ 1979 c 303 art 3 s 34 ]

## CHAPTER 525. PROBATE PROCEEDINGS

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### 525.011 Civil and criminal jurisdiction.

Subdivision 1. Except in the counties of Hennepin and Ramsey the probate court shall also exercise the powers, duties and jurisdiction conferred upon courts by chapters 487, 491, 492, and 493.

[For text of subs 2 and 3, see M.S.1978]

[ 1979 c 41 s 7 ]

### 525.013 Jury trials.

Subdivision 1. Except as otherwise provided in chapter 487, the laws relating to jury trials in the district court apply to jury trials in a probate court under sections 525.011 to 525.015.

[For text of subs 2a to 7, see M.S.1978]

Subd. 8. Whenever a petit jury is desired by a party to a proceeding in probate court under sections 525.011 to 525.015, and such jury is permitted by law, such party shall request such jury, in writing, when the case is set for trial and pay the fees prescribed by chapter 487. The court, by order, may waive the payment of jury fees in a criminal case if it appears that the defendant is unable to make such payment.

[ 1979 c 41 s 8,9 ]

### 525.014 Pleading, practice, procedure, and appeals.

Subdivision 1. Pleading, practice, procedure, and the forms thereof in civil actions shall be the same in probate court as in the county court under chapter 487.

Subd. 2. Appeals from any judgment of a probate court exercising the powers, duties, and jurisdiction in certain civil and criminal cases under sections 525.011 to 525.015, shall be made in the same manner as in the county courts under chapter 487.

[ 1979 c 41 s 10 ]

PROBATE PROCEEDINGS 525.172

**525.091 Destruction and reproduction of probate records.**

Subdivision 1. The clerk of court of any county upon order of the probate judge may destroy all the original documents in any proceeding of record in his office five years after the file in such proceeding has been closed provided the original or a Minnesota state archives commission approved photographic, photostatic, microphotographic, microfilmed, or similarly reproduced copy of the original of the following enumerated documents in the proceeding are on file in his office.

Enumerated original documents:

(a) In estates, the jurisdictional petition and proof of publication of the notice of hearing thereof; will and certificate of probate; letters; inventory and appraisal; orders directing and confirming sale, mortgage, lease, or for conveyance of real estate; order setting apart statutory selection; receipts for federal estate taxes and state estate taxes; orders of distribution and general protection; decrees of distribution; federal estate tax closing letter, consent to discharge by commissioner of revenue and order discharging representative; and any amendment of the listed documents.

When an estate is deemed closed as provided in clause (d) of this subdivision, the enumerated documents shall include all claims of creditors.

(b) In guardianships or conservatorships, the jurisdictional petition and order for hearing thereof with proof of service; letters; orders directing and confirming sale, mortgage, lease or for conveyance of real estate; order for restoration to capacity and order discharging guardian; and any amendment of the listed documents.

(c) In mental, inebriety, and indigent matters, the jurisdictional petition; report of examination; warrant of commitment; notice of discharge from institution, or notice of death and order for restoration to capacity; and any amendment of the listed documents.

(d) Except for the enumerated documents described in this subdivision, the clerk of probate court may destroy all other original documents in any proceeding without retaining any reproduction of the document. For the purpose of this subdivision, a proceeding in the probate court is deemed closed if no document has been filed in the proceeding for a period of 15 years, except in the cases of wills filed for safe-keeping and those containing wills of decedents not adjudicated upon.

Subd. 2. The clerk of probate court of any county upon order of the probate judge may destroy the original record books as enumerated in this subdivision provided a Minnesota state archives commission approved photographic, photostatic, microphotographic, microfilmed, or similarly reproduced copy of the original record book is on file in his office.

Enumerated original record books:

All record books kept for recording in compliance with section 525.03, clauses (3), (4), (5) and (6).

[For text of subs 3 and 4, see M.S.1978]

[ 1979 c 303 art 3 s 35,36 ]

**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 witness shall have declared himself to be his father, provided such writing or an authenticated copy thereof shall be produced in the proceeding in which it is asserted or from the person who has been determined to be the father of such child in a paternity proceeding before a court of competent jurisdiction; but such child shall not inherit from the kindred of the father by right of representation.

[ 1979 c 161 s 1 ]

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## 525.312 PROBATE PROCEEDINGS

### 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 524.1-401. Notice of the hearing, in the form prescribed by court rule, shall also be given under direction of the clerk of court by publication once a week for two consecutive weeks in a legal newspaper in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for hearing. 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 of descent assigning the real or personal property, or any interest therein, to the persons entitled thereto pursuant to the will or such authenticated copy, if there be one, otherwise pursuant to the laws of intestate succession in force at the time of the decedent's death. The court may appoint two or more disinterested persons to appraise the property.

[ 1979 c 303 art 3 s 37 ]

### 525.551 Hearing; appointment; bond; prosecution; notice.

Subdivision 1. Upon proof of the petition, the court shall appoint one or two persons suitable and competent to discharge the trust as general guardians or conservators of the person or estate or of both. Upon the filing of a bond in an 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 48.79, letters of guardianship or conservatorship shall issue. If there be no personal property, the court may waive the filing of a bond, but if the guardian or conservator 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. In case of breach of any condition of the bond an action thereon may be prosecuted by leave of the court by any interested person. If the ward or conservatee be a patient of a state hospital for the mentally ill, or committed to the guardianship or conservatorship of the commissioner of public welfare as mentally retarded, epileptic, dependent and neglected or is under the temporary custody of the commissioner of public welfare, the court shall notify the commissioner of public welfare of the appointment of a guardian or conservator or successor guardian or conservator of the estate of the ward or conservatee.

Subd. 2. If the circumstances warrant, the court may treat a petition for guardianship as a petition for conservatorship.

[ 1979 c 43 s 2 ]

### 525.61 Restoration to capacity.

Any person who is under guardianship or conservatorship (except as a minor, or as a feeble-minded or epileptic person, or a person under guardianship or conservatorship in the juvenile court), or his guardian or conservator, 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 or to have a guardianship transferred to a conservatorship. Upon the filing of a petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the commissioner of public welfare if he was under the control of the commissioner and has not been discharged by the commissioner, and to those other persons and in a manner as the court may direct.

Any person may oppose the restoration. Upon proof that the 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 any proceedings for restoration, 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 a reasonable sum for his services. Upon the order, the county auditor shall issue a warrant on the county treasurer for the payment thereof.

[ 1979 c 43 s 3 ]

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## PROBATE PROCEEDINGS 525.74

### 525.71 Appealable orders.

Appeals to the district court may be taken from any of the following orders, judgments, and decrees issued by a judge of the court under chapters 524 or 525:

- (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 counterclaim, in whole or in part, when the amount in controversy exceeds \$100;
- (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;
- (9) An order allowing, or refusing to allow, an account of a representative or any part thereof when the amount in controversy exceeds \$100;
- (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 or an order determining or confirming distribution or any order of general protection;
- (13) An order entered pursuant to section 576.142;
- (14) An order granting or denying restoration to capacity;
- (15) An order made directing, or refusing to direct, the payment of representative's 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, judgment, or decree relating to or affecting estate taxes or refusing to amend, modify, or vacate such an order, judgment, or decree; 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.

[ 1979 c 303 art 3 s 38 ]

### 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 estate 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, of which \$10 shall be transmitted to the clerk of the supreme court, as provided by law for appeals in civil actions.

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## 525.74 PROBATE PROCEEDINGS

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 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.

[ 1979 c 303 art 3 s 39 ]

### 525.841 Escheat returned.

In all such cases the commissioner of finance shall be furnished with a certified copy of the court's order assigning the escheated property to the persons entitled thereto, and upon notification of payment of the estate tax, the commissioner of finance shall draw his warrant on the state treasurer, or execute a proper conveyance to the persons designated in such order. In the event any escheated property has been sold pursuant to sections 11.08 or 94.09 to 94.16, then the warrant shall be for the appraised value as established during the administration of the decedent's estate. There is hereby annually appropriated from any moneys in the state treasury not otherwise appropriated an amount sufficient to make payment to all such designated persons. No interest shall be allowed on any amount paid to such persons.

[ 1979 c 303 art 3 s 40 ]

## CHAPTER 542. VENUE OF ACTIONS

Sec.  
542.06 Replevin.

Sec.  
542.16 Notice to remove.

### 542.06 Replevin.

Actions to recover the possession of personal property wrongfully taken shall be tried in the county in which the taking occurred, or, at claimant's election, in the county in which he resides; in other cases in the county in which the property is situated.

[ 1979 c 18 s 10 ]

### 542.16 Notice to remove.

Subdivision 1. **Initial disqualification.** Any party, or his attorney, to a cause pending in a district court, within one day after it is ascertained which judge is to preside at the trial or hearing thereof, or at the hearing of any motion or order to show cause, may make and file with the clerk of the court in which the action is pending and serve on the opposite party a notice to remove. Thereupon without any further act or proof, the chief judge of the judicial district shall assign any other judge of any court within the district to preside at the trial of the cause or the hearing of the motion or order to show cause, and the cause shall be continued on the calendar, until the assigned judge can be present. In criminal actions the notice to remove shall be made and filed with the clerk by the defendant, or his attorney, not less than two days before the expiration of the time allowed him by law to prepare for trial and in any of those cases the presiding judge shall be incapacitated to try the cause. In criminal cases, the chief judge, for the purpose of securing a speedy trial, may in his discretion change the place of trial to another county.

Subd. 2. **Subsequent disqualifications.** After a litigant has once disqualified a presiding judge as a matter of right under subdivision 1, he may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative