

MINNESOTA STATUTES 1994

CHAPTER 525

PROBATE PROCEEDINGS

POWERS OF COURT	
525.011	Civil and criminal jurisdiction.
525.012	Fees, fines, and costs.
525.013	Jury trials.
525.014	Pleading, practice, procedure, and appeals.
525.015	Judgments.
525.02	Powers.
525.03	Records.
525.031	Fees for copies.
525.033	Fees for filing petitions.
PERSONNEL	
525.041	Written decision shall be filed within 90 days; mandatory.
525.05	Judge or referee; grounds for disqualification.
525.051	Temporary assignment of judges.
525.052	Insanity of judge.
525.053	Delivery to successor.
525.06	Annual assemblage.
525.07	Acting as counsel prohibited.
525.08	Salaries.
525.081	Practice of law; appraisals.
525.082	Judicial officers, increase in compensation.
525.09	Court administrators; appointment; powers.
525.091	Destruction and reproduction of probate records.
525.092	Court administrator may destroy certain papers.
525.095	Court administrator may issue orders under direction of the court.
525.10	Referee; appointment; bond; office abolished.
525.101	Compensation of referee.
525.102	Reference.
525.103	Delivery of books and records.
525.11	Reporter; appointment and duties.
525.111	Compensation; transcript fees.
525.112	Court reporters for Hennepin county court.
525.113	Additional employees.
525.12	Auditor; appointment.
525.121	Powers.
525.122	Compensation of auditor.
INTESTATE SUCCESSION	
525.13	Estate.
525.14	Descent of cemetery lot.
525.145	Descent of homestead.
525.15	Allowances to spouse.
525.151	Allowance selection and maintenance payment.
525.152	Award of property with sentimental value to children.
525.161	No surviving spouse or kindred; notices to attorney general.
WILLS	
525.21	Quantity of estate devised.
525.22	Deposit of wills.
525.221	Duty of custodian.
525.2221	Wills not affected.
UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT	
525.223	Uniform testamentary additions to trusts act.
PROBATE OF WILLS	
525.242	Secondary evidence.
525.253	Sale of devised property.
DETERMINATION OF DESCENT	
525.31	Essentials.
525.311	Contents of petition.
525.312	Decree of descent.
PROPERTY DISPOSITION	
525.37	Foreclosure of mortgages.
525.38	Realty acquired.
525.391	Property fraudulently conveyed.
525.392	Property converted.
525.393	Disposal by coroner.
ACCOUNTING, DISTRIBUTION	
525.475	Dormant estate; removal of representative or attorney.
525.48	Final account, attorney fees and representative fees.
525.483	Recording decree.
525.484	Property of deceased persons to be transferred to representatives of foreign countries in certain cases.
525.486	Termination of trusts; distribution.
525.491	Attorney's lien.
525.51	Summary proceedings.
525.515	Basis for attorney's fees.
525.528	Federal estate tax; marital deduction.
ADVANCEMENTS	
525.532	Disclaimer of interests passing by will, intestate succession or under certain powers of appointment.
GUARDIANSHIPS AND CONSERVATORSHIPS	
525.539	Definitions.
525.54	Adults subject to guardianship and conservatorship.
525.541	Petitioners.
525.542	Contents of petition.
525.543	Lis pendens.
525.544	Nomination or appointment of guardian or conservator.
525.55	Notice of hearing.
525.5501	Right to counsel.
525.551	Hearing; appointment; bond; prosecution; notice.
525.5515	Letters of guardianship or conservatorship.
525.552	Reduction of bond.
525.56	Guardian's or conservator's powers and duties.
525.561	Contents of inventory.
525.562	Appraisal.
525.57	Transfer of venue.
525.58	Filing of accounts; filing of affidavit.
525.581	Notice of hearing on account.
525.582	Adjudication on account.
525.583	Allowance and wages of conservatee; limited accountability of conservator.
525.59	Succeeding guardian or conservator.
525.591	Special guardian or conservator.
525.60	Termination.
525.61	Restoration to capacity; modification of guardianship or conservatorship.
525.615	Status of guardian of minor; general.
525.6155	Testamentary appointment of guardian of minor.
525.616	Objection by minor of 14 or older or interested adult to testamentary appointment.

MINNESOTA STATUTES 1994

963

PROBATE PROCEEDINGS 525.011

525.6165	Court appointment of guardian of minor; conditions for appointment.	525.703	Costs.
525.617	Court appointment of guardian of minor; venue.	525.705	Preexisting guardianships and conservatorships.
525.6175	Court appointment of guardian of minor; qualification; priority of minor's nominee.		APPEALS
525.618	Court appointment of guardian of minor; procedure.	525.71	Appealable orders.
525.6185	Consent to service by acceptance of appointment; notice.	525.712	Requisites.
525.619	Powers and duties of guardian of minor.	525.714	Suspension by appeal.
525.6192	Termination of appointment of guardian; general.	525.73	Affirmance; reversal.
525.6194	Proceedings subsequent to appointment; venue.	525.731	Judgment; execution.
525.6195	Resignation or removal proceedings.		GENERAL PROVISIONS
525.6196	Facility of payment or delivery.	525.80	Representative.
525.6197	Discharge of guardian or conservator; property of a minor.	525.83	Notice.
525.6198	Protective proceedings; appointment of conservator of estate of minor.	525.831	Notice to attorney general of devises for charitable purposes.
525.6199	Guardianship, conservatorship; workers' compensation proceedings.	525.84	Erroneous escheat.
	REALTY; SALES, LEASES, MORTGAGES	525.841	Escheat returned.
525.62	Mortgage and lease.	525.85	Disclosure proceedings.
525.63	Reasons for sale, mortgage, lease.	525.88	State patents.
525.64	Petition, notice, hearing.	525.881	Federal patents.
525.641	Order for sale, mortgage, lease.	525.91	Letters, contents.
525.642	Terms of sale.		UNIFORM ANATOMICAL GIFT ACT
525.65	Public sale.	525.921	Definitions.
525.651	Private sale.	525.9211	Making, amending, revoking, and refusing to make anatomical gifts by individual.
525.652	Additional bond.	525.9212	Making, revoking, and objecting to anatomical gifts, by others.
525.66	Sale of contract interest.	525.9213	Authorization by coroner or medical examiner or local public health official.
525.661	Sale subject to charge.	525.9214	Routine inquiry and required request; search and notification.
525.662	Confirmation.	525.9215	Persons who may become donees; purposes for which anatomical gifts may be made.
525.67	Agreement and sale for public purpose.	525.9216	Delivery of document of gift.
525.68	Platting.	525.9217	Rights and duties at death.
525.69	Conveyance of vendor's title.	525.9218	Coordination of procurement and use.
525.691	Mortgage extension.	525.9219	Sale or purchase of parts prohibited.
525.692	Liability on mortgage note.	525.9221	Examination, autopsy, applicable law, liability.
525.70	Validity of proceedings.	525.9222	Transitional provisions.
525.702	Limitation of action.	525.9223	Uniformity of application and construction.
		525.9224	Short title.
		525.95	Fiduciary powers, suspension during war service.

POWERS OF COURT

525.01 [Renumbered 487.01]

525.0105 [Repealed, 1971 c 951 s 44]

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.

Subd. 2. The county board of a county in which additional powers, duties and jurisdictions are conferred upon the probate court by subdivision 1, shall provide and furnish to the probate court such supplies, equipment and personnel as may be necessary for the purposes of the subdivision.

Subd. 3. The court administrator of the probate court of a county in which additional powers, duties and jurisdictions are conferred upon probate court by subdivision 1 shall exercise such powers and duties as the probate judge may direct in order to enable the probate court to carry out the provisions of subdivision 1.

History: 1959 c 494 s 1; 1971 c 166 s 1; 1979 c 41 s 7; 1Sp1986 c 3 art 1 s 82

525.012 FEES, FINES, AND COSTS.

Subdivision 1. [Repealed, 1989 c 335 art 3 s 57 subd 2]

Subd. 2. [Repealed, 1989 c 335 art 3 s 57 subd 2]

Subd. 3. [Repealed, 1989 c 335 art 3 s 57 subd 2]

Subd. 4. [Repealed, 1989 c 335 art 3 s 57 subd 2]

Subd. 5. The court administrator shall pay such fees and mileage to witnesses as may be ordered by the probate judge in any action or proceeding involving a charged violation of criminal law or municipal ordinance. The court administrator shall obtain receipts therefor as vouchers for the sums paid and shall deduct these payments from the amounts otherwise due the officers to whom the court administrator is required to pay fees, costs, and fines. If the court administrator is without funds to make the payments required by this subdivision, the witnesses shall be paid, upon certification by the court administrator, by the city whose municipal ordinance, charter provision, rule, or regulation is involved in the proceeding, and in other cases by the county in which the court is situated. No witness fees under this subdivision shall be paid in advance. No public officer or employee shall be paid any witness fees when called upon to testify in a matter resulting from public employment.

History: 1959 c 494 s 2; 1973 c 123 art 5 s 7; 1986 c 444; *ISp* 1986 c 3 art 1 s 82

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.

Subd. 2. [Repealed, 1977 c 201 s 2]

Subd. 2a. Petit jurors for the trial of all types of action shall be selected in the same manner as petit jurors are selected in district court.

Subd. 3. [Repealed, 1977 c 201 s 2]

Subd. 4. Petit jurors shall be drawn from the list of persons properly qualified. The court administrator of probate court shall issue a venire for the jurors drawn which shall be returnable on such dates and hours as the judge directs. No person shall be drawn as a juror more than once every two years.

Subd. 5. When necessary, the court may issue a special venire.

Subd. 6. Failure to attend as a juror when duly drawn and summoned is punishable as contempt of court.

Subd. 7. Jurors shall be paid by the county in which the court is situated the same compensation and mileage as prescribed by law for jurors in the district court. The court administrator of probate court shall deliver to each juror a certificate showing the number of days of service and the mileage for which the juror is entitled to receive compensation. This certificate shall be filed with the county auditor in which the court is situated and the amount due shall be paid from the treasury of such county. The certificate is a proper and sufficient voucher for the issuance of a warrant. Any juror regularly summoned who actually attends at the time named in such summons is entitled to per diem and mileage whether or not sworn as a juror.

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.

History: 1959 c 494 s 3; 1977 c 201 s 1; 1979 c 41 s 8,9; 1986 c 444; *ISp* 1986 c 3 art 1 s 82

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.

MINNESOTA STATUTES 1994

965

PROBATE PROCEEDINGS 525.033

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.

History: 1959 c 494 s 4; 1961 c 238 s 1; 1979 c 41 s 10

525.015 JUDGMENTS.

No judgment of a probate court under sections 525.011 to 525.015 shall be a lien upon the real estate until a transcript thereof is filed and docketed with the court administrator of the district court. If no execution thereon be outstanding, the judgment creditor may cause such transcript to be docketed in the same county, and thereafter execution may issue from either court. The court administrator with whom the transcript is so filed may issue transcripts to be filed and docketed in other counties, as in the case of a judgment originally rendered in the court administrator's court. When docketed as herein provided, the judgment shall have the same force and effect in all respects as the judgment of the district court.

History: 1959 c 494 s 5; 1986 c 444; 1Sp1986 c 3 art 1 s 82

525.02 POWERS.

In addition to its general powers, the court shall have power to correct, modify, vacate, or amend its records, orders and decrees:

- (a) At any time, for the correction of clerical error or pursuant to the provisions of section 524.3-413.
- (b) Within the time for taking an appeal, for the correction of judicial error;
- (c) Within two years after petitioner's discovery thereof, for fraud, whether intrinsic or extrinsic, or misrepresentation unless petitioner be a party to such fraud;
- (d) Within two years after the date of filing of any record, order or decree, for excusable neglect, inadvertence or mistake.

In any case, the petitioner must proceed with due diligence and may be barred by laches or the court may deny relief where it appears that the granting thereof would be inequitable in view of all the facts and circumstances appearing.

History: (8992-2) 1935 c 72 s 2; 1965 c 563 s 1; 1975 c 347 s 81

525.03 RECORDS.

The court shall keep the following records:

(1) An index to the court records, in which all proceedings shall be entered in alphabetical order under the name of the subject person, together with the case number and the date of the filing of the first document;

(2) A register, in which shall be entered the title of each proceeding, the case number and a listing of each document filed with the date of the filing.

History: (8992-3) 1935 c 72 s 3; 1937 c 435 s 1,2; 1959 c 100 s 1; 1975 c 347 s 82; 1982 c 592 s 2

525.031 FEES FOR COPIES.

The fees for copies of all documents shall be the same as the fee established for such copies on civil proceedings under section 357.021, subdivision 2.

History: (8992-4) 1935 c 72 s 4; 1967 c 128 s 1; 1986 c 442 s 13

525.033 FEES FOR FILING PETITIONS.

The probate court shall collect a fee as established by section 357.021, subdivision 2, clause (1), for filing a petition to commence a proceeding under this chapter and chapter 524. The fee for copies of all documents in probate proceedings must be the same as the fee established for certified copies in civil proceedings under section 357.021, subdivision 2. Fees collected under this section and section 525.031 must be

MINNESOTA STATUTES 1994

forwarded to the state treasurer for deposit in the state treasury and credited to the general fund.

History: 1978 c 730 s 3; 1986 c 442 s 14; 1987 c 11 s 1; 1989 c 335 art 3 s 35

PERSONNEL

525.04 [Repealed, 1Sp1981 c 4 art 3 s 8]

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.

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 the attorney, who appeared of record at the hearing.

History: (8992-6) 1935 c 72 s 6; 1967 c 317 s 1; 1986 c 444

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 the judge or the judge's spouse or any of either of their kin nearer than first cousin is 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 the judge; (3) that the judge may be a necessary witness in the matter; (4) that it involves a property right in respect to which the judge has been engaged or is engaged as an attorney; or (5) that the judge was engaged in a joint enterprise for profit with the decedent at the time of death or that the judge is then engaged in a joint enterprise for profit with any person interested in the 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 or a probate judge who has retired as provided in section 490.12, subdivision 2, to act in the judge's stead in the matter.

History: (8992-7) 1935 c 72 s 7; 1961 c 6 s 1; 1981 c 31 s 12; 1986 c 444

525.051 TEMPORARY ASSIGNMENT OF JUDGES.

Whenever by reason of disqualification, absence, illness, incapacity or other cause, the probate judge of any county is unable to act, or whenever the interest of the public or of any person interested in any matter requires that such probate judge should not act, any other probate judge, or probate judge who has retired as a probate judge, and who consents so to act, may be assigned to serve and discharge the duties of such probate judge in the judge's stead at such times or for such purposes as may be directed by order of such probate judge or in the event of death or refusal, failure, or inability so to order as determined by the chief judge of the district court of the judicial district in which the county is situated, by order of such chief judge. Any probate judge or retired probate judge temporarily assigned to serve and discharge the duties of the probate judge in such other county shall be reimbursed for all reasonable and necessary mileage and expenses and may, when so ordered by such chief judge, be paid such additional compensation as such chief judge shall fix, but in no event shall any compensation so paid exceed the rate of compensation prescribed by law as the salary of the probate judge in the county in which said probate judge or retired probate judge is temporarily assigned. It shall be the duty of the county to which a probate judge or retired probate judge is temporarily assigned to make payment to such probate judge or retired probate judge of all amounts due under the provisions hereof for mileage, expenses or compensation.

Any substitute judge while acting in such capacity shall have all the power, author-

MINNESOTA STATUTES 1994

967

PROBATE PROCEEDINGS 525.081

ity, and jurisdiction of the resident judge, including juvenile, municipal or other jurisdiction conferred by law, irrespective of the nature of the jurisdiction of the substitute judge in the county from which called to serve.

History: (8992-8) 1935 c 72 s 8; Ex1959 c 60 s 1; 1961 c 267 s 1; 1986 c 444

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.

History: (8992-9) 1935 c 72 s 9

525.053 DELIVERY TO SUCCESSOR.

When the term of office of any judge expires, the judge shall deliver to the successor all books, records, and papers in the judge's possession relating to that office. Upon failure to do so within five days after demand by the successor, the judge shall be guilty of a gross misdemeanor.

History: (8992-10) 1935 c 72 s 10; 1986 c 444

525.06 ANNUAL ASSEMBLAGE.

The judges of the probate courts shall assemble each year at such places and times as may be designated by the probate judges' according to rule governing their meetings, and any 30 of them constitute a quorum.

History: (8992-11) 1935 c 72 s 11; 1967 c 317 s 2; 1987 c 377 s 11

525.07 ACTING AS COUNSEL PROHIBITED.

No judge, referee, registrar, court administrator, deputy court administrator, or employee of any 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, registrar, or court administrator shall keep or hold official office with any practicing attorney.

History: (8992-12) 1935 c 72 s 12; 1975 c 347 s 83; 1986 c 444; 1Sp1986 c 3 art 1 s 82

525.08 SALARIES.

The salaries of the judges, referees, registrars, court administrators, reporters, and employees shall be as provided by law, but the salaries of the registrars, court administrators and employees shall be fixed by the judge within the budget approved by the board of county commissioners, subject to the provisions of section 382.265.

History: (8992-13) 1935 c 72 s 13; 1967 c 317 s 3; 1975 c 347 s 84; 1Sp1986 c 3 art 1 s 82

525.081 PRACTICE OF LAW; APPRAISALS.

Subdivision 1. [Repealed, 1977 c 432 s 49]

Subd. 2. [Repealed, 1977 c 432 s 49]

Subd. 3. [Repealed, 1977 c 432 s 49]

MINNESOTA STATUTES 1994

Subd. 4. [Repealed, 1977 c 432 s 49]

Subd. 5. [Repealed, 1977 c 432 s 49]

Subd. 6. [Repealed, 1977 c 432 s 49]

Subd. 7. No judge of the probate court shall practice as an attorney or counselor at law, nor be a partner of any practicing attorney in the business of the judge's profession, nor serve as an appraiser in any estate proceeding.

Subd. 8. [Repealed, 1977 c 432 s 49]

Subd. 9. [Repealed, 1977 c 432 s 49]

History: 1961 c 596 s 1; 1965 c 826 s 1; Ex1967 c 54 s 1; 1969 c 1023 s 1-3; 1971 c 81 s 2; 1973 c 654 s 15; 1975 c 271 s 6; 1977 c 432 s 44; 1986 c 444

525.082 JUDICIAL OFFICERS, INCREASE IN COMPENSATION.

Notwithstanding any law to the contrary, or any provision of Laws 1971, chapter 951, the salaries of all judges of probate as provided under section 525.081, subdivisions 1 and 2, who do not become county court judges, but who are eligible to serve out the balance of their term as judicial officers of the county district court as provided in Laws 1971, chapter 951, shall be increased by ten percent of the amount provided for and received by the judge under the provisions of section 525.081, subdivisions 1 and 2, which salary shall be the salary for the balance of the term for which they are elected, and which salary shall determine any retirement and spouse's survivorship to which the judge and the judge's spouse may be entitled to under the laws pertaining thereto.

History: Ex1971 c 32 s 26 subd 1; 1981 c 31 s 13

525.09 COURT ADMINISTRATORS; APPOINTMENT; POWERS.

The judge may appoint a court administrator, deputy court administrators, and employees as provided by law, to hold office during the judge's 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 office, each court administrator and such deputy court administrators and employees designated by the court 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 duties. Such bond with the oath of the appointee shall be recorded in the office of the county recorder. 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 court administrator or deputy court administrator 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.

History: (8992-14) 1935 c 72 s 14; 1937 c 435 s 4; 1945 c 209 s 1; 1973 c 524 s 13; 1976 c 181 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82

525.091 DESTRUCTION AND REPRODUCTION OF PROBATE RECORDS.

Subdivision 1. The court administrator of any county upon order of the probate judge may destroy all the original documents in any proceeding of record in the 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 the 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

MINNESOTA STATUTES 1994

969

PROBATE PROCEEDINGS 525.092

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 court administrator 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 safekeeping and those containing wills of decedents not adjudicated upon.

Subd. 2. The court administrator 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 the office.

Enumerated original record books:

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

Subd. 3. A photographic, photostatic, microphotographic, microfilmed, or similarly reproduced record is of the same force and effect as the original and may be used as the original document or book of record in all proceedings.

Subd. 4. This section does not apply to the court of any county until the county board of the county adopts a resolution authorizing the destruction of probate records pursuant to the provisions of this section. When the county board has complied with this subdivision, section 525.092 and any act amendatory thereof shall no longer apply to the probate court of that county.

History: 1965 c 883 s 1; 1971 c 484 s 1; 1973 c 582 s 3; 1975 c 347 s 85-87; 1979 c 303 art 3 s 35,36; 1986 c 444; 1Sp1986 c 3 art 1 s 82

525.092 COURT ADMINISTRATOR MAY DESTROY CERTAIN PAPERS.

Subdivision 1. **Certain vouchers and receipts.** The court administrator of the probate court is hereby authorized to destroy all vouchers or receipts filed in estates and guardianship proceedings of record in the office after such estates or guardianships have been closed for a period of 25 years, or more, except receipts for any federal or state taxes.

Subd. 2. **Certain guardianships excepted.** The provisions of this section shall not apply to guardianships of incompetent or insane persons, nor to guardianships of minors until one year after the minor has become 18 years old.

History: 1947 c 117 s 1,2; 1949 c 409 s 1; 1951 c 21 s 1; 1973 c 725 s 75; 1986 c 444; 1Sp1986 c 3 art 1 s 82

525.094 [Repealed, 1965 c 883 s 2]

525.095 COURT ADMINISTRATOR MAY ISSUE ORDERS UNDER DIRECTION OF THE COURT.

The judge may authorize the court administrator or any deputy court administrator 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 court administrator or deputy court administrator shall be prima facie evidence of authority to issue it.

History: (8992-15) 1935 c 72 s 15; 1937 c 435 s 5; 1986 c 444; 1Sp1986 c 3 art 1 s 82

525.10 REFEREE; APPOINTMENT; BOND; OFFICE ABOLISHED.

Subdivision 1. **Office abolished.** The office of referee is abolished. No vacancy in the office of referee shall be filled, nor new office created.

Subd. 2. **Incumbents.** Persons holding the office of referee on June 30, 1980, in the second and August 15, 1980, in the fourth judicial district may continue to serve at the pleasure of the chief judge of the district under the terms and conditions of their appointment. All referees are subject to the administrative authority and assignment power of the chief judge of the district as provided in section 484.69, subdivision 3, and are not limited to assignment to probate court. All referees are subject to the provisions of section 484.70. Part time referees holding office in the second judicial district pursuant to this subdivision shall cease to hold office on July 31, 1984.

Subd. 3. **Referees.** Each referee in probate court shall be an attorney at law duly admitted in this state. The appointment shall be in writing and filed in the court. The referee has the power to take acknowledgments and administer oaths.

History: (8992-16) 1935 c 72 s 16; 1937 c 435 s 6; 1957 c 212 s 1; 1973 c 524 s 14; 1974 c 165 s 1; 1974 c 387 s 1; 1976 c 181 s 2; 1981 c 272 s 6

NOTE: St. Louis county probate court referees, see Laws 1971, chapter 223.

Washington county referee, see Laws 1967, chapter 814.

525.101 COMPENSATION OF REFEREE.

Such referee shall receive from the county as compensation \$3,600 per annum in counties having more than 500,000 inhabitants, 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 a suitable office in the courthouse 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 properly discharge the duties.

History: (8992-17) 1935 c 72 s 17; 1957 c 212 s 2; 1971 c 471 s 1; 1986 c 444

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 the referee's signature to the order or decree of the court; and whenever this 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 the referee's signature to any such order or decree shall not affect its validity.

History: (8992-18) 1935 c 72 s 18; 1986 c 444

MINNESOTA STATUTES 1994

971

PROBATE PROCEEDINGS 525.113

525.103 DELIVERY OF BOOKS AND RECORDS.

When the term of office of such referee expires or is terminated, the referee shall deliver to the successor or to the judge all books and papers in the referee's possession relating to the office. Upon failure to do so within five days after demand by the successor or the judge, the referee shall be guilty of a gross misdemeanor.

History: (8992-19) 1935 c 72 s 19; 1986 c 444

525.11 REPORTER; APPOINTMENT AND DUTIES.

The judge may appoint a competent stenographer as reporter and secretary in all matters pertaining to official duties to hold office during the judge's 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 that in commitment proceedings a tape recording of the proceedings may be kept in lieu of a stenographic record. The reporter 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, the reporter shall make a record of any matter or proceeding and without charge shall read to or transcribe for such judge any record made or any tape recording made in a commitment proceeding. Upon completion of every trial or proceeding, such reporter shall file the stenographic record or tape recording in the manner directed by the judge. Upon request of any person and payment of fees by such person, the reporter shall furnish a transcript. The reporter may take acknowledgments, administer oaths, and certify copies of the stenographic record or transcript of either such record or tape recording made in a commitment proceeding.

History: (8992-20) 1935 c 72 s 20; 1974 c 482 s 8; 1986 c 444

525.111 COMPENSATION; TRANSCRIPT FEES.

Where the salary of the reporter is not provided for by law, 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.

History: (8992-21) 1935 c 72 s 21; 1986 c 444

525.112 COURT REPORTERS FOR HENNEPIN COUNTY COURT.

The county judge or 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.

History: (8992-21a) 1935 c 373 s 1; 1941 c 179 s 1; 1975 c 347 s 88

525.113 ADDITIONAL EMPLOYEES.

The reporter and clerk mentioned in section 525.112 shall be employed and appointed in addition to the court administrator, deputy court administrators, 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.

History: (8992-21b) 1935 c 373 s 2; 1Sp1986 c 3 art 1 s 82

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 personal representative or of any person interested in the estate or guardianship.

History: (8992-22) 1935 c 72 s 22; 1975 c 347 s 89

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. The auditor shall report findings of fact to the court.

History: (8992-23) 1935 c 72 s 23; 1986 c 444

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 personal representative as expenses of administration, guardianship or conservatorship or by the person applying for such audit as the court may determine.

History: (8992-24) 1935 c 72 s 24; 1975 c 347 s 90

INTESTATE SUCCESSION

525.13 ESTATE.

As used in sections 525.13 to 525.161, 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 the death.

History: (8992-25) 1935 c 72 s 25; 1985 c 250 s 24; 1986 c 444

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 the decedent's surviving spouse, a life estate with right of interment of the spouse therein, and remainder over to the person who would be entitled to the fee if there were no spouse, provided, however, if no person entitled to the remainder of the fee survives, then the entire fee to the surviving spouse with right of interment therein;

(2) If there is no surviving spouse, then to the decedent's eldest surviving child;

(3) If there is no surviving child, then to the decedent's youngest surviving sibling;

(4) If there is no surviving spouse, child or sibling of the decedent, then, if not sold during administration of decedent's estate, to the cemetery association or private cemetery in trust as a burial lot for the decedent and such of the decedent's relatives as the governing body thereof shall deem proper.

The cemetery association or private cemetery, or, with its consent, any person to whom the lot shall descend may grant and convey the lot to any of the decedent's parents, siblings 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 the lot or plot.

History: (8992-26) 1935 c 72 s 26; 1969 c 852 s 1; 1981 c 25 s 1

525.145 DESCENT OF HOMESTEAD.

(1) Where there is a surviving spouse the homestead, including a manufactured home which is the family residence, shall descend free from any testamentary or other disposition thereof to which the spouse has not consented in writing or as provided by law, as follows:

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

(b) if there be children or issue of deceased children surviving, then to the spouse for the term of the spouse's natural life and the remainder in equal shares to the children and the issue of deceased children by right of representation.

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

(3) Where the homestead passes by descent or will 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 except that the homestead shall be subject to a claim filed pursuant to section 246.53 for state hospital care or 256B.15 for medical assistance benefits. If the homestead passes to a person other than a spouse or child or issue of a deceased child, it shall be subject to the payment of the items mentioned in section 524.2-101. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce the lien or charge by an appropriate action in the district court.

(4) For purposes of this section, except as provided in section 524.2-301, the surviving spouse is deemed to consent to any testamentary or other disposition of the homestead to which the spouse has not previously consented in writing unless the spouse files in the manner provided in section 524.2-205, subsection (f), a petition that asserts the homestead rights provided to the spouse by this section.

History: (8992-27) 1935 c 72 s 27; 1937 c 435 s 7; 1943 c 329 s 1; 1981 c 105 s 1; 1981 c 365 s 9; 1982 c 621 s 3; 1982 c 641 art 1 s 20; 1985 c 250 s 25; 1Sp1986 c 3 art 3 s 4

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 the decedent was entitled at the time of death, the wearing apparel, and, as selected, furniture and household goods not exceeding \$6,000 in value, and other personal property not exceeding \$3,000 in value, subject to an award of property with sentimental value to the decedent's children under section 525.152;

(2) When, except for one automobile, all of the personal estate of the decedent is allowed to the surviving spouse by clause (1), the surviving spouse shall also be allowed the automobile;

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

(4) 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 reasonable maintenance;

(5) In the administration of an estate of a nonresident decedent, the allowances received in the domiciliary administration shall be deducted from the allowances under this section.

History: (8992-28) 1935 c 72 s 28; 1947 c 45 s 1; 1955 c 189 s 1; 1975 c 347 s 91; 1981 c 103 s 1; 1986 c 444; 1988 c 417 s 1

NOTE: This section is repealed by Laws 1994, chapter 472, section 64, effective January 1, 1996. See Laws 1994, chapter 472, section 65.

525.151 ALLOWANCE SELECTION AND MAINTENANCE PAYMENT.

The surviving spouse, and conservators or guardians of the minor children, may select the property of the estate allowed to them under section 525.15, clauses (1), (2) and (3), subject to an award of property with sentimental value to the decedent's children under section 525.152. The personal representative may make these selections if the surviving spouse or the conservators or guardians of the minor children are unable or fail to do so within a reasonable time or if there are no conservators or guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of the property, provided that any notice required under section 525.152, subdivision 3, has been given and eligible children have failed to request an award of property with sentimental value or the court has denied the request. The personal representative may determine maintenance in periodic installments not exceeding \$500 per month for one year, if the estate is insolvent or 18 months if the estate is solvent, and may disburse funds of the estate in payment of such maintenance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief. Relief may include provision for a family allowance larger or smaller than that which the personal representative determined or could have determined.

History: 1975 c 347 s 92; 1986 c 444; 1988 c 417 s 2; 1989 c 219 s 1

NOTE: This section is repealed by Laws 1994, chapter 472, section 64, effective January 1, 1996. See Laws 1994, chapter 472, section 65.

525.152 AWARD OF PROPERTY WITH SENTIMENTAL VALUE TO CHILDREN.

Subdivision 1. Definitions. (a) "Eligible child" means a child of the decedent who:

(1) is not the child of the surviving spouse, if any;

(2) if there is no surviving spouse, is not a minor, and has a different parent than minor children of the decedent who are entitled to an allowance selection under section 525.15, clause (3); and

(3) if the decedent dies testate, is a devisee under the decedent's will.

(b) "Sentimental value" means significant emotional or nostalgic value arising out of the relationship of an individual with the decedent or arising out of the relationship of the eligible child with the individual who is the nondecedent parent of the eligible child.

Subd. 2. Ineligible property. The following property is not eligible for an award under this section:

(1) real property;

(2) personal property that is the subject of a specific devise under the decedent's will where the will was executed before August 1, 1989, and where the devise specifically identifies the particular item of property, unless the property is selected under section 525.151;

(3) personal property that is the subject of a specific devise under a separate writing under section 524.2-513, unless the property is selected under section 525.151; and

(4) personal property disposed of by a premarital agreement.

Subd. 3. Notice to eligible children; petition. At the time of an allowance selection under section 525.151, the person making the selection shall serve personally or by mail a written itemized notice of the property selected to every eligible child of the decedent. This requirement does not apply if an award of property with sentimental value already has been made under this section. Within 30 days of receipt of the notice of selection, an eligible child may petition the court to award property with sentimental value contained in the notice, or other property with sentimental value that belonged to the decedent, to the eligible child.

Subd. 4. Court decision. The court shall award property with sentimental value to

MINNESOTA STATUTES 1994

975

PROBATE PROCEEDINGS 525.161

an eligible child if it finds that the property's sentimental value to the child outweighs its sentimental value to the person entitled to the allowance selection. If more than one eligible child petitions the court for an award of the same property, the court shall award the property to the child for whom the property has the greatest sentimental value. In awarding property with sentimental value to an eligible child, the court shall give weight to the following factors:

- (1) the relationship of the eligible child to the acquisition and use of the property;
- (2) whether the property was acquired prior to the decedent's marriage to the surviving spouse or prior to the birth of minor children who are entitled to an allowance selection; and
- (3) whether the property belonged to the individual who is the nondecedent parent of the eligible child.

Subd. 5. Payment to estate. (a) As a condition of an award of sentimental property under this section, the court shall order that the eligible child pay the value of the property to the estate or that the value of the property be deducted from the eligible child's share of the estate. The surviving spouse or minor children may make an additional allowance selection in place of property with sentimental value awarded to an eligible child.

(b) If the court awards property under subdivision 4, the court shall appoint an appraiser who shall determine the value of the property. The value of the property is its appraised value as of the date of the decedent's death without reference to its sentimental value to the eligible child or any other person.

History: 1988 c 417 s 3; 1989 c 219 s 2

525.16 [Repealed, 1985 c 250 s 27]

525.161 NO SURVIVING SPOUSE OR KINDRED, NOTICES TO ATTORNEY GENERAL.

When it appears from the petition or application for administration of the estate, or otherwise, in a proceeding in the court that the intestate left surviving no spouse or kindred, the court shall give notice of such fact and notice of all subsequent proceedings in such estate to the attorney general forthwith; and the attorney general shall protect the interests of the state during the course of administration. The residue which escheats to the state shall be transmitted to the attorney general. All moneys, stocks, bonds, notes, mortgages and other securities, and all other personal property so escheated shall then be given into the custody of the state treasurer, who shall notify the commissioner of finance thereof and immediately credit the moneys received to the general fund. The treasurer shall hold such stocks, bonds, notes, mortgages and other securities, and all other personal property, subject to such investment, sale or other disposition as the state board of investment may direct pursuant to section 11A.04, clause (9). The attorney general shall immediately report to the state executive council all real property received in the individual escheat, and any sale or disposition of such real estate shall be made in accordance with sections 94.09 to 94.16.

History: 1955 c 194 s 1; 1957 c 861 s 1; 1969 c 399 s 1; 1973 c 492 s 14; 1975 c 347 s 93; 1980 c 607 art 14 s 46

525.17 [Repealed, 1985 c 250 s 27]

525.171 [Repealed, 1985 c 250 s 27]

525.172 [Repealed, 1985 c 250 s 27]

525.173 [Repealed, 1985 c 250 s 27]

WILLS

525.18 [Repealed, 1975 c 347 s 144]

525.181 [Repealed, 1975 c 347 s 144]

- 525.182** [Repealed, 1975 c 347 s 144]
- 525.183** [Repealed, 1975 c 347 s 144]
- 525.184** [Repealed, 1975 c 347 s 144]
- 525.19** [Repealed, 1975 c 347 s 144]
- 525.191** [Repealed, 1975 c 347 s 144]
- 525.20** [Repealed, 1985 c 250 s 27]
- 525.201** [Repealed, 1985 c 250 s 27]
- 525.202** [Repealed, 1985 c 250 s 27]
- 525.203** [Repealed, 1975 c 347 s 144]

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.

History: (8992-45) 1935 c 72 s 45

- 525.211** [Repealed, 1975 c 347 s 144]
- 525.212** [Repealed, 1985 c 250 s 27]
- 525.213** [Repealed, 1985 c 250 s 27]
- 525.214** [Repealed, 1985 c 250 s 27]
- 525.215** [Repealed, 1985 c 250 s 27]
- 525.216** [Repealed, 1985 c 250 s 27]

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. The court administrator shall receive a fee, as provided in section 357.021, subdivision 2, for each will deposited. During the testator's lifetime, such will shall be delivered only to the testator or upon the testator's 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.

History: (8992-48) 1935 c 72 s 48; 1986 c 444; 1990 c 544 s 2

NOTE: This section is repealed by Laws 1994, chapter 472, section 64, effective January 1, 1996. See Laws 1994, chapter 472, section 65.

525.221 DUTY OF CUSTODIAN.

After the death of a testator, the person having custody of the 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.

History: (8992-49) 1935 c 72 s 49; 1986 c 444

NOTE: This section is repealed by Laws 1994, chapter 472, section 64, effective January 1, 1996. See Laws 1994, chapter 472, section 65.

525.222 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.2221 WILLS NOT AFFECTED.

Notwithstanding any other provision of law to the contrary, the provisions of any will executed prior to June 1, 1973 relating to ones "minority" or "majority" or other related terms shall be governed by the definitions of such terms existing at the time of the execution of the will.

History: 1973 c 725 s 86

**UNIFORM TESTAMENTARY
ADDITIONS TO TRUSTS ACT**

525.223 UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT.

Subdivision 1. Testamentary additions to trusts. A devise, the validity of which is determinable by the law of this state, may be made by a will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person or persons or by some other person or persons, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (a) shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given and (b) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise to lapse.

Subd. 2. Effect on prior wills. This section shall not invalidate any devise made by a will executed prior to February 21, 1963.

Subd. 3. Uniformity of interpretation. This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Subd. 4. Short title. This section is the uniform testamentary additions to trusts act.

Subd. 5. Effective date. This section shall take effect upon final enactment, and shall apply to all wills and trusts heretofore or hereafter executed.

History: 1963 c 13 s 1-5; 1975 c 347 s 97,98

NOTE: This section is repealed by Laws 1994, chapter 472, section 64, effective January 1, 1996. See Laws 1994, chapter 472, section 65.

PROBATE OF WILLS

525.23 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.231 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.24 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.241 [Repealed, 1974 c 442 art 8 s 524.8-102]

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.

History: (8992-55) 1935 c 72 s 55

525.243 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.244 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.25 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.251 [Repealed, 1974 c 442 art 8 s 524.8-102]

MINNESOTA STATUTES 1994

525.252 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.253 SALE OF DEVISED PROPERTY.

Subdivision 1. Unless a contrary intent appears from the will, an agreement made by a testator for the sale or transfer of real property disposed of by the will previously made, does not revoke or deem such disposal; but all the right, title, and interest of the decedent in such property and in said agreement shall pass, according to the terms of the will. Such an agreement shall be enforceable and subject to the same remedies for specific performance or otherwise against the devisees as exists against a decedent's successors if the same passed by succession.

Subd. 2. This section shall be applicable to estates of decedents dying after June 5, 1969.

History: 1969 c 944 s 1,2; 1975 c 347 s 99

525.26 [Repealed, 1975 c 347 s 144]

525.261 [Repealed, 1975 c 347 s 144]

525.262 [Repealed, 1975 c 347 s 144]

525.27 [Repealed, 1975 c 347 s 144]

525.271 [Repealed, 1975 c 347 s 144]

525.272 [Repealed, 1975 c 347 s 144]

525.273 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.28 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.281 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.282 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.29 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.291 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.292 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.30 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.301 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.302 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.303 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.304 [Repealed, 1974 c 442 art 8 s 524.8-102]

DETERMINATION OF DESCENT

525.31 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.31 ESSENTIALS.

Whenever any person has been dead for more than three years and has left real or personal property, or any interest therein, and no will or authenticated copy of a will probated outside this state in accordance with the laws in force in the place where probated has been probated nor proceedings had in this state, any interested person or assignee or successor of an interested person may petition the court of the county of the decedent's residence or of the county wherein such real or personal property, or any part thereof, is situated to determine the descent of such property and to assign such property to the persons entitled thereto.

History: 1975 c 347 s 100; 1976 c 161 s 15

525.311 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.311 CONTENTS OF PETITION.

Such petition shall show so far as known to the petitioner:

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

MINNESOTA STATUTES 1994

979

PROBATE PROCEEDINGS 525.312

(2) The names, ages, and addresses of heirs, personal representatives, and devisees;

(3) That no will or authenticated copy of a will probated outside of this state in accordance with the laws in force in the place where probated has been probated nor proceedings had in this state;

(4) A description of the real or personal property, or interest therein and if a home- stead, designated as such, the interest therein of the decedent, the value thereof at the date of death, and the interest therein of the petitioner;

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

(6) That the devisee or successors and assigns possess the property devised in accordance with the will, any heir or a successor and assigns possess such property which passes to such heir under the laws of intestate succession in force at the decedent's death, or such property was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

(7) In any such proceeding wherein it appears that the property affected descends through several decedents under circumstances qualifying for a descent proceeding under this section in each case, the court in its discretion may consolidate the proceedings into one and may accept the filing of one petition for the several decedents where no interests are prejudiced thereby. The notice and other requirements of this section and sections 525.31 and 525.312 shall be complied with, and the matter shall be then adjudicated under one title combining the names of the several decedents and making appropriate findings for each decedent and determining heirship.

History: 1975 c 347 s 100; 1986 c 444

525.312 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

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 court administrator 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.

History: 1975 c 347 s 100; 1977 c 207 s 1; 1979 c 303 art 3 s 37; 1Sp1986 c 3 art 1 s 82

525.314 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.315 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.316 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.32 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.321 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.322 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.323 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.324 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.33 [Repealed, 1975 c 347 s 144]

525.331 [Repealed, 1974 c 442 art 8 s 524.8-102]

PROPERTY DISPOSITION

525.34 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.35 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.36 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.37 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.37 FORECLOSURE OF MORTGAGES.

The guardian or conservator shall have the same right to foreclose a mortgage, lien, or pledge or collect the debt secured thereby as the ward or conservatee would have had, if competent, and may complete any such proceeding commenced by such ward or conservatee.

History: 1975 c 347 s 101; 1986 c 444

525.38 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

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 personal representative shall receive the money paid and execute the necessary satisfaction or release. If bid in by the personal representative or if bid in by the decedent or ward and the redemption period expired during the administration of the estate or guardianship or conservatorship without redemption, the real estate shall be treated as personal property. 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.

History: 1975 c 347 s 102

525.39 [Repealed, 1975 c 347 s 144]

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 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.

History: (8992-95) 1935 c 72 s 95; 1986 c 444

525.392 PROPERTY CONVERTED.

If any person embezzles, alienates, or converts to personal 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.

History: (8992-96) 1935 c 72 s 96; 1986 c 444

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

MINNESOTA STATUTES 1994

981

PROBATE PROCEEDINGS 525.475

death, the coroner, after the expiration of said time, shall file in the court an inventory of all such property and a fingerprint 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. The coroner 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 the coroner 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 shall pay the same to such representative.

History: (8992-97) 1935 c 72 s 97; Ex1936 c 48; 1975 c 347 s 103; 1986 c 444

525.40 [Repealed, 1974 c 442 art 8 s 524.8-102]
525.401 [Repealed, 1974 c 442 art 8 s 524.8-102]
525.41 [Repealed, 1975 c 347 s 144]
525.411 [Repealed, 1975 c 347 s 144]
525.412 [Repealed, 1975 c 347 s 144]
525.413 [Repealed, 1975 c 347 s 144]
525.42 [Repealed, 1975 c 347 s 144]
525.421 [Repealed, 1975 c 347 s 144]
525.43 [Repealed, 1975 c 347 s 144]
525.431 [Repealed, 1975 c 347 s 144]
525.44 [Repealed, 1975 c 347 s 144]
525.441 [Repealed, 1975 c 347 s 144]
525.442 [Repealed, 1975 c 347 s 144]
525.45 [Repealed, 1975 c 347 s 144]
525.46 [Repealed, 1975 c 347 s 144]

ACCOUNTING, DISTRIBUTION

525.47 [Repealed, 1974 c 442 art 8 s 524.8-102]
525.475 MS 1974 [Repealed, 1975 c 347 s 144]

525.475 DORMANT ESTATE; REMOVAL OF REPRESENTATIVE OR ATTORNEY.

(1) In a supervised administration under sections 524.3-501 to 524.3-505:

(a) If an order of complete settlement of the estate or a decree, as provided in section 524.3-1001, is not entered within 18 months after appointment of the personal representative, the court shall order the personal representative and the attorney to show good cause why an order of complete settlement of the estate or a decree has not been entered.

(b) If good cause is not shown the court shall order the removal of the personal representative, instruct the personal representative to dismiss the attorney and employ another attorney, if necessary, to complete the administration of the estate, or shall order such other or further relief as may be appropriate. In addition, the court may refer a record of the proceeding to the state board of professional responsibility. If removal of the personal representative is ordered, the court shall also direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(c) If good cause is shown, the court shall order that the time for administration of the estate be extended for an additional period not to exceed one year. If an order

MINNESOTA STATUTES 1994

of complete settlement of the estate or a decree, as provided in section 524.3-1001, is not entered within such extended period, the court shall again order the personal representative and the attorney to show cause why an order of complete settlement or a decree has not been entered. If good cause is not shown, the provisions of paragraph (b) of this section shall be applicable. If good cause is shown, the court shall order that the time for administration of the estate be again extended for an additional period not to exceed one year and the provisions of this paragraph (c) of this section shall be applicable to such additional extension.

(2) In an administration other than a supervised administration under sections 524.3-501 to 524.3-505:

(a) Upon the petition of an interested person and upon showing of probable cause for relief, the court shall order the personal representative and the attorney to show cause why the estate has not been closed pursuant to the provisions of sections 524.3-1001 to 524.3-1003.

(b) If good cause is not shown, the court shall order the removal of the personal representative, instruct the personal representative to dismiss the attorney and employ another attorney, if necessary, to complete the administration of the estate or shall order such other or further relief as may be appropriate. In addition, the court may refer a record of the proceeding to the state board of professional responsibility. If removal of the personal representative is ordered, the court shall also direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(c) If good cause is shown, the court shall enter an order so finding. An interested party may thereafter again petition the court for an order directing the personal representative and the attorney to show cause why the estate has not been closed pursuant to the provisions of sections 524.3-1001 to 524.3-1003.

(3) An attorney dismissed pursuant to this section and who is seeking attorney fees for services rendered to the estate has the burden of affirmatively proving that the estate has benefited from the services and that the benefits warrant the payment of the requested fee.

History: 1975 c 347 s 104; 1986 c 444

525.48 FINAL ACCOUNT, ATTORNEY FEES AND REPRESENTATIVE FEES.

Any full or final account to distributees shall include a statement of attorney fees and representative fees. This statement shall include the total fees charged to date and estimated future fees to be charged.

History: (8992-114) 1935 c 72 s 114; 1974 c 442 art 9 s 2; 1975 c 347 s 105

525.481 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.482 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.483 RECORDING DECREE.

A certified copy of any decree of distribution may be filed for record in the office of the county recorder 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 the transfer record and shall have noted thereon "Transfer entered" over that person's 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.

History: (8992-117) 1935 c 72 s 117; 1976 c 181 s 2; 1986 c 444

MINNESOTA STATUTES 1994

525.484 PROPERTY OF DECEASED PERSONS TO BE TRANSFERRED TO REPRESENTATIVES OF FOREIGN COUNTRIES IN CERTAIN CASES.

Whenever any person who is entitled to any property in an estate is a citizen of and a resident in any foreign country with the government of which the United States maintains diplomatic relations, the personal representative of the estate may deliver or pay such property to an accredited diplomatic or consular representative of the government of such foreign country for delivery or payment to such person, or, if such property has been deposited with the county treasurer pursuant to section 524.3-914, the court upon application as therein provided shall grant its order authorizing and directing the county auditor to issue a warrant to the county treasurer to pay such money or deliver such property to such accredited diplomatic or consular representative, and the personal representative of such estate or the county treasurer shall be discharged from that person's trust and all further liability thereunder upon filing the receipt of such diplomatic or consular representative for such property with such court, provided that such diplomatic or consular representative has been licensed by proper federal authority to receive such property of the nationals of such country, where such license is required.

This section shall not apply where such citizen of and resident in any such foreign country has appeared in person or by duly authorized representative other than such diplomatic or consular representative.

History: 1943 c 477 s 1,2; 1975 c 347 s 106; 1986 c 444

525.485 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.486 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.486 TERMINATION OF TRUSTS; DISTRIBUTION.

In any administration of an estate in probate, wherein the decedent died testate and has established a testamentary trust, and it appears to the court that the operative events have occurred whereby said trust is terminated prior to distribution in whole or in part, the court shall have jurisdiction in its discretion to adjudge and determine that said trust be terminated in whole or in part without further proceedings in any other court of general jurisdiction and may make its decree or order of distribution accordingly to the extent that the trust is no longer operative.

History: 1975 c 347 s 107

525.49 MS 1957 [Repealed, 1961 c 265 s 3]

525.49 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.491 MS 1957 [Repealed, 1961 c 265 s 3]

525.491 ATTORNEY'S LIEN.

When any attorney at law has been retained to appear for any heir or devisee, such attorney may perfect a lien upon the client's interest in the estate for compensation for such services as may have been rendered respecting such interest, by serving upon the personal representative before distribution is made, a notice of intent to claim a lien for agreed compensation, or the reasonable value of services. 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.

History: 1961 c 265 s 2; 1975 c 347 s 108; 1986 c 444

525.50 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.501 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.502 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.503 [Repealed, 1974 c 442 art 8 s 524.8-102]

MINNESOTA STATUTES 1994

525.51 PROBATE PROCEEDINGS

984

525.504 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.504 MS 1980 [Repealed, 1981 c 313 s 26]

525.51 SUMMARY PROCEEDINGS.

Subdivision 1. Upon petition of an interested person, the court, with or without notice, may determine 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 personal representative by order of the court may pay the same in the order named. Thereupon the court with or without notice may summarily determine the heirs, legatees, and devisees in its final decree or order of distribution assigning to them their share or part of the property with which the personal representative is charged.

Subd. 2. If upon hearing of a petition for summary assignment or distribution, for special administration, or for any 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 or order of distribution 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.

Subd. 3. Summary distribution may be made under this section in any proceeding of any real, personal, or other property in kind in reimbursement or payment of the allowances to the spouse and children mentioned in said section 525.15, expenses of administration, funeral expenses, expenses of last illness, debts having preference under the laws of the United States, and taxes, in the order named, whenever the court is satisfied as to the propriety thereof and as to the valuation, based upon appraisal in the case of real estate other than homestead, of the property being assigned to exhaust the assets of the estate.

Subd. 4. Summary proceedings may be had with or without the appointment of a personal representative. In all summary proceedings wherein no personal representative is appointed, the court may require the petitioner to file a corporate surety bond in an amount fixed and approved by the court. The condition of the bond shall be that the petitioner has made a full, true, and correct disclosure of all the facts related in the petition and will perform the terms of the decree or order of distribution issued pursuant thereto. Any interested person suffering damages as a result of misrepresentation or negligence of the petitioner in stating facts in the petition pursuant to which an improper decree or order of distribution is issued, or the terms of the decree or order of distribution are not performed by the petitioner as required, shall have a cause of action against the petitioner and the surety to recover such damages in the court wherein such proceeding was had which is hereby granted jurisdiction thereof.

Subd. 5. In any summary, special, or other administration wherein it appears that the estate will not be exhausted in payment of the priority items enumerated in the foregoing subdivisions, the estate may nevertheless be summarily closed without further notice, and the property assigned to the proper persons, if the gross probate estate, exclusive of any exempt homestead as defined in section 525.145, does not exceed the value of \$30,000. Where such closing and distribution of assets is made pursuant to the terms of a will, no decree shall issue until a hearing has been held for formal probate of the will as provided in sections 524.3-401 to 524.3-413.

No summary closing of an estate shall be made to any distributee under this subdivision, unless a showing is made by the personal representative or the petitioner, that all funeral expenses, expenses of last illness, taxes, debts, and claims have been paid,

MINNESOTA STATUTES 1994

985

PROBATE PROCEEDINGS 525.515

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

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

Any judgment rendered for damages or the recovery of assets in such proceedings shall be upon petition and only after hearing held thereon on 14 days' notice of hearing and a copy of petition served personally upon the personal representative and the surety and upon any distributee or recipient of assets where applicable. Any action for the recovery of moneys or damages under this subdivision shall be subject to the time and other limitations imposed by section 525.02.

History: (8992-125) 1935 c 72 s 125; 1937 c 435 s 16; 1967 c 465 s 1; 1969 c 1009 s 1; 1971 c 497 s 6; 1973 c 306 s 1; 1973 c 644 s 1; 1975 c 347 s 110; 1986 c 444

525.515 BASIS FOR ATTORNEY'S FEES.

(a) Notwithstanding any law to the contrary, an attorney performing services for the estate at the instance of the personal representative, guardian or conservator shall have such compensation therefor out of the estate as shall be just and reasonable. This section shall apply to all probate proceedings.

(b) In determining what is a fair and reasonable attorney's fee effect shall be given to a prior agreement in writing by a testator concerning attorney fees. Where there is no prior agreement in writing with the testator consideration shall be given to the following factors in determining what is a fair and reasonable attorney's fee:

- (1) The time and labor required;
- (2) The experience and knowledge of the attorney;
- (3) The complexity and novelty of problems involved;
- (4) The extent of the responsibilities assumed and the results obtained; and
- (5) The sufficiency of assets properly available to pay for the services;

(c) An interested person who desires that the court review attorney fees shall seek review of attorney fees in the manner provided in section 524.3-721. In determining the reasonableness of the attorney fees, consideration shall be given to all the factors listed in clause (b) and the value of the estate shall not be the controlling factor.

History: 1971 c 497 s 8; Ex1971 c 48 s 50; 1974 c 442 art 9 s 3; 1975 c 347 s 111; 1976 c 2 s 146

525.52 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.521 [Repealed, 1975 c 347 s 144]

525.522 [Repealed, 1975 c 347 s 144]

525.523 [Repealed, 1975 c 347 s 144]

MINNESOTA STATUTES 1994

525.524 [Repealed, 1975 c 347 s 144]
525.525 [Repealed, 1975 c 347 s 144]
525.526 [Repealed, 1975 c 347 s 144]
525.527 [Repealed, 1975 c 347 s 144]

525.528 FEDERAL ESTATE TAX; MARITAL DEDUCTION.

Whenever the decedent leaves a surviving spouse or by law the spouse is presumed to have survived and the representative of the decedent's estate, and the decedent's trustee or any other fiduciary is permitted or required to exercise a discretion, even though stated as sole, absolute or uncontrolled, to select assets in kind at values other than their values at the date or dates of distribution thereof, including values to be determined in the discretion of the representative, trustee or other fiduciary and even though such discretion is stated as sole, absolute or uncontrolled, to satisfy a bequest or transfer within the meaning of the marital deduction provisions of section 2056 of the United States internal revenue code or such cognate provisions of federal law as may hereafter be applicable, such representative, trustee or other fiduciary shall be subject to the general fiduciary obligation of fairness and pursuant thereto shall select assets fairly representative of appreciation or depreciation in the value of all property available on the date or dates of distribution for selection and distribution in satisfaction of such bequest or transfer, unless other language of the will or trust instrument expressly refers to this section and states that it shall not be applicable. This section shall apply to the estates of decedents dying after May 26, 1965, to trusts created after May 26, 1965, and to trusts, whenever created, which are revocable after May 26, 1965.

History: 1965 c 765 s 1

ADVANCEMENTS

525.53 [Repealed, 1975 c 347 s 144]
525.531 [Repealed, 1975 c 347 s 144]

525.532 DISCLAIMER OF INTERESTS PASSING BY WILL, INTESTATE SUCCESSION OR UNDER CERTAIN POWERS OF APPOINTMENT.

Subdivision 1. As used in this section, unless otherwise clearly required by the context:

(a) "Beneficiary" means and includes any person entitled, but for that person's disclaimer, to take an interest: by intestate succession; by devise; by legacy or bequest; by succession to a disclaimed interest by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; by virtue of a renunciation and election to take against a will; as beneficiary of a testamentary trust; pursuant to the exercise or nonexercise of a testamentary power of appointment; as donee of a power of appointment created by testamentary instrument; or otherwise under a testamentary instrument;

(b) "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof or any estate in any such property or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto;

(c) "Disclaimer" means a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate.

Subd. 2. A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares or assets thereof, by filing a disclaimer in court in the manner hereinafter provided. A guardian, executor, administrator or other personal representative of the estate of a minor, incompetent or deceased beneficiary, if that per-

MINNESOTA STATUTES 1994

son deems it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim if living, of legal age and competent. A beneficiary likewise may execute and file a disclaimer by agent or attorney so empowered.

Subd. 3. Such disclaimer shall be filed at any time after the creation of the interest, but in all events within nine months after the death of the person by whom the interest was created or from whom it would have been received, or, if the disclaimant is not finally ascertained as a beneficiary or the interest has not become indefeasibly fixed both in quality and quantity as of the death of such person, then such disclaimer shall be filed not later than nine months after the event which would cause the disclaimant so to become finally ascertained and the interest to become indefeasibly fixed both in quality and quantity.

Subd. 4. Such disclaimer shall be effective upon being filed in the court in which the estate of the person by whom the interest was created or from whom it would have been received is, or has been, administered or, if no probate administration has been commenced, then in the court where it would be pending if commenced. A copy of the disclaimer shall be delivered or mailed to the personal representative, trustee or other person having legal title to, or possession of, the property in which the interest disclaimed exists, and no such representative, trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer. If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the court administrator of the court wherein the same has been filed, shall be filed in the office of the county recorder or the registrar of titles, as hereinafter provided, in the county or counties where the real estate is situated and shall constitute notice to all persons only from and after the time of such filing. If title to such real estate has not been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the county recorder. If title to such real estate has been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the registrar of titles.

Subd. 5. Unless the person by whom the interest was created or from whom it would have been received has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the property in which the interest disclaimed existed shall descend, be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes the disclaimant to become finally ascertained as a beneficiary and the interest to become indefeasibly fixed both in quality and quantity, and, in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. However, one disclaiming an interest in a non-residuary gift, devise or bequest shall not be excluded, unless the disclaimer so provides, from sharing in a gift, devise or bequest of the residue even though, through lapse, such residue includes the assets disclaimed. An interest of any nature in or to the estate of an intestate may be declined, refused or disclaimed as herein provided without ever vesting in the disclaimant.

Subd. 6. The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before the beneficiary has filed a disclaimer, as herein provided, bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest.

Subd. 7. The right to disclaim granted by this section shall exist irrespective of any

limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed as provided in this section, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under that person, except that a beneficiary so waiving may thereafter transfer, assign or release the interest if such is not prohibited by an express or implied spendthrift provision. If an interest in real estate is disclaimed and the disclaimer is duly filed in accordance with the provisions of subdivision 4, the spouse of the disclaimant, if such spouse has consented to the disclaimer in writing, shall thereupon be automatically debarred from any spouse's statutory or common law right or estate by courtesy or in dower or otherwise in such real estate to which such spouse, except for such disclaimer, would have been entitled.

Subd. 8. This section shall not abridge the right of any person, apart from this section, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest.

Subd. 9. Any interest which exists on May 22, 1965 but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after May 22, 1965 in the manner provided herein.

History: 1965 c 552 s 1; 1975 c 347 s 112,113; 1976 c 181 s 2; 1980 c 439 s 33; 1986 c 444; 1Sp1986 c 3 art 1 s 82

GUARDIANSHIPS AND CONSERVATORSHIPS

525.539 DEFINITIONS.

Subdivision 1. For the purposes of sections 525.54 to 525.5515; 525.56; 525.57 to 525.581; 525.583 to 525.61; 525.62; 525.63; 525.67; and 525.69, the following terms shall have the meanings given them.

Subd. 2. "Guardian" means a person or entity who is appointed by the court to exercise all of the powers and duties designated in section 525.56 for the care of an incapacitated person or that person's estate, or both.

Subd. 3. "Conservator" means a person appointed by the court to exercise some, but not all, of the powers designated in section 525.56 for the care of an incapacitated person or that person's estate, or both.

Subd. 4. "Ward" means an incapacitated person for whom the court has appointed a guardian.

Subd. 5. "Conservatee" means an incapacitated person for whom the court has appointed a conservator.

Subd. 6. **Visitor.** "Visitor" means a person who is trained in law, health care, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Subd. 7. **Best interests of the ward or conservatee.** "Best interests of the ward or conservatee" means all relevant factors to be considered or evaluated by the court in nominating a guardian or conservator, including but not limited to:

(1) the reasonable preference of the ward or conservatee, if the court determines the ward or conservatee has sufficient capacity to express a preference;

(2) the interaction between the proposed guardian or conservator and the ward or conservatee; and

(3) the interest and commitment of the proposed guardian or conservator in promoting the welfare of the ward or conservatee and the proposed guardian's or conservator's ability to maintain a current understanding of the ward's or conservatee's physical and mental status and needs. In the case of a ward or a conservatorship of the person, welfare includes:

(i) food, clothing, shelter, and appropriate medical care;

- (ii) social, emotional, religious, and recreational requirements; and
- (iii) training, education, and rehabilitation.

Kinship is not a conclusive factor in determining the best interests of the ward or conservatee but should be considered to the extent that it is relevant to the other factors contained in this subdivision.

History: 1980 c 493 s 1; 1981 c 313 s 1; 1986 c 444; 1Sp1986 c 3 art 3 s 5; 1Sp1993 c 1 art 3 s 40

525.54 ADULTS SUBJECT TO GUARDIANSHIP AND CONSERVATORSHIP.

Subdivision 1. Adults subject to guardianship and conservatorship. Upon petition as provided in this chapter, the court, if satisfied of the need therefor, may appoint one or more persons suitable and competent to discharge the trust as guardians of the person or estate or of both or as conservators of the person or the estate or of both, of any incapacitated person. The county human services agency may create a screening committee to review a petition involving an indigent person. The screening committee must be made up of individuals selected by the agency with knowledge of the availability of alternatives that are less restrictive than guardianships or conservatorships. If the agency has created a screening committee, the court shall make its decision after the screening committee has reviewed the petition. For indigent persons, the court may appoint a guardian or conservator under contract with the county to provide these services.

Subd. 2. Guardianship or conservatorship of the person. "Incapacitated person" means, in the case of guardianship or conservatorship of the person, any adult person who is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions; and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety.

Subd. 3. Guardianship or conservatorship of the estate. Appointment of a guardian or conservator may be made in relation to the estate and financial affairs of an adult person: (a) voluntarily, upon the person's petition or consent in writing if the court is satisfied of the need thereof; (b) involuntarily, upon the court's determination that (1) the person is unable to manage the person's property and affairs effectively because the person is an incapacitated person, and (2) the person has property which will be dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person, and (3) a guardian or conservator is necessary to adequately protect the person's estate or financial affairs; or (c) involuntarily, upon the court's determination that an indigent incapacitated person is institutionalized and has a demonstrated need for guardianship or conservatorship services beyond financial services available through the institution as required by chapter 144A and sections 256B.35 and 256B.36, or through the county human services agency, to the extent the agency provides these services. The need for a guardian or conservator may not be based solely on the fact that the ward or conservatee is a recipient of medical assistance or is institutionalized. "Incapacitated person" means, in the case of guardianship or conservatorship of the estate of an adult, any adult person who is impaired to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person's estate or financial affairs, and who has demonstrated deficits in behavior which evidence an inability to manage the estate, or who is unable to manage the estate or financial affairs effectively by reason of detention by a foreign power or disappearance.

Subd. 4. Voting. The appointment of a conservator shall not deprive the conservatee of the right to vote, unless the right is restricted by court order.

Subd. 5. Competency. Appointment of a guardian is evidence of the incompetency of the incapacitated person. Appointment of a conservator is not evidence of incompetency.

Subd. 6. Authority to appoint guardian. Nothing contained in this section shall

diminish the power of the court to appoint a guardian to serve or protect the interest of any person under disability in any proceedings therein.

Subd. 7. Certain protective arrangements. If it is established in a proper proceeding under section 525.551 that a basis exists for the appointment of a guardian or conservator, the court, instead of appointing a guardian or conservator, may (a) authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to: payment, delivery, deposit or retention of funds or property; sale, mortgage, lease or other transfer of property; entry into an annuity contract, a contract for life care, a deposit contract or a contract for training and education; or addition to or establishment of a suitable trust; or (b) authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving the protected person's estate if the court determines that the transaction is in the best interests of the protected person.

Before approving a protective arrangement or other transaction under this subdivision, the court shall consider the interests of creditors and dependents of the protected person and, in view of the disability, whether the protected person needs the continuing protection of a guardian or conservator. The court may appoint a special conservator with or without bond to assist in the accomplishment of any protective arrangement or other transaction authorized under this subdivision, who shall have the authority conferred by the order and serve until discharged by order after making a report to the court of all matters done pursuant to the order of appointment.

History: (8992-129) 1935 c 72 s 129; 1971 c 588 s 1; 1973 c 618 s 1; 1980 c 493 s 2; 1981 c 313 s 2; 1986 c 444; 1988 c 456 s 1; 1993 c 118 s 1,2

525.541 PETITIONERS.

Any person may petition for the appointment of a guardian or conservator or for a protective order for any person believed to be subject to guardianship or conservatorship. The petition of an adult person for the appointment of a guardian or conservator of that person or that person's estate shall have priority over the petition of any other person.

History: (8992-130) 1935 c 72 s 130; 1973 c 618 s 2; 1980 c 493 s 3; 1981 c 313 s 3; 1986 c 444

525.542 CONTENTS OF PETITION.

Subdivision 1. Information. The petition shall show (1) the name and address of the person for whom a guardian or conservator, is sought, (2) the date of birth, (3) the names and addresses of living parents, children, brothers and sisters, or in the event that none of these persons are living, the names and addresses of nearest kindred, (4) if married, the name and address of the spouse, (5) the grounds for the guardianship or conservatorship, with a statement that the proposed ward or conservatee may demand a written bill of particulars, (6) if conservatorship is requested, the powers the petitioner believes are necessary in order for a conservator to protect and supervise the proposed conservatee's person or property, (7) the probable value and general character of real and personal property and the probable amount of debts, (8) the names, ages, addresses, and occupations of the proposed guardians or conservators.

Subd. 2. Bill of particulars. A bill of particulars may be requested from the petitioner by the proposed ward or conservatee, and when so requested shall be delivered to the proposed ward or conservatee within ten days or prior to the hearing, whichever is sooner. The bill of particulars shall be in writing and shall include specific factual information which the petitioner believes supports the need for appointment of a guardian or conservator, such as mental and physical condition, financial transactions, personal actions, or actual occurrences which are claimed to demonstrate the proposed ward's or conservatee's inability to manage the estate, or to provide for personal needs for food, clothing, shelter or health care.

History: (8992-131) 1935 c 72 s 131; 1973 c 618 s 3; 1980 c 493 s 4; 1981 c 313 s 4; 1986 c 444

525.543 LIS PENDENS.

After the filing of the petition, a certificate of the probate court certified to that fact may be filed for record in the office of the county recorder of any county in which any real estate owned by the proposed ward or conservatee is situated and if a resident of this state, in the county of residence. The certificate shall state that a petition is pending and the name and address of the person for whom a guardian or conservator is sought. If a guardian or conservator is appointed on the petition, and, in the case of a conservatorship, if the conservatorship order removes or restricts the right of the conservatee to transfer property or to contract, then all contracts except for necessities, and all transfers of real or personal property made by the ward or conservatee after the filing and before the termination of the guardianship or conservatorship shall be void.

History: (8992-132) 1935 c 72 s 132; 1961 c 578 s 1; 1973 c 618 s 4; 1976 c 181 s 2; 1980 c 493 s 5; 1981 c 313 s 5; 1986 c 444

525.544 NOMINATION OR APPOINTMENT OF GUARDIAN OR CONSERVATOR.

Subdivision 1. **By proposed ward or conservatee.** In the petition or in a written instrument executed before or after the petition is filed, the proposed ward or conservatee may, if acting with sufficient capacity to form an intelligent preference, nominate a conservator or guardian or give instructions to the conservator or guardian. The written instrument shall be executed and attested in the same manner as a will. The court shall appoint the person so nominated as conservator or guardian and shall charge the person with the instructions, unless the court finds that the appointment of the nominee or the instructions are not in the best interests of the proposed ward or conservatee.

Subd. 2. **Other cases.** If the proposed ward or conservatee lacks capacity or fails to nominate a conservator or guardian, the court may appoint a qualified person after review by a screening committee as provided in section 525.54, subdivision 1, if any, if the court finds that the person's appointment is in the best interests of the proposed ward or conservatee. A proposed guardian or conservator need not reside in this state if the proposed guardian or conservator is able to maintain a current understanding of the ward's or conservatee's physical and mental status and needs. If the proposed ward or conservatee lacks capacity or fails to give instructions, the court may give the guardian or conservator powers as required in accordance with section 525.56. If the proposed ward or conservatee is indigent, the court may appoint a guardian or conservator under contract with the county, or a public or private agency under contract with the county, to provide these services.

History: 1973 c 618 s 5; 1980 c 348 s 1; 1980 c 493 s 6; 1986 c 444; 1Sp1986 c 3 art 3 s 6; 1988 c 456 s 2; 1993 c 118 s 3

525.55 NOTICE OF HEARING.

Subdivision 1. **Time of notice; to whom given.** In all cases, upon the filing of the petition the court shall fix the time and place for the hearing and shall order that notice be given of the hearing. At least 14 days prior to the hearing, personal service of the notice shall be made upon the proposed ward or conservatee. Notice shall also be served on the spouse, parents, adult children, brothers and sisters, and, if none of those are alive or can be located, on the nearest kindred as determined by the court, and on any other persons the court may direct, by mail postmarked at least 14 days prior to the hearing. If the person is a patient or resident of any hospital or other institution, notice by mail shall also be given to the administrative head of the institution. If the person is a nonresident or if after diligent search cannot be found in this state, notice shall be given in the manner and to those persons as the court may determine.

Subd. 2. **Form; service.** The notice shall be written in language which can be easily understood. Included with the notice shall be a copy of the petition. The notice shall contain information regarding the nature, purpose and legal effects of the guardianship or conservatorship proceedings on the proposed ward or conservatee. The notice shall

MINNESOTA STATUTES 1994

state that the person may be adjudged incapable of self care for person or property, and by reason thereof, a guardian or conservator may be appointed, and that the adjudication may transfer to the appointed guardian or conservator certain rights, including the right to manage and control property, to enter into contracts and to determine residence. The notice shall further contain information regarding the rights of the proposed ward or conservatee in the proceeding, including the right to attend the hearing, to be represented by an attorney, to oppose the proceeding, and to present evidence. The notice shall state that if the proposed ward or conservatee wishes to exercise the right to be represented by an attorney, that person must either obtain counsel of choice, or ask the court to appoint an attorney to represent that person, and that the county shall pay a reasonable attorney's fee if that person is indigent. The procedure for requesting a court appointed attorney shall be described in the notice.

The process server shall inquire whether the proposed ward or conservatee desires the notice and petition to be read to that person, and shall read the notice and petition if requested to do so. In place of a process server, the court may appoint a visitor to deliver the notice and petition and explain them to the proposed ward or conservatee.

Subd. 3. Defective notice or service. A defect in the service of notice or process, other than personal service upon the proposed ward or conservatee within the time allowed and the form prescribed in subdivisions 1 and 2, shall not invalidate any guardianship or conservatorship proceedings.

History: (8992-133) 1935 c 72 s 133; 1973 c 618 s 6; 1980 c 493 s 7; 1981 c 313 s 6; 1982 c 472 s 2,3; 1986 c 444

525.5501 RIGHT TO COUNSEL.

Subdivision 1. General. A proposed ward or conservatee has the right to be represented by counsel at any proceeding under this chapter. The court shall appoint counsel to represent the proposed ward or conservatee for the initial proceeding held pursuant to section 525.551 if neither the proposed ward or conservatee nor others provide counsel unless in a meeting with a visitor the proposed ward or conservatee specifically waives the right to counsel. Counsel must be appointed immediately after any petition under this chapter is served under section 525.55.

Counsel has the full right of subpoena. In all proceedings under this chapter, counsel shall:

- (1) consult with the proposed ward or proposed conservatee before any hearing;
- (2) be given adequate time to prepare for all hearings; and
- (3) continue to represent the person throughout any proceedings under section 525.551 unless released as counsel by the court.

The court need not appoint counsel to represent the proposed ward or conservatee on a voluntary petition and the court may remove a court-appointed attorney at any time if the court finds that the proposed ward or conservatee has made a knowing and intelligent waiver of the right to counsel or has obtained private counsel.

Subd. 2. Filing fee surcharge. A person who pays a filing fee for a petition or application under this chapter and chapter 524 shall pay a surcharge of \$20, in addition to the filing fee and other surcharges imposed by law. The court administrator shall transmit the surcharge to the county treasurer for deposit in the county treasury.

Subd. 3. Payment of counsel. A proposed ward or conservatee shall pay the costs of counsel out of assets of, or available to, the ward or conservatee. If the proposed ward or conservatee is indigent, the costs of counsel shall be paid by the county from amounts deposited in the county treasury under subdivision 2.

Subd. 4. Exclusion. This section does not apply in the counties that make up the eighth judicial district.

History: 1990 c 578 s 1; 1991 c 281 s 3

525.551 HEARING; APPOINTMENT; BOND; PROSECUTION; NOTICE.

Subdivision 1. Attendance at hearing. If the proposed ward or conservatee is within the state, that person shall be present at the hearing unless in a meeting with a visitor that person specifically waives the right to appear in person or is not able to attend by reason of medical condition as evidenced by a written statement from a licensed physician. The written statement shall be evidence only of the proposed ward's or conservatee's medical inability to attend the hearing, and shall not be considered in determining the issue of incapacity. In any instance in which a proposed ward or conservatee is absent from the hearing, the court shall specify in its findings of fact the reason for nonattendance.

If a visitor delivered the notice and petition pursuant to section 525.55 and the proposed ward or conservatee has waived the right to attend the hearing, the visitor may testify as to the notice and any waiver of the right to appear in person, and as to other matters which may assist the court in determining the need for a guardian or conservator and the extent of the power to be granted.

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

Subd. 3. Conduct of hearing; proof. The proposed ward or conservatee has the right to summon and cross-examine witnesses. The rules of evidence apply. In the proceedings, there is a legal presumption of capacity and the burden of proof is on the petitioner. The standard of proof is that of clear and convincing evidence.

Subd. 4. Record of proceedings. In all proceedings the court shall take and preserve an accurate stenographic record or tape recording of the proceedings.

Subd. 5. Findings. In all cases the court shall make specific written findings of fact, state separately its conclusions of law, and direct the entry of an appropriate judgment or order.

If upon completion of the hearing and consideration of the record the court finds: (a) that the requirements for the voluntary appointment of a conservator or guardian have been met, or (b)(1) that the proposed ward or conservatee is incapacitated as defined in section 525.54; and (2) in need of the supervision and protection of a guardian or conservator; and (3) that no appropriate alternatives to the guardianship or conservatorship exist which are less restrictive of the person's civil rights and liberties, such as those set forth in section 525.54, subdivision 7, it shall enter its order or judgment granting all of the powers set out in section 525.56, subdivision 3, in the case of a guardian of the person, and section 525.56, subdivision 4, in the case of a guardian of the estate, or specifying the powers of the conservator pursuant to section 525.56. The court shall make a finding that appointment of the person chosen as guardian or conservator is in the best interests of the ward or conservatee. Except as provided in section 525.544, subdivision 1, if more than one person has petitioned the court to serve as guardian or conservator, or if the petition is contested, the court shall make a finding that the person to be appointed as guardian or conservator is the most suitable and best qualified person among those who are available before making the appointment. The court's finding as to the best available guardian must specifically address the reasons for the court's determination that the appointment of that person is in the best interests of the ward or conservatee.

The court may enumerate in its findings which legal rights the proposed ward or conservatee is incapable of exercising.

Subd. 6. Bond. Upon the filing of a bond by the guardian or conservator of an estate in an amount 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 is no personal property, the court may waive the filing of a bond, but if the guardian or conservator receives or becomes entitled to any property of the ward or conservatee the guardian or conservator shall immediately file a report thereof and a bond in an amount the court may direct. In case of breach of a condition of the bond an action thereon may be prosecuted by leave of the court by any interested person or by the court on its own motion.

MINNESOTA STATUTES 1994

Subd. 7. Notification. If a patient of a state hospital, regional center, or any state-operated service has a guardianship or conservatorship established, modified, or terminated, the head of the state hospital, regional center, or state-operated service shall be notified. If a ward or conservatee is under the guardianship or conservatorship of the commissioner of human services as mentally retarded or dependent and neglected or is under the temporary custody of the commissioner of human services, the court shall notify the commissioner of human services if the public guardianship or conservatorship is established, modified, or terminated.

History: (8992-134) 1935 c 72 s 134; 1959 c 525 s 1; 1973 c 618 s 7; 1975 c 347 s 114; 1979 c 43 s 2; 1980 c 493 s 8; 1981 c 313 s 7; 1982 c 424 s 117; 1982 c 472 s 4; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp1986 c 3 art 3 s 7; 1Sp1993 c 1 art 3 s 41

525.5515 LETTERS OF GUARDIANSHIP OR CONSERVATORSHIP.

Subdivision 1. Copy of order to ward or conservatee. A copy of the order appointing the guardian or conservator shall be served by mail upon the ward or conservatee and that person's counsel, if that person was represented at the hearing. The order shall be accompanied by a notice which advises the ward or conservatee of the right to appeal the guardianship or conservatorship appointment within 30 days.

Subd. 2. Contents of letters. Letters of guardianship or conservatorship shall issue to the guardian or conservator. They shall contain: (a) the name, address and telephone number of the guardian or conservator; (b) the name, address and telephone number of the ward or conservatee; (c) whether it is of the estate or of the person or both; and (d) the legal limitations, if any, imposed by the court on the guardian or conservator.

Subd. 3. [Repealed, 1982 c 472 s 11]

History: 1980 c 493 s 9; 1981 c 313 s 8; 1982 c 472 s 5; 1986 c 444

525.552 REDUCTION OF BOND.

Any conservator or guardian may deposit money belonging to the conservatee or ward, in a bank or trust company or in a savings and loan association and make the money subject to withdrawal only upon order of the court. Upon such deposit, the court may reduce or waive bond.

History: 1973 c 618 s 8

525.56 GUARDIAN'S OR CONSERVATOR'S POWERS AND DUTIES.

Subdivision 1. A guardian or conservator shall be subject to the control and direction of the court at all times and in all things.

Subd. 2. The court shall grant to a guardian or conservator only those powers necessary to provide for the demonstrated needs of the ward or conservatee.

Subd. 3. The court may appoint a guardian of the person if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the person if it determines that a conservator is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator of the person include, but are not limited to:

(1) The power to have custody of the ward or conservatee and the power to establish a place of abode within or without the state, except as otherwise provided in this clause. The ward or conservatee or any person interested in the ward's or conservatee's welfare may petition the court to prevent or to initiate a change in abode. A ward or conservatee may not be admitted to a regional treatment center by the guardian or conservator except (1) after a hearing pursuant to chapter 253B; (2) for outpatient services; or (3) for the purpose of receiving temporary care for a specific period of time not to exceed 90 days in any calendar year.

(2) The duty to provide for the ward's or conservatee's care, comfort and mainte-

nance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation. The guardian or conservator has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian or conservator, but the guardian or conservator shall have no personal or monetary liability.

(3) The duty to take reasonable care of the ward's or conservatee's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a guardian or conservator of the estate. The guardian or conservator must give notice in the manner required and to those persons specified in section 525.55 prior to the disposition of the ward's or conservatee's clothing, furniture, vehicles, or other personal effects. The notice must inform the person of the right to object to the disposition of the property within ten days and to petition the court for a review of the guardian's or conservator's proposed actions. Notice of the objection must be served by mail or personal service on the guardian or conservator and the ward or conservatee unless the ward or conservatee be the objector. The guardian or conservator served with notice of an objection to the disposition of the property may not dispose of the property unless the court approves the disposition after a hearing.

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

(b) A guardian or conservator who believes a procedure described in clause (4)(a) requiring prior court approval to be necessary for the proper care of the ward or conservatee shall petition the court for an order and, in the case of a public guardianship or conservatorship under chapter 252A, obtain the written recommendation of the commissioner of human services. The court shall fix the time and place for the hearing and shall give notice to the ward or conservatee and to the other persons specified in section 525.55, subdivision 1. The notice shall comply with the requirements of, and be served in the manner provided in section 525.55, subdivision 2. The court shall appoint an attorney to represent the ward or conservatee who is not represented by counsel. In every case the court shall determine if the procedure is in the best interests of the ward or conservatee. In making its determination, the court shall consider a written medical report which specifically considers the medical risks of the procedure, whether alternative, less restrictive methods of treatment could be used to protect the best interests of the ward or conservatee, and any recommendation of the commissioner of human services for a public ward or conservatee. The standard of proof is that of clear and convincing evidence.

(c) In the case of a petition for sterilization of a mentally retarded ward or conservatee, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's or conservatee's social history and adjustment or the case manager for the ward or conservatee to examine or evaluate the ward or conservatee and to provide written reports to the court. The reports shall indicate why sterilization is being proposed, whether sterilization is necessary and is the least intrusive method for alleviating the problem presented, and whether it is in the best interests of the ward or conservatee. The medical report shall specifically consider the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interests of the ward or conservatee.

(d) Any conservatee whose right to consent to a sterilization has not been

restricted under this section or section 252A.101, may be sterilized only if the conservatee consents in writing or there is a sworn acknowledgment by an interested person of a nonwritten consent by the conservatee. The consent must certify that the conservatee has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization operation.

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

(5) The power to approve or withhold approval of any contract, except for necessities, which the ward or conservatee may make or wish to make.

(6) The duty and power to exercise supervisory authority over the ward or conservatee in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

Subd. 4. Duties of guardian or conservator of the estate. The court may appoint a guardian of the estate if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the estate if it determines that a conservator is necessary to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator include, but are not limited to:

(1) The duty to pay the reasonable charges for the support, maintenance, and education of the ward or conservatee in a manner suitable to the ward's or conservatee's station in life and the value of estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The guardian or conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability;

(2) The duty to pay out of the ward's or conservatee's estate all just and lawful debts of the ward or conservatee and the reasonable charges incurred for the support, maintenance, and education of the ward's or conservatee's spouse and dependent 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 legally entitled to support from the ward or conservatee;

(3) The duty to possess and manage the estate, collect all debts and claims in favor of the ward or conservatee, or, with the approval of the court, compromise them, institute suit on behalf of the ward or conservatee and represent the ward or conservatee in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48.84 and 501B.10, subdivision 1, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a guardian or conservator. A guardian or conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) Where a ward or conservatee has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the ward or conservatee, may authorize an exchange or sale of the ward's or conservatee's interest or a purchase by the ward or conservatee of any interest other heirs may have in the real estate.

Subd. 5. Transaction set aside. If a ward or conservatee has made a financial transaction or gift or entered into a contract during the two-year period before establishment of the guardianship or conservatorship, the guardian or conservator may petition for court review of the transaction, gift, or contract. If the court finds that the ward or conservatee was incompetent or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the court may declare the transaction, gift, or contract void except as against a bona fide transferee for value and order reimbursement or other appropriate relief. This subdivision does not affect any other right or remedy that may be available to the ward or conservatee with respect to the transaction, gift, or contract.

History: (8992-135) 1935 c 72 s 135; 1941 c 395 s 1; 1947 c 209 s 1; 1953 c 457 s 1; 1961 c 288 s 1; 1973 c 618 s 9; 1980 c 493 s 10; 1981 c 313 s 9,10; 1986 c 444; 1987 c 185 art 2 s 4; 1987 c 403 art 2 s 152; 1989 c 340 art 2 s 4; 1991 c 118 s 1

525.561 CONTENTS OF INVENTORY.

Within one month after appointment, unless a longer time has been granted by the court, every guardian or conservator shall make and exhibit to the court a verified inventory of all the estate of the ward or conservatee which shall have come to the guardian's or conservator's 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. The guardian or conservator shall set forth in the inventory the fair market value of all assets listed therein. If appraisers are appointed by the court, the value of assets other than those assets specified in section 525.562, subdivision 1, clause (b) shall be determined by the court appointed appraisers. Such value shall be the value at the date of appointment of the guardian or conservator. Such inventory shall show the net value of each item after deducting all encumbrances, liens and charges and the total net value of each class of items and of all classes.

History: 1975 c 347 s 115; 1986 c 444

525.562 APPRAISAL.

Subdivision 1. For the usual purposes of administration, the inventory filed by the guardian or conservator pursuant to section 525.561 shall be sufficient without any appraisal of assets by court appointed appraisers in the following instances:

- (a) Where no sale of assets is to be made, and then an appraisal shall be had only as to assets which are to be sold and which are not included in clause (b) below.
- (b) As to the following assets:
 - (1) Cash or deposits in any financial institution;
 - (2) Securities, bonds or other obligations of the United States government or agency thereof; and

(3) Securities listed on the New York Stock Exchange or the American Stock Exchange, and such other securities markets as may be designated by a rule of court, if the market value thereof can be readily ascertained.

Subd. 2. In all other instances, and in all instances enumerated under clauses (a) and (b) above where an appraisal is necessary for some special administrative purpose, the court shall appoint two or more disinterested and qualified appraisers who shall appraise the assets required to be appraised and shall set down in figures after 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 guardian, or conservator, who shall immediately file the same. Such assets shall be appraised at the fair market value thereof as of the

MINNESOTA STATUTES 1994

date of the appointment of the guardian or conservator or time of sale of assets as circumstances may require as directed by the court.

Subd. 3. The appraisers shall be allowed such reasonable fees, necessary disbursements and expenses as may be fixed by the court, and be paid by the guardian or conservator as expenses of guardianship or conservatorship. In fixing the fee so allowed, the court shall not give any consideration to items not requiring appraisal by this section, even though such assets be included with other appraisable assets in an inventory and appraisal filed pursuant hereto.

History: 1975 c 347 s 116

525.57 TRANSFER OF VENUE.

When it is for the best interest of the ward or conservatee or the estate the venue may be transferred to another county. Upon the filing of a petition by any person interested in the ward or conservatee or in the estate the court shall fix the time and place for the hearing thereof, and shall give notice to the persons and in the manner required by section 525.55. Upon proof that a transfer of venue is for the best interest of the ward or conservatee or the estate, and upon the settlement and allowance of the guardian's or conservator's accounts to the time of the hearing, the court shall transmit the entire file to the court of the other county where all subsequent proceedings shall be held.

History: (8992-136) 1935 c 72 s 136; 1973 c 618 s 10; 1980 c 493 s 11; 1986 c 444

525.58 FILING OF ACCOUNTS; FILING OF AFFIDAVIT.

Subdivision 1. **Annual account.** Except where expressly waived or modified by the court, every guardian or conservator of the estate annually shall file with the court within 30 days of the anniversary date of the guardian's or conservator's appointment a verified account covering the period from the date of appointment or the last account. The guardian or conservator of the estate shall give a copy of the annual account to the ward or conservatee except where expressly waived by the court after a finding that the ward or conservatee is so incapacitated as to be unable to understand the account or there is a serious likelihood of harm to the ward or conservatee. The court or its designee shall annually review the court file to insure that the account has been filed and that the account contains the information required by this section. If an account has not been filed or if the account does not contain the information required by this section the court shall order the guardian or conservator to file an appropriate account. The examination and acceptance shall not constitute an adjudication or determination of the merits of the account filed nor shall it constitute the court's approval of the account. At the termination of the guardianship or conservatorship, or upon the guardian's or conservator's removal or resignation, the guardian or conservator or the surety, or in the event of death or disability, the guardian's or conservator's 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 or conservatee and of the guardian or conservator, and unless the guardian or conservator 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 the surety justified.

Subd. 2. **Notice of right to petition for restoration of capacity.** Except where expressly waived by the court after a finding that the ward or conservatee is so incapacitated as to be unable to understand any notice, or there is a serious likelihood of harm to the ward or conservatee, every guardian or conservator shall annually give notice to the ward or conservatee of the right to petition for restoration to capacity, discharge of guardian or conservator, or modification of the orders of guardianship or conservatorship. A waiver shall not be effective for more than two years without a redetermination by the court. The notice shall describe the procedure for preparing and filing such a petition. Notice shall also inform the ward or conservatee that after a petition is filed the court will hold a hearing on the matter and that the ward or conservatee has the

MINNESOTA STATUTES 1994

999

PROBATE PROCEEDINGS 525.582

right to be present and to be represented by counsel at the hearing. The form of the notice shall be approved or supplied by the court.

Subd. 3. Affidavit. Except where expressly waived by the court as provided in subdivision 2, every guardian or conservator shall file annually with the court an affidavit of having given the notice required by subdivision 2 to the ward or conservatee and every guardian or conservator of an estate shall file an affidavit stating that a copy of the annual account has been given to the ward or conservatee.

Subd. 4. Annual report of the guardian of the person. Except where expressly waived by the court, every guardian or conservator of the person shall annually file a report under oath with the court within 30 days of the anniversary date of the appointment of the guardian or conservator. The report shall contain the guardian's or conservator's good faith evaluation of the following information for the preceding year:

- (a) changes in the medical condition of the ward or conservatee;
- (b) changes in the living conditions of the ward or conservatee;
- (c) changes in the mental and emotional condition of the ward or conservatee;
- (d) a listing of hospitalizations of the ward or conservatee; and
- (e) if the ward or conservatee is institutionalized, an evaluation of the care and treatment received by the ward or conservatee, and if the ward or conservatee is indigent, a review of the continued need for guardian or conservator services beyond those provided by the institution or the county human services agency. The court shall request the assistance of the county human services agency to assist in making this need determination. If a continued need for guardian or conservator services exists, the county may contract for these services with other public or private agencies.

The court or its designee shall annually review the court file to insure that the report has been filed and that the report contains the information required by this subdivision. If a report has not been filed or if the report does not contain the information required by this subdivision, the court shall order the guardian or conservator to file an appropriate report.

History: (8992-137) 1935 c 72 s 137; 1973 c 618 s 11; 1980 c 493 s 12; 1981 c 313 s 11; 1982 c 401 s 1; 1983 c 51 s 1; 1986 c 444; 1993 c 118 s 4

525.581 NOTICE OF HEARING ON ACCOUNT.

The court on its own motion may, or upon the petition of the guardian, conservator, ward, conservatee, or any person interested in the ward or conservatee or the ward's or conservatee's estate shall, fix the time and place for the hearing on any account, notice of which shall be given to the ward or conservatee and to other 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.

History: (8992-138) 1935 c 72 s 138; 1973 c 618 s 12; 1980 c 493 s 13; 1986 c 444

525.582 ADJUDICATION ON ACCOUNT.

(a) Unless otherwise ordered, the guardian or conservator 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 or conservator and the sureties. Any person for whom a guardian or conservator has been appointed and who has become of age or has been restored to capacity may show to the court that the person has settled with the guardian or conservator and may petition for the guardian's or conservator's discharge without further hearing. Upon such petition, the court may discharge the guardian or conservator and the sureties.

(b) If, after hearing on notice as the court may require to the guardian, conservator and any surety, there is determined to be mismanagement, a shortage of funds, or other

misconduct for which the guardian, conservator or a surety is liable, the court shall settle the account and enter judgment against the guardian, conservator or any surety as may be appropriate. The judgment may be filed, docketed and enforced in the same manner as any other judgment. This remedy is in addition to any other remedy available for breach of any condition of the bond.

(c) The resignation of a guardian or conservator shall not take effect until the court examines and allows the final account and makes an order accepting the resignation.

(d) If a guardian or conservator becomes unsuitable, incapacitated or disabled, or violates the trust or fails to perform any duty imposed by law or the lawful order of the court, the court upon petition or the court's own motion may remove the guardian or conservator after notice.

History: (8992-139) 1935 c 72 s 139; 1973 c 618 s 13; 1977 c 153 s 1; 1986 c 444

525.583 ALLOWANCE AND WAGES OF CONSERVATEE; LIMITED ACCOUNTABILITY OF CONSERVATOR.

The court, upon its own motion or upon petition of the conservator or conservatee, may authorize or direct the conservator to pay to the conservatee out of the conservatorship estate a reasonable allowance for the personal use of the conservatee in the amount the court may determine to be for the best interests of the conservatee. Unless otherwise ordered by the court, if the conservatee shall at any time during the continuance of the conservatorship be employed, the wages or salary for employment shall not be a part of the conservatorship estate and the wages and salaries shall be paid to, and be subject to the control of, the conservatee to the same extent as if the conservatorship did not exist. The conservator shall not be accountable for the allowances or wages and salary.

History: 1973 c 618 s 14; 1980 c 493 s 14; 1986 c 444

525.59 SUCCESDING GUARDIAN OR CONSERVATOR.

If a guardian or conservator dies, resigns, or is removed, the court may appoint a successor with at least 14 days prior notice to the ward or conservatee, a spouse, parents, adult children and siblings, and to other persons as the court may direct. A ward or conservatee having capacity to do so may nominate a person to serve as successor or may give instructions to the succeeding guardian or conservator or may do both. The court shall appoint the person so nominated and shall charge the appointee with the instructions, unless the court finds that the appointment of the nominee or the instructions or both are not in the best interests of the ward or conservatee.

History: (8992-140) 1935 c 72 s 140; 1973 c 618 s 15; 1980 c 493 s 15; 1986 c 444

525.591 SPECIAL GUARDIAN OR CONSERVATOR.

Subdivision 1. Any person may file a verified petition for a special guardian or conservator. The petition shall contain: (a) all of the information required in section 525.542; (b) the reasons that the petitioner believes the proposed ward or conservatee is in need of a special guardian or conservator; and (c) the reasons why the regular procedure for obtaining guardianship or conservatorship is not appropriate.

Subd. 2. **Special guardian or conservator.** Upon a clear showing of necessity, the court with notice may appoint a special guardian or conservator of the person or estate or both of any adult person designated in section 525.54, whether a petition for general guardianship or conservatorship has been filed or not. Notice shall be given in language which can be easily understood at least 24 hours prior to the hearing, and shall contain the information required by section 525.55, subdivision 2, regarding the purpose of the hearing and the rights of the proposed ward or conservatee. A copy of the petition shall be served with the notice. The court may waive the 24 hour notice requirement upon a showing that immediate and reasonably foreseeable harm to the person or the person's estate will result from the 24 hour delay. Notice of the court's order shall be given to the proposed ward or conservatee.

MINNESOTA STATUTES 1994

1001

PROBATE PROCEEDINGS 525.61

Subd. 3. No appeal. There shall be no appeal from any order appointing or refusing to appoint a special guardian or conservator.

Subd. 4. The court shall grant to a special guardian or conservator only those powers necessary to provide for the demonstrated needs of the ward or conservatee. Subject to this limitation the court may grant any of the powers specified in section 525.56.

Subd. 5. Within 14 days after appointment, a special guardian or conservator of the estate shall file an inventory and appraisal of the personal property according to the requirements of sections 525.561 and 525.562. The court shall specify in its order the duration of the special guardianship or conservatorship. At the expiration of the time specified in the court's order, or upon the granting of letters of general guardianship or conservatorship, the power of a special guardian or conservator shall cease, and the special guardian or conservator shall proceed forthwith to a final accounting. When a special guardian or conservator has been appointed to protect the ward's or conservatee's interest in any matter wherein the interest of the general guardian or conservator appears to conflict with that of the ward or conservatee, or to protect the ward's or conservatee's interest upon suspension of an order of removal of a general guardian or conservator by appeal, the power of the special guardian or conservator shall not cease until terminated by the court.

History: (8992-141) 1935 c 72 s 141; 1973 c 618 s 16; 1975 c 347 s 117; 1980 c 493 s 16; 1981 c 313 s 12,13; 1986 c 444

525.60 TERMINATION.

Subdivision 1. The guardianship or conservatorship of an adult ward or conservatee shall terminate upon death or upon the ward's or conservatee's restoration to capacity. When there is no further need for any guardianship or conservatorship, the court may terminate the same upon notice as it may direct. Termination does not affect a guardian's or conservator's liability for prior acts, nor the obligation to account for funds and assets of the ward or conservatee.

Subd. 2. [Repealed, 1980 c 493 s 40]

History: (8992-142) 1935 c 72 s 142; 1967 c 508 s 1; 1973 c 618 s 17; 1980 c 493 s 17; 1986 c 444

525.61 RESTORATION TO CAPACITY; MODIFICATION OF GUARDIANSHIP OR CONSERVATORSHIP.

Subdivision 1. General. Any adult person who is under guardianship or conservatorship or the guardian or conservator, or any other person may petition the court in which the person was so adjudicated to be restored to capacity or to have a guardianship transferred to a conservatorship or to modify the guardianship or conservatorship. Upon the filing of the petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the ward or conservatee, guardian or conservator, and to those other persons and in a manner provided in section 525.55.

Subd. 2. Restoration to capacity. To obtain an order of restoration to capacity the petitioner must prove by a preponderance of the evidence that the ward or conservatee is no longer incapacitated as defined in section 525.54, and is able to make provisions for personal care or self-management of property. If a ward or conservatee has the functional ability to care for self or for property, or to make provisions for personal care or the care of property, the fact of impairment to some extent by a mental condition shall not preclude restoration to capacity. In any proceedings for restoration, the court may appoint one person duly licensed by a health related licensing board and one accredited social worker with expertise in evaluating persons who have the disabilities similar to those found to be the reason for the ward's or conservatee's incapacity, to assist in the determination of mental condition and functional ability to care for self or property. The court shall allow and order paid to each health professional and social worker a reasonable sum for services. Upon the order, the county auditor shall issue a warrant on the county treasurer for the payment thereof.

MINNESOTA STATUTES 1994

525.61 PROBATE PROCEEDINGS

1002

Subd. 3. Appointment of new guardian or conservator. Upon a motion to remove a guardian or conservator and appoint a new guardian or conservator, the court shall consider whether the existing guardian or conservator has performed the applicable duties and whether the continued appointment of the guardian or conservator is in the best interests of the ward or conservatee. The court shall appoint a new guardian or conservator if it finds that:

(1) the existing guardian or conservator has failed to perform the duties associated with the guardianship or conservatorship or to provide for the best interests of the ward or conservatee; and

(2) the best interests of the ward or conservatee will be better served by the appointment of a new guardian or conservator.

The court's decision must include the specific findings required by section 525.551, subdivision 5.

History: (8992-143) 1935 c 72 s 143; 1939 c 270 s 8; 1959 c 267 s 3; 1973 c 618 s 18; 1979 c 43 s 3; 1980 c 493 s 18; 1986 c 444; 1Sp1986 c 3 art 3 s 8

525.611 MS1980 [Repealed, 1980 c 493 s 40]

525.612 MS1980 [Repealed, 1980 c 493 s 40]

525.613 MS1980 [Repealed, 1980 c 493 s 40]

525.614 MS1980 [Repealed, 1980 c 493 s 40]

525.615 STATUS OF GUARDIAN OF MINOR; GENERAL.

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

History: 1980 c 493 s 26

525.6155 TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR.

The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 525.616, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given within five days by the guardian to the minor, to the person having the minor's care, to the minor's adult siblings, grandparents, aunts and uncles. Notice shall state that any person interested in the welfare of the minor, or the minor, if 14 or more years of age, may file with the court a written objection to the appointment in accordance with section 525.616.

History: 1980 c 493 s 27; 1986 c 444

525.616 OBJECTION BY MINOR OF 14 OR OLDER OR INTERESTED ADULT TO TESTAMENTARY APPOINTMENT.

A minor of 14 or more years or any adult interested in the minor's welfare may prevent an appointment of the minor's testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

History: 1980 c 493 s 28; 1986 c 444

MINNESOTA STATUTES 1994

1003

PROBATE PROCEEDINGS 525.618

525.6165 COURT APPOINTMENT OF GUARDIAN OF MINOR; CONDITIONS FOR APPOINTMENT.

The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by prior court order. A guardian appointed by will as provided in section 525.6155 whose appointment has not been prevented or nullified under section 525.616 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

History: 1980 c 493 s 29; 1982 c 472 s 6

525.617 COURT APPOINTMENT OF GUARDIAN OF MINOR; VENUE.

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

History: 1980 c 493 s 30

525.6175 COURT APPOINTMENT OF GUARDIAN OF MINOR; QUALIFICATION; PRIORITY OF MINOR'S NOMINEE.

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

History: 1980 c 493 s 31

525.618 COURT APPOINTMENT OF GUARDIAN OF MINOR; PROCEDURE.

Subdivision 1. **Time of notice; to whom.** Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor shall be given by the petitioner in the following manner and to the following persons:

- (a) The minor, if 14 or more years of age, by personal service at least 14 days prior to the date of hearing;
- (b) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition by personal service, at least 14 days prior to the date of hearing;
- (c) Any living parent of the minor residing in Minnesota by personal service, at least 14 days prior to the date of hearing;
- (d) Any living parent of the minor residing outside of Minnesota, and any adult brothers and sisters of the minor, service by mail, at least 14 days prior to the date of hearing; and
- (e) To any other persons that the court may direct.

Subd. 2. Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 525.6165 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interests of the minor.

Subd. 3. If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.

Subd. 4. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

Subd. 5. **Copy of order to ward or conservatee.** A copy of an order appointing a guardian or conservator of a minor shall be served by mail upon the ward or conser-

MINNESOTA STATUTES 1994

vatee and counsel, if represented at the hearing. The order shall be accompanied by a notice which advises the ward or conservatee of the right to appeal the guardianship or conservatorship appointment within 30 days.

Subd. 6. Contents of letters. Letters of guardianship or conservatorship shall issue to the guardian or conservator. They shall contain: (a) the name, address, and telephone number of the guardian or conservator; (b) the name, address, and telephone number of the ward or conservatee; (c) whether it is a guardianship or conservatorship or both; and (d) the legal limitations, if any, imposed by the court on the guardian or conservator.

History: 1980 c 493 s 32; 1981 c 313 s 14; 1982 c 472 s 7,8; 1986 c 444

525.6185 CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT; NOTICE.

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be given by mail or personal service upon the guardian at least 14 days prior to the date of the hearing.

History: 1980 c 493 s 33; 1981 c 313 s 15

525.619 POWERS AND DUTIES OF GUARDIAN OF MINOR.

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward. In particular, and without qualifying the foregoing, a guardian:

(a) must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship and also may receive money or property of the ward paid or delivered by virtue of section 525.6196. Any sums so received shall be applied to the ward's current needs for support, care and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment or advice. A ward who is less than 16 years of age may be admitted to a treatment facility as an informal patient according to section 253B.04 but may not be committed to any state institution except pursuant to chapter 253B. No guardian may give consent for psychosurgery, electroshock, sterilization or experimental treatment of any kind unless the procedure is first approved by the order of the court, after a hearing as prescribed by section 525.56, subdivision 3.

A guardian is not liable by reason of consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented, or unless the guardian fails to comply with the requirements of this section which provide that a court order is necessary for commitment and for certain types of medical procedures. A guardian may consent to the marriage or adoption of the ward.

(d) A guardian must report the condition of the ward and of the ward's estate

MINNESOTA STATUTES 1994

1005

PROBATE PROCEEDINGS 525.6196

which has been subject to the guardian's possession or control, as ordered by the court on its own motion or on petition of any person interested in the minor's welfare and as required by court rule.

History: 1980 c 493 s 34; 1981 c 313 s 16; 1983 c 216 art 1 s 75; 1984 c 623 s 8; 1985 c 248 s 66; 1986 c 444

525.6192 TERMINATION OF APPOINTMENT OF GUARDIAN; GENERAL.

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect the guardian's liability for prior acts, nor the obligation to account for funds and assets of the ward. A guardian may be discharged without notice or hearing on petition and acceptance of the guardian's accounts by the ward after the ward marries or attains majority, or, in the case of the ward's death, by the personal representative of the ward's estate. In other cases the court may discharge the guardian upon approval of the guardian's accounts after notice and a hearing. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

History: 1980 c 493 s 35; 1981 c 313 s 17; 1986 c 444

525.6194 PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE.

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interests of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: 1980 c 493 s 36

525.6195 RESIGNATION OR REMOVAL PROCEEDINGS.

(a) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

History: 1980 c 493 s 37

525.6196 FACILITY OF PAYMENT OR DELIVERY.

Any person other than a personal representative subject to section 524.3-915, clause (b), who is under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 per annum, by paying or delivering the money or property to, (1) the minor, if 16 years of age or married; (2)

MINNESOTA STATUTES 1994

525.6196 PROBATE PROCEEDINGS

1006

any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under clause (4), receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor. Any balance not so used and any property received for the minor must be turned over to the minor on attaining majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of it.

History: 1980 c 493 s 38; 1981 c 313 s 18; 1982 c 472 s 9; 1986 c 444

525.6197 DISCHARGE OF GUARDIAN OR CONSERVATOR; PROPERTY OF A MINOR.

When a minor receives or is entitled to personal property, the court may order a guardian or conservator to make payment of up to \$2,000 of the property to the parent or parents, custodian, or the person, corporation, or institution with whom the minor child is, for the benefit, support, maintenance, and education of the minor or may direct the investment of the whole or any part of that amount in a savings account, savings certificate, or certificate of deposit in a bank, savings bank, building and loan association, or savings and loan association having deposit insurance, in the name of the minor. When so invested the savings account passbook, savings certificate, certificate of deposit, or other acknowledgment of receipt of the deposit by the depository is to be kept as provided by the court. The depository shall be instructed not to allow the investment to be withdrawn, except by order of the court. The court may authorize the use of any part or all of that amount to purchase United States government savings bonds in the minor's name. The bonds shall be kept as provided by the court and retained until the minor reaches majority unless otherwise authorized by an order of the court.

History: 1982 c 472 s 10

525.6198 PROTECTIVE PROCEEDINGS; APPOINTMENT OF CONSERVATOR OF ESTATE OF MINOR.

Upon petition and after notice and hearing in accordance with the provisions of section 525.618 the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by minority, or that funds are needed for support and education and that protection is necessary or desirable to obtain or provide funds.

(2) The court may grant to the conservator of the estate of a minor any or all of the powers and duties enumerated in section 525.56, subdivision 4, and the conservator shall be subject to the requirements of sections 525.58, subdivision 1, 525.581 and 525.582 regarding an inventory and accounting, except that the court may waive the requirement that the annual account be served on the ward. The conservator shall file a bond with the court in such amount as the court may direct.

History: 1980 c 493 s 39; 1981 c 313 s 19; 1982 c 424 s 118; 1986 c 444

525.6199 GUARDIANSHIP, CONSERVATORSHIP; WORKERS' COMPENSATION PROCEEDINGS.

Subdivision 1. Referral. When a matter is referred under section 176.092, subdivision 3, the court shall determine whether the employee or dependent is a minor or an incapacitated person, shall appoint a guardian or conservator if the employee or dependent is a minor or an incapacitated person, and shall return the matter to the source of referral.

Subd. 2. Court oversight. The court shall oversee the use of monetary benefits paid to a guardian or conservator as provided in this chapter or under rule 145 of the general rules of practice for the district courts. There is a rebuttable presumption that a settlement or award approved by the commissioner of the department of labor and industry or a compensation judge is reasonable and fair to the employee or dependent.

Subd. 3. Costs. Subject to the approval of the court, the insurer or self-insured employer shall pay the costs and a reasonable attorney fee of the employee or dependent associated with the appointment of a guardian or conservator required under section 176.092.

History: 1993 c 194 s 9

REALTY; SALES, LEASES, MORTGAGES

525.62 MORTGAGE AND LEASE.

Sections 525.62 to 525.702 shall be applicable only to guardianships and conservatorships and not to decedents' estates. 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, and the word "lease" means a lease for one or more years, unless the context indicates otherwise.

History: (8992-144) 1935 c 72 s 144; 1975 c 347 s 118; 1980 c 493 s 19; 1981 c 313 s 20

525.621 MS1980 [Repealed, 1980 c 493 s 40]

525.63 REASONS FOR SALE, MORTGAGE, LEASE.

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

The homestead of a ward or conservatee shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed.

History: (8992-146) 1935 c 72 s 146; 1975 c 347 s 119; 1980 c 493 s 20; 1986 c 444

525.64 PETITION, NOTICE, HEARING.

A guardian or conservator 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 ward or conservatee 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 except that no publication is required unless otherwise ordered. 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.

History: (8992-147) 1935 c 72 s 147; 1937 c 435 s 17; 1969 c 943 s 1; 1973 c 405 s 1; 1975 c 347 s 120

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. An order to mortgage shall fix the maximum amount of the principal and the maximum rate of interest 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.

History: (8992-148) 1935 c 72 s 148; 1937 c 435 s 18; 1975 c 347 s 121

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 percent of the purchase price, or on contract for deed. The initial payment under a sale on contract shall not be less than ten percent of the total purchase price, and the unpaid purchase price shall bear interest at a rate of not less than four percent per annum and shall be payable in reasonable monthly, quarterly, semiannual, or annual payments, and the final installment 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 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 guardian or conservator 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.

History: (8992-149) 1935 c 72 s 149; 1937 c 435 s 19; 1975 c 347 s 122; 1986 c 444

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 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 proceedings. The guardian or conservator 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.

History: (8992-150) 1935 c 72 s 150; 1975 c 347 s 123

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 unless a prior appraisal of the real estate has been made by two or more disinterested persons not more than three months before the sale, 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.

History: (8992-151) 1935 c 72 s 151; 1980 c 493 s 21

525.652 ADDITIONAL BOND.

If the existing bond be insufficient, before confirmation of a sale or lease, or before execution of a mortgage, the guardian or conservator shall file an additional bond in such amount as the court may require.

History: (8992-152) 1935 c 72 s 152; 1975 c 347 s 124; 1986 c 444

525.66 SALE OF CONTRACT INTEREST.

When a ward or conservatee 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 ward or conservatee. Before confirmation, the court may require the filing of a bond conditioned to save the estate harmless. Upon confirmation, the guardian or conservator shall assign the contract and convey by quitclaim deed.

History: (8992-153) 1935 c 72 s 153; 1975 c 347 s 125

525.661 SALE SUBJECT TO CHARGE.

When the estate of a ward or conservatee 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.

History: (8992-154) 1935 c 72 s 154; 1975 c 347 s 126

525.662 CONFIRMATION.

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

History: (8992-155) 1935 c 72 s 155; 1975 c 347 s 127; 1986 c 444

525.67 AGREEMENT AND SALE FOR PUBLIC PURPOSE.

When any real estate of a ward or conservatee is desired by any person, firm, association, corporation, or governmental agency having the power of eminent domain, the guardian or conservator 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 the agreement has been made, the guardian or conservator shall file a petition, of which the agreement shall be a part, setting forth the facts relative to the transaction. The court, with notice as provided in section 525.83, except that no publication is required unless it is ordered by the court, shall hear, determine, and act upon the petition. If the court approves the agreement, the guardian or conservator, upon payment of the agreed compensation, shall convey the real estate sought to be acquired and execute any release which may be authorized.

History: (8992-156) 1935 c 72 s 156; 1975 c 347 s 128; 1980 c 493 s 22; 1981 c 313 s 21

525.68 PLATTING.

When it is for the best interests of the estate of a ward or conservatee, real estate may be platted by the guardian or conservator under such conditions and upon such notice as the court may order.

History: (8992-157) 1935 c 72 s 157; 1975 c 347 s 129

525.69 CONVEYANCE OF VENDOR'S TITLE.

When any ward or conservatee is legally bound to make a conveyance or lease, the court, without further notice, may direct the guardian or conservator to make the conveyance or lease to the person entitled thereto. The petition may be made by any person claiming to be entitled to the conveyance or lease, or by the guardian or conservator, or by any person interested in the estate or claiming an interest in the real estate or contract, and shall show the description of the land and the facts upon which the claim for conveyance or lease is based. Upon proof of the petition, the court may order the guardian or conservator to execute and deliver an instrument of conveyance or lease upon performance of the contract.

History: (8992-158) 1935 c 72 s 158; 1937 c 435 s 20; 1975 c 347 s 130; 1980 c 493 s 23; 1981 c 313 s 22

MINNESOTA STATUTES 1994

525.691 MORTGAGE EXTENSION.

A guardian or conservator 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.

History: (8992-159) 1935 c 72 s 159; 1975 c 347 s 131

525.692 LIABILITY ON MORTGAGE NOTE.

No guardian or conservator shall be liable personally on any mortgage note or by reason of the covenants in any instrument or conveyance executed in the capacity of guardian or conservator.

History: (8992-160) 1935 c 72 s 160; 1975 c 347 s 132; 1986 c 444

525.693 [Repealed, 1975 c 347 s 144]

525.70 VALIDITY OF PROCEEDINGS.

No sale, mortgage, lease, or conveyance by a guardian or conservator 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.

History: (8992-162) 1935 c 72 s 162; 1975 c 347 s 133

525.701 [Repealed, 1975 c 347 s 144]

525.702 LIMITATION OF ACTION.

No proceeding to have declared invalid the sale, mortgage, lease, or conveyance by a guardian or conservator shall be maintained by any person claiming under or through the ward or conservatee 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 or conservator, no action for its recovery shall be maintained by or under the ward or conservatee unless it is begun within five years next after the termination of the guardianship or conservatorship; 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.

History: (8992-163) 1935 c 72 s 163; 1975 c 347 s 134

525.703 COSTS.

Subdivision 1. **In forma pauperis.** The court may authorize a proceeding under sections 525.54 to 525.702 to proceed in forma pauperis, as provided in chapter 563.

Subd. 2. **Lawyer or health professional.** In proceedings under sections 525.54 to 525.702 a lawyer or health professional rendering necessary services with regard to the appointment of a guardian or conservator, the administration of the ward's or conservatee's estate or personal affairs or the restoration of that person's capacity, shall be entitled to reasonable compensation from the estate of the ward or conservatee or from the county having jurisdiction over the proceedings if the ward or conservatee is indigent. When the court determines that other necessary services have been provided for the benefit of the ward or conservatee by a lawyer or health professional, the court may order reasonable fees to be paid from the estate of the ward or conservatee or from the county having jurisdiction over the proceedings if the ward or conservatee is indigent. If, however, the court determines that a petitioner, guardian or conservator has not acted in good faith, the court shall order some or all of the fees or costs incurred in the proceedings to be borne by the petitioner, guardian, or conservator not acting in good faith. In determining reasonable compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation

MINNESOTA STATUTES 1994

1011

PROBATE PROCEEDINGS 525.71

based on the living arrangements of the ward or conservatee. If these services are provided by a public or private agency, the county may contract on a fee for service basis with that agency.

Subd. 3. Guardian or conservator. (a) When the court determines that a guardian or conservator of the person or the estate has rendered necessary services or has incurred necessary expenses for the benefit of the ward or conservatee, the court may order reimbursement or reasonable compensation to be paid from the estate of the ward or conservatee or from the county having jurisdiction over the guardianship or conservatorship if the ward or conservatee is indigent. The court may not deny an award of fees solely because the ward or conservatee is a recipient of medical assistance. In determining reasonable compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or conservatee. If these services are provided by a public or private agency, the county may contract on a fee for service basis with that agency.

(b) The court shall order reimbursement or reasonable compensation if the guardian or conservator requests payment and the guardian or conservator was nominated by the court or by the county adult protection unit because no suitable relative or other person was available to provide guardianship or conservatorship services necessary to prevent abuse or neglect of a vulnerable adult, as defined in section 626.557. In determining reasonable compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or conservatee. If these services are provided by a public or private agency, the county may contract on a fee for service basis with that agency.

(c) When a county employee serves as a guardian or conservator as part of employment duties, the court shall order reasonable compensation if the guardian or conservator performs necessary services that are not compensated by the county. The court may order reimbursement to the county from the ward's or conservatee's estate for reasonable compensation paid by the county for services rendered by a guardian or conservator who is a county employee but only if the county shows that after a diligent effort it was unable to arrange for an independent guardian or conservator.

History: 1980 c 493 s 24; 1981 c 313 s 23; 1985 c 250 s 26; 1986 c 444; 1993 c 118 s 5,6

525.705 PREEXISTING GUARDIANSHIPS AND CONSERVATORSHIPS.

All guardians and conservators serving prior to August 1, 1981, shall have all powers and duties of section 525.56, subdivision 3, as to the person and section 525.56, subdivision 4, as to the estate, unless restricted by any existing court order, until those powers or duties are restricted or changed by court order.

History: 1981 c 313 s 24

APPEALS

525.71 APPEALABLE ORDERS.

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

- (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;

MINNESOTA STATUTES 1994

525.71 PROBATE PROCEEDINGS

1012

- (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 of it when the amount in controversy exceeds \$100;
- (10) an order adjudging a person in contempt;
- (11) an order vacating, or 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 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; and
- (17) an order extending the time for the settlement of the estate beyond five years from the date of the appointment of the representative.

History: (8992-164) 1935 c 72 s 164; 1939 c 270 s 9; 1941 c 411 s 1; 1963 c 740 s 24; 1974 c 447 s 4; 1975 c 347 s 135; 1979 c 303 art 3 s 38; 1983 c 247 s 186

525.711 [Repealed, 1983 c 247 s 219]

525.712 REQUISITES.

The 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 notice be served, within six months after the filing of the order, judgment, or decree. Except as provided in this section, the appeal shall be perfected and determined upon the record as provided in sections 484.63 and the rules of appellate procedure.

History: (8992-166) 1935 c 72 s 166; 1937 c 435 s 21; 1953 c 476 s 1; 1980 c 344 s 1; 1987 c 346 s 17

525.713 [Repealed, 1980 c 344 s 2]

525.714 SUSPENSION BY APPEAL.

The appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the court of appeals orders otherwise. The court of appeals may require the appellant to give additional bond for the payment of damages which may be awarded against the appellant in consequence of the suspension, on the appellant's failure to obtain a reversal of the order, judgment, or decree appealed from. Nothing herein contained shall prevent the probate court from appointing special representatives nor prevent special representatives from continuing to act as such.

History: (8992-168) 1935 c 72 s 168; 1983 c 247 s 187; 1986 c 444

525.72 [Repealed, 1980 c 344 s 2]

MINNESOTA STATUTES 1994

1013

PROBATE PROCEEDINGS 525.83

525.73 AFFIRMANCE; REVERSAL.

When the appellant fails to prosecute the appeal, or the order, judgment, or decree appealed from or reviewed is sustained, judgment shall be entered in the court of appeals affirming the decision of the probate court. Upon the filing in the probate court of a certified transcript of the 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 court of appeals 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 the judgment, it shall proceed as directed by the court of appeals.

History: (8992-170) 1935 c 72 s 170; 1983 c 247 s 188; 1986 c 444

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 the appeal bond and execution may issue thereon.

History: (8992-171) 1935 c 72 s 171; 1986 c 444

525.74 [Repealed, 1982 c 501 s 26; 1983 c 247 s 219]

525.749 [Repealed, 1967 c 638 s 22]

525.75 [Repealed, 1967 c 638 s 22]

525.751 [Repealed, 1967 c 638 s 22]

525.752 [Repealed, 1967 c 638 s 22]

525.753 [Repealed, 1967 c 638 s 22]

525.754 [Repealed, 1967 c 638 s 22]

525.76 [Repealed, 1967 c 638 s 22]

525.761 [Repealed, 1967 c 638 s 22]

525.762 [Repealed, 1967 c 638 s 22]

525.763 [Repealed, 1967 c 638 s 22]

525.77 [Repealed, 1967 c 638 s 22]

525.78 [Repealed, 1967 c 638 s 22]

525.79 [Repealed, 1967 c 638 s 22]

GENERAL PROVISIONS

525.80 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.80 REPRESENTATIVE.

As used in this chapter, the word "representative," unless the context otherwise indicates, includes personal representatives as that term is defined in chapter 524, guardians, and conservators.

History: 1975 c 347 s 136

525.805 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.81 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.82 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.83 NOTICE.

When notice of hearing is required by any provision of this chapter by reference to this section, the 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

MINNESOTA STATUTES 1994

525.83 PROBATE PROCEEDINGS

1014

pending; or, if no such designation be made, in any legal newspaper in the county; or, if the city of the decedent's residence is situated in more than one county, in any legal newspaper in the city. 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 hearing the petitioner, the petitioner's attorney or agent, shall in guardianship or conservatorship mail a copy of the notice to the ward or conservatee, and other persons as the court may direct and in decedents' estates shall mail a copy of the notice to each heir, devisee, and legatee whose name and address are known.

Proof of 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.

History: (8992-188) 1935 c 72 s 188; 1941 c 422 s 1; 1957 c 30 s 1; 1971 c 497 s 7; 1973 c 123 art 5 s 7; 1973 c 404 s 1; 1975 c 347 s 137; 1980 c 493 s 25; 1986 c 444

525.831 NOTICE TO ATTORNEY GENERAL OF DEVISES FOR CHARITABLE PURPOSES.

Whenever a will provides for a devise for a charitable purpose, as defined in section 501B.35, subdivision 2, the personal representative shall provide the attorney general with the notices or documents, if any, required by section 501B.41, subdivision 5.

History: 1978 c 601 s 28; 1989 c 340 art 2 s 5

525.84 ERRONEOUS ESCHEAT.

When 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 admit the will to probate as provided by law, or make its determination of heirship and enter its order assigning the escheated property to the persons entitled thereto.

History: (8992-189) 1935 c 72 s 189; 1975 c 347 s 138

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 a 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 11A.04, clause (9) and 11A.10, subdivision 2 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.

History: (8992-190) 1935 c 72 s 190; 1957 c 861 s 8; 1973 c 492 s 14; 1975 c 347 s 139; 1979 c 303 art 3 s 40; 1980 c 607 art 14 s 46; 1986 c 444

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.

History: (8992-191) 1935 c 72 s 191

MINNESOTA STATUTES 1994

1015

PROBATE PROCEEDINGS 525.921

525.86 [Repealed, 1975 c 347 s 144]

525.87 [Repealed, 1975 c 347 s 144]

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.

History: (8992-194) 1935 c 72 s 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 the heirs, devisees, or representatives, and a patent has been granted to the "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.

History: (8992-195) 1921 c 36 s 2; 1935 c 72 s 195; 1986 c 444

525.89 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.90 MS 1992 [Renumbered 524.2-702]

525.91 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

525.91 LETTERS, CONTENTS.

All letters issued by the courts to representatives of estates of deceased persons shall state the date of death of the deceased.

History: 1975 c 347 s 140

UNIFORM ANATOMICAL GIFT ACT

525.921 DEFINITIONS.

Subdivision 1. Scope. For the purposes of sections 525.921 to 525.9224 the terms defined in this section have the meanings given them.

Subd. 1a. Anatomical gift. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

Subd. 2. [Repealed, 1991 c 202 s 42]

Subd. 3. Decedent. "Decedent" means a deceased individual and includes a still-born infant or an embryo or fetus that has died of natural causes in utero.

Subd. 3a. Document of gift. "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's or chauffeur's license, a will, or other writing used to make an anatomical gift.

Subd. 4. Donor. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

Subd. 4a. Enucleator. "Enucleator" means an individual who has completed a course in eye enucleation conducted and certified by the department of ophthalmology of any accredited college of medicine, and holds a valid certificate of competence for completing the course.

Subd. 5. Hospital. "Hospital" means a facility licensed, accredited, or approved as a hospital under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

MINNESOTA STATUTES 1994

Subd. 6. Part. "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

Subd. 7. Person. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

Subd. 8. Physician or surgeon. "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

Subd. 8a. Procurement organization. "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

Subd. 9. State. "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

Subd. 10. Technician. "Technician" means an individual who is appropriately trained to remove or process a part.

History: 1969 c 79 s 1; 1986 c 444; 1991 c 202 s 18-27

525.9211 MAKING, AMENDING, REVOKING, AND REFUSING TO MAKE ANATOMICAL GIFTS BY INDIVIDUAL.

(a) An individual who is at least 18 years of age, or a minor with the written consent of a parent or legal guardian, may (i) make an anatomical gift for any of the purposes stated in section 525.9215, paragraph (a), (ii) limit an anatomical gift to one or more of those purposes, or (iii) refuse to make an anatomical gift.

(b) An anatomical gift may be made by a will or by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(c) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license, the document of gift must comply with paragraph (b). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(e) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by:

(1) a signed statement;

(2) an oral statement made in the presence of two individuals;

(3) any form of communication during a terminal illness or injury addressed to a health care professional or member of the clergy; or

(4) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in paragraph (f).

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(i) An individual may refuse to make an anatomical gift of the individual's body

MINNESOTA STATUTES 1994

or part by (i) a writing signed in the same manner as a document of gift, or (ii) any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under section 525.9212 or on a removal or release of other parts under section 525.9213.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to paragraph (i).

History: 1991 c 202 s 28

525.9212 MAKING, REVOKING, AND OBJECTING TO ANATOMICAL GIFTS, BY OTHERS.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent has made a refusal to make that anatomical gift that is unrevoked at the time of death:

- (1) the spouse of the decedent;
- (2) an adult son or daughter of the decedent;
- (3) either parent of the decedent;
- (4) an adult brother or sister of the decedent;
- (5) a grandparent of the decedent; and
- (6) a guardian of the person of the decedent at the time of death.

(b) An anatomical gift may not be made by a person listed in paragraph (a) if:

(1) a person in a prior class is available at the time of death to make an anatomical gift;

(2) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under paragraph (a) must be made by (i) a document of gift signed by the person, or (ii) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under paragraph (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make a decision as to an anatomical gift under paragraph (a) is not an objection to the making of an anatomical gift.

History: 1991 c 202 s 29

525.9213 AUTHORIZATION BY CORONER OR MEDICAL EXAMINER OR LOCAL PUBLIC HEALTH OFFICIAL.

(a) The coroner or medical examiner may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:

(1) the official has received a request for the part from a hospital, physician, surgeon, or procurement organization;

(2) the official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in section 525.9212, paragraph (a), of their option to make, or object to making, an anatomical gift;

MINNESOTA STATUTES 1994

(3) the official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in section 525.9212, paragraph (a);

(4) the removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(5) the removal will not interfere with any autopsy or investigation; and

(6) the removal will be in accordance with accepted medical standards.

(b) If the body is not within the custody of the coroner or medical examiner, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation or therapy if the requirements of paragraph (a) are met.

(c) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

History: 1991 c 202 s 30

525.9214 ROUTINE INQUIRY AND REQUIRED REQUEST; SEARCH AND NOTIFICATION.

(a) If, at or near the time of death of a patient, there is no documentation in the medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss with the patient or a relative of the patient the option to make or refuse to make an anatomical gift and may request the making of an anatomical gift pursuant to section 525.9211 or 525.9212. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in section 525.9215. An entry must be made in the medical record of the patient, stating the name of the individual making the request, and the name, response, and relationship to the patient of the person to whom the request was made.

(b) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) a law enforcement officer, firefighter, paramedic, or other emergency rescuer finding an individual who the searcher believes is dead or near death;

(2) a hospital or emergency care facility, upon the admission or presentation of an individual at or near the time of death, if there is not immediately available any other source of that information; and

(3) a medical examiner or coroner upon receipt of a body.

(c) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by paragraph (b), clause (1), and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(d) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to section 525.9212, paragraph (a), or a release and removal of a part has been permitted pursuant to section 525.9213, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(e) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability.

History: 1991 c 202 s 31

MINNESOTA STATUTES 1994

1019

PROBATE PROCEEDINGS 525.9217

525.9215 PERSONS WHO MAY BECOME DONEES; PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE.

(a) The following persons may become donees of anatomical gifts for the purposes stated:

(1) a hospital, nonprofit organization in medical education and research, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;

(2) an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science;

(3) an approved chiropractic college for education; or

(4) a designated individual for transplantation or therapy needed by that individual.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital or procurement organization.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under section 525.9212, paragraph (a), the donee may not accept the anatomical gift.

History: 1991 c 202 s 32

525.9216 DELIVERY OF DOCUMENT OF GIFT.

(a) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

History: 1991 c 202 s 33

525.9217 RIGHTS AND DUTIES AT DEATH.

(a) Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under section 525.9221, paragraph (b). A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(b) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to section 525.9211, paragraph (d).

(c) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

History: 1991 c 202 s 34

MINNESOTA STATUTES 1994

525.9218 COORDINATION OF PROCUREMENT AND USE.

The procurement organizations, after consultation with hospitals, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

History: 1991 c 202 s 35

525.9219 SALE OR PURCHASE OF PARTS PROHIBITED.

(a) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(b) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(c) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding five years, or both.

History: 1991 c 202 s 36

525.922 [Repealed, 1991 c 202 s 42]

525.9221 EXAMINATION, AUTOPSY, APPLICABLE LAW, LIABILITY.

(a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) The provisions of sections 525.921 to 525.9224 are subject to the laws of this state governing autopsies.

(c) A hospital, physician, surgeon, coroner, medical examiner, local public health officer, enucleator, technician, or other person, who acts in accordance with sections 525.921 to 525.9224 or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so is not liable for that act in a civil action or criminal proceeding.

(d) An individual who makes an anatomical gift pursuant to section 525.9211 or 525.9212, and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

(e) The provision or use of any part of a human body, including blood, blood components, bone marrow, or solid organs from living donors, for the purpose of injection, transfusion, or transplantation in the human body is the rendition of a health care service by each person participating in the provision or use and is not a sale of goods, as that term is defined in section 336.2-105, paragraph (1), or a sale of a product.

History: 1991 c 202 s 37; 1993 c 13 art 1 s 46; 1993 c 256 s 1

525.9222 TRANSITIONAL PROVISIONS.

Sections 525.921 to 525.9224 apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of sections 525.921 to 525.9224.

History: 1991 c 202 s 38

525.9223 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sections 525.921 to 525.9224 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of sections 525.921 to 525.9224 among states enacting it.

History: 1991 c 202 s 39

MINNESOTA STATUTES 1994

1021

PROBATE PROCEEDINGS 525.95

525.9224 SHORT TITLE.

Sections 525.921 to 525.9224 may be cited as the "uniform anatomical gift act (1987)."

History: 1991 c 202 s 40

525.923 [Repealed, 1991 c 202 s 42]

525.924 [Repealed, 1991 c 202 s 42]

525.925 [Repealed, 1991 c 202 s 42]

525.926 [Repealed, 1991 c 202 s 42]

525.927 [Repealed, 1991 c 202 s 42]

525.928 [Repealed, 1991 c 202 s 42]

525.929 [Repealed, 1991 c 202 s 42]

525.93 [Repealed, 1991 c 202 s 42]

525.94 [Repealed, 1991 c 202 s 42]

525.95 FIDUCIARY POWERS, SUSPENSION DURING WAR SERVICE.

Subdivision 1. Definitions. The definitions in this subdivision apply to this section.

(a) "War service" includes the following, during a period when the United States is engaged in war or other major military engagement with a foreign nation:

(1) active membership in the military forces of the United States or any of its allies;

(2) acceptance for membership in the military forces of the United States or any of its allies and awaiting induction into that service;

(3) participation in work abroad in connection with a governmental agency of the United States or any of its allies, with the Red Cross, or with a similar service;

(4) internment by an enemy or absence from the United States and inability to return; and

(5) service arising out of or in connection with the war or other major military engagement, which in the opinion of the court prevents the fiduciary from giving the proper attention to duties.

(b) "Fiduciary" refers to a trustee of a testamentary trust or of an express trust, a guardian or conservator of the person or estate of a person, an executor of a will, an administrator of the estate of the decedent, a custodian under the Minnesota uniform transfers to minors act, or an advisor or consultant in a testamentary or express trust.

Subd. 2. Powers of fiduciary may be suspended; petition. A fiduciary who contemplates entering war service, a fiduciary who is engaged in war service, a cofiduciary, or an interested person may petition the proper court having jurisdiction in matters of that nature for the suspension of the powers and duties of the fiduciary during the period of war service and until the further order of the court, and may petition for the reinstatement of the fiduciary upon the fiduciary's return.

Subd. 3. Notice of hearing. Notice of the hearing on a petition under subdivision 2 must be given to persons and in the manner the court directs.

Subd. 4. Hearing; order. After a hearing on a petition under subdivision 2 or in the case of an executor, administrator, or guardian on the court's own motion, the court may:

(1) order the suspension of the powers and duties of the fiduciary who is in war service for the period of the war service and until the further order of the court;

(2) appoint a successor fiduciary to serve for the period of suspension of the powers and duties of the fiduciary and until the further order of the court, if upon suspension of powers and duties, there is no fiduciary to exercise the powers and duties of the fiduciary who is in war service, or if in the opinion of the court the appointment of a cofiduciary is advisable;

MINNESOTA STATUTES 1994

(3) decree that the ownership and title to the trust property vests in the successor fiduciary or cofiduciary, as the case may be, and that the duties, powers, and discretions, or those of the powers and discretions that are not personal to the fiduciary, may be exercised by the cofiduciary or successor fiduciary;

(4) make other orders the court considers advisable with respect to the trust estate or its administration, and authorize a reasonable compensation to the successor fiduciary; or

(5) reserve jurisdiction for the entry of further orders and for the reinstatement of the fiduciary.

Upon petition, the court shall order the reinstatement of the fiduciary when the fiduciary's war service has terminated if it appears that the trust is not fully executed or administration of the estate is not completed.

Subd. 5. Responsibility of fiduciary. The fiduciary has no responsibility for the acts and doings of the cofiduciary or successor fiduciary during the period of the suspension of the fiduciary's powers and duties, but is not relieved of responsibility for the fiduciary's own acts or doings in the administration of the trust fund or estate. A successor fiduciary appointed under this section is not responsible for the acts of the predecessor fiduciary.

History: 1989 c 340 art 1 s 75