

Legislative History for Connecticut Act

PA 80-476

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House Pages:	6802-6808		7
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LAW REVISION COMMISSION

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Introduction to the

Technical Revision of the Probate Courts and Procedure Statutes

The following pages contain the Connecticut Law Revision Commission's suggested technical revision of Title 45 - Probate Courts and Procedure. This is part of the Commission's ongoing revision of the General Statutes, which is the first technical revision since 1958 and which was undertaken at the direction of the 1977 General Assembly.

The task of technical revision involves reviewing the General Statutes for sections which: have become obsolete; contain archaic language; have been expressly repealed or repealed by implication; are validating provisions which are no longer necessary; are ambiguous; are unnecessarily long or complex; or are inconsistent with other sections. A technical revision also endeavors to ensure that all of the law on one subject may be found in one place and, to accomplish this, statutes on one subject are consolidated in the same chapter or title.

The net result of the technical revision is a set of statutes which is better organized and more readable, and which is shortened by the repeal of unnecessary sections. Examples of the improvements made by a technical revision may be found in the Commission's first revised title, which now appears in the General Statutes at Title 46b - Family Law.

In preparing this revision, the Law Revision Commission has sought and received the cooperation and advice of many individuals and organizations, including the Office of the Probate Court Administrator, a special committee of ten probate judges appointed by the Probate Court Administrator, a special committee of the Estates and Probate Section of the Connecticut Bar Association chaired by Attorney Ronald O. Dederick, and the Legislative Commissioners' Office. While seeking this collaboration has probably meant a slight increase in the time that it took to complete this revision, the Commission feels that the input received is valuable, results in a better

end-product and ultimately shortens the time required by the General Assembly for consideration of the revision bill.

It should be noted that the bill which the Law Revision Commission has asked the Judiciary Committee to raise, An Act Implementing the Law Revision Commission's Technical Revision of the Probate Laws, effectuates only the language changes contained in the suggested revision. The re-ordering of sections, the grouping of sections into new chapters and the changing of statute catch-lines as suggested in the revision are all within the discretion of the Legislative Commissioners' Office and will be done during the compilation of the 1981 edition of the General Statutes.¹

A brief memorandum on the legal effect of a technical revision, a table of contents, a conversion table, and the text of the technical revision, with comments, follow.

¹ This means that the Legislative Commissioners' Office will assign numbers to sections within the proposed new title and, therefore, the designation by the proposed revision of the new title as "45a" is purely arbitrary and is not intended as the official title designation.

TECHNICAL REVISION

OF TITLE 45

PROBATE COURTS AND PROCEDURE

VOLUME I

Chapter I - Probate Court SystemPart I - Probate Courts Generally

45a-1	(NEW)	"District" defined.
45a-2	[45-4]	General powers.
45a-3	[45-3]	Where court held.
45a-4	[45-1]	Probate districts.
45a-5	[45-1d]	Probate district of Griswold established.
45a-6	[45-12]	Record books, records and supplies.
45a-7	[45-13]	Indexes.
45a-8	[45-14]	Fire-resistant safe or vault and office space to be provided for records.
45a-9	[45-15]	Certification of records and files.
45a-10	[45-16]	Copies of probate records to be furnished veterans administration when required.

Part II - Probate Judges

45a-11	[45-5]	Election of judges. Term of office. Clerks.
45a-12	[45-6]	Electoral status of judges.
45a-13	[45-7]	Judge may call assistance.
45a-14	[45-4c]	Court employees to serve at pleasure of judge.
45a-15	[45-8]	Disqualification of judge and of corporation of which he is a director or officer.

45a-16	[45-9]	Validity of orders, judgments and decrees.
45a-17	[45-11b]	Probate judge not to appear as attorney in contested matter in probate court.
45a-18	[45-11c]	Partner or associate of probate judge not to practice law in judge's court.
45a-19	[45-10]	Citation of another judge.
45a-20	[45-11]	Judge cited may issue order in his own district.
45a-21	[45-18]	Adjournment of court in absence of judge.
45a-22	[45-11j]	Judge to file statement of financial interests.
45a-23	[45-24]	Connecticut probate assembly; meeting; powers and duties.
45a-24	[45-25]	Officers and committees.
45a-25	[45-26]	Payments to state treasurer.

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45a-27	[45-11e]	Duties and powers of council.
45a-28	[45-11f]	Hearing.
45a-29	[45-11g]	Report of council's findings. Reprimand; public censure, impeachment; exoneration.
45a-30	[45-11h]	Witnesses before council.
45a-31	[45-11i]	Expenses of council paid from probate fund.

Part IV - Probate Court Administrator

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45a-34	[45-4c]	Powers. Annual report. Legislative recommendations.
45a-35	[45-4d]	Administrator to review procedures of probate courts. Duties.
45a-36	[45-4f]	Rules for probate practice and procedure. Practice book.
45a-37	[45-4g]	Probate judges and court employees to cooperate with administrator.
45a-38	[45-4a]	Office space.
45a-39	[45-4b]	Assistants and clerical help.
45a-40	[45-4h]	Probate court administration fund. Transfers to retirement fund and general fund.
45a-41	[45-4i]	Payment of expenses. Transfer from general fund.

Part V - Uniform Costs

45a-42	[45-17a]	Uniform costs established.
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Part VI - Retirement Benefits

45a-43	[45-29a]	Definitions.
45a-44	[45-29b]	Establishment of probate judges' and employees' retirement fund.
45a-45	[45-29c]	Retirement qualifications.
45a-46	[45-29d]	Retirement date of employee.
45a-47	[45-29e]	Retirement of employee after twenty years of service.
45a-48	[45-29f]	Retirement of judge after twelve years of service.
45a-49	[45-29g]	Disability retirement.
45a-50	[45-29h]	Retirement allowance.
45a-51	[45-29i]	Reemployment after retirement.

45a-52	[P.A. 79-454 Sec. 7]	Cost of living adjustment.
45a-53	[45-29j]	Husband and wife retirement income option.
45a-54	[45-29k]	Retirement contributions of employees.
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45a-58	[45-29o]	Benefits not assignable.
45a-59	[45-29p]	Disposition of retirement contributions.
45a-60	[45-29q]	Administration of retirement allowances.
45a-61	[45-29r]	Liability of courts.
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45a-65	[45-31]	Manner of notice to be fixed by court.
45a-66	[45-32]	Giving of public notice.
45a-67	[45-33]	Special notice to be given on written request.
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45a-69	[45-22]	Committee appointment and fees.
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- 45a-72 [45-16b] Participation of departments of human resources, income maintenance or administrative services employees in proceedings.
- 45a-73 [45-54] Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons.

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- 45a-75 [45-37] Officials or employees of probate court not to issue probate bonds.
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- 45a-83 [45-233] Award of arbitrators.
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- 45a-86 [45-236] Sale of choses in action and personal property.
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- 45a-88 [45-238] Sale or mortgage of real property. Application. Procedure. When guardian ad litem appointed.
- 45a-89 [45-243] Sale or mortgage of real property by successor to original appointee or survivor of two or more appointees.
- 45a-90 [45-241] Public or private sale of real property. Distribution of proceeds.
- 45a-91 [45-244] Sale of real property by other than fiduciary. When fiduciary may purchase.
- 45a-92 [45-242] Mortgage of real property; amount and interest rate; individual liability of fiduciary.
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- 45a-94 [45-267] Jurisdiction of accounts of fiduciaries. Notice and hearing on allowance.
- 45a-95 [45-267a] Statement in lieu of account when fiduciary is sole beneficiary.
- 45a-96 [45-268] Accounts to be rendered at least every three years. Nature of account. Exceptions.
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- 45a-100 [45-288] Appeals from probate.
- 45a-101 [45-289] Time of taking appeals.
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- 45a-121 [45-50] Appointment of guardian of estate of nonresident minor.
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- 45a-126 [45-57] Guardians of estate of minors may make partition.
- 45a-127 [Part of 45-257] Court may order guardian to convey property.

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- 45a-129 [45-78b] Application for appointment of guardian.
- 45a-130 [45-78d] Hearings on appointment and discharge of guardian; termination of guardianship.
- 45a-131 [45-78c] Appointment of limited guardian.
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Technical Revision
of Title 45
Probate Courts and Procedure

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ADDENDUM TO THE TECHNICAL
REVISION OF TITLE 45

The following statutes are recommended for repeal in the bill enacting the technical revision of Title 45:

1. Section 45-1a,
"Probate district of Hartford redefined. New districts of Newington and Glastonbury established."
To be repealed because it is obsolete
2. Section 45-1b,
"Probate district of New Haven redefined. New district of Orange established."
To be repealed because it is obsolete.
3. Section 45-1c,
"Probate district of Danbury redefined. New district of New Fairfield established."
To be repealed because it is obsolete.
4. Section 45-2,
"Jurisdiction of West Haven, Hamden, North Haven, East Haven and Trumbull courts."
To be repealed because it is obsolete.
5. Section 45-26a,
"Overpayment."
To be repealed because it is obsolete.
6. Section 45-26b,
"Prior statute or regulation."
To be repealed because it is obsolete.
7. Section 45-204,
"Inventory of property without this state."
To be repealed because it is incorporated with part of section 45-202 in section 45a-306, "Inventory to be filed. Property included in inventory. Appraisal."
8. Section 45-222,
"Disallowance of claim by commissioners; notice."
To be repealed because it is incorporated with section 45-220 in section 45a-336.
9. Section 45-246,
"Sale or mortgage free of dower."
To be repealed because it is obsolete.

10. Section 45-248,
"Notice of petition for
partition and sale."
To be repealed because it is
incorporated with section
45-247 into section 45a-354,
"Partition or sale of
undivided interest in
decendent's estate. Notice
Hearing."
11. Section 45-250b,
"Release of security filed
prior to June 14, 1961."
To be repealed because it is
obsolete.
12. Section 45-312a,
"Limitation period stayed."
To be repealed because it is
obsolete.

Note: Section 45-46 of the General Statutes, revised to 1979,
was repealed by section 20 of Public Act 79-460.

CHAPTER I

PROBATE COURT SYSTEM

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CHAPTER 1

PART I

PROBATE COURTS GENERALLY

Sec. 45a-1. "District" defined.

(NEW) As used in this chapter, "district" means probate district.

Reviser's comments:

Definition added for clarification and economy of language.

Sec. 45a-2. [Sec. 45-4.] General powers.

Courts of probate in their respective districts, shall have THE power to admit wills to probate [and], TO grant administration of intestate estates of persons who have died domiciled in their districts, [and] to call executors, administrators, trustees, guardians and conservators to account [for and] concerning the estates entrusted to their charge, and TO [may] make any lawful orders or decrees to carry into effect the power and jurisdiction conferred upon them [by the several provisions contained in this title] BY THE LAWS OF THIS STATE. [Upon the admission of any will to probate or the appointment of an administrator of the estate of any deceased person, the court of probate shall make a finding as to the domicile of such person at the time of death, and any person interested in such estate may appeal from such finding as provided in section 45-288.]

Reviser's comments:

Last sentence moved to section 45a-344 chapter on settlement of testate and intestate decedents' estates, to improve organization.

Other language changes for clarification and simplification.

The phrase "BY THE LAWS OF THIS STATE" substituted for "by... this title" because some probate court powers are set forth outside of Title 45. See, e.g., Chapter 306 on civil commitments.

"Laws of this state" needed because some powers are not in Title 45, e.g., see Chapter 306 - Civil commitments, generally.

Sec. 45a-3. [Sec. 45-3.] Where court held.

A court of probate may be held in any town in the district.

Reviser's comments:

No change.

Sec. 45a-4. [Sec. 45-1.] Probate districts.

The probate districts of the state, for all purposes for which they were constituted, shall be as follows:

(a) Hartford County

The district of Hartford, consisting of the towns of Hartford, Bloomfield and West Hartford.

The district of Avon, consisting of the town of Avon.

The district of Berlin, consisting of the towns of Berlin and New Britain.

The district of Bristol, consisting of the town of Bristol.

The district of Burlington, consisting of the town of Burlington.

The district of Canton, consisting of the town of Canton.

The district of East Granby, consisting of the town of East Granby.

The district of East Hartford, consisting of the town of East Hartford.

The district of East Windsor, consisting of the towns of East Windsor and South Windsor.

Reviser's comments:

Subdivisioning added for clarity.

No other changes.

The district of Enfield, consisting of the town of Enfield.

The district of Farmington, consisting of the town of Farmington.

The district of Glastonbury, consisting of the town of Glastonbury.

The district of Granby, consisting of the town of Granby.

The district of Hartland, consisting of the town of Hartland.

The district of Manchester, consisting of the town of Manchester.

The district of Marlborough, consisting of the town of Marlborough.

The district of Newington, consisting of the towns of Newington, Rocky Hill and Wethersfield.

The district of Plainville, consisting of the town of Plainville.

The district of Simsbury, consisting of the town of Simsbury.

The district of Southington, consisting of the town of Southington.

The district of Suffield, consisting of the town of Suffield.

The district of Windsor, consisting of the town of Windsor.

The district of Windsor Locks, consisting of the town of Windsor Locks.

(b) New Haven County

The district of New Haven, consisting of the towns of New Haven and Woodbridge.

The district of Bethany, consisting of the town of Bethany.

The district of Branford, consisting of the town of Branford.

The district of Cheshire, consisting of the towns of Cheshire and Prospect.

The district of Derby, consisting of the towns of Derby, Ansonia and Seymour.

The district of East Haven, consisting of the town of East Haven.

The district of Guilford, consisting of the town of Guilford.

The district of Hamden, consisting of the town of Hamden.

The district of Madison, consisting of the town of Madison.

The district of Meriden, consisting of the town of Meriden.

The district of Milford, consisting of the town of Milford.

The district of Naugatuck, consisting of the towns of Naugatuck and Beacon Falls.

The district of North Branford, consisting of the town of North Branford.

The district of North Haven, consisting of the town of North Haven.

The district of Orange, consisting of the town of Orange.

The district of Oxford, consisting of the town of Oxford.

The district of Southbury, consisting of the town of Southbury.

The district of Wallingford, consisting of the town of Wallingford.

The district of Waterbury, consisting of the towns of Waterbury, Middlebury and Wolcott.

The district of West Haven, consisting of the town of West Haven.

(c) New London County

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The district of New London, consisting of the towns of New London and Waterford.

The district of Norwich, consisting of the towns of Norwich, Franklin, Lisbon, Preston, Sprague and Voluntown.

The district of Bozrah, consisting of the town of Bozrah.

The district of Colchester, consisting of the town of Colchester.

The district of East Lyme, consisting of the town of East Lyme.

The district of Griswold, consisting of the town of Griswold.

The district of Groton, consisting of the town of Groton.

The district of Lebanon, consisting of the town of Lebanon.

The district of Ledyard, consisting of the town of Ledyard.

The district of Lyme, consisting of the town of Lyme.

The district of Montville, consisting of the town of Montville.

The district of North Stonington, consisting of the town of North Stonington.

The district of Old Lyme, consisting of the town of Old Lyme.

The district of Salem, consisting of the town of Salem.

The district of Stonington, consisting of the town of Stonington.

(d) Fairfield County

The district of Bridgeport, consisting of the town of Bridgeport.

The district of Danbury, consisting of the town of Danbury.

The district of Bethel, consisting of the town of Bethel.

The district of Brookfield, consisting of the town of Brookfield.

The district of Darien, consisting of the town of Darien.

The district of Fairfield, consisting of the town of Fairfield.

The district of Greenwich, consisting of the town of Greenwich.

The district of New Canaan, consisting of the town of New Canaan.

The district of New Fairfield, consisting of the town of New Fairfield.

The district of Newtown, consisting of the town of Newtown.

The district of Norwalk, consisting of the towns of Norwalk and Wilton.

The district of Redding, consisting of the town of Redding.

The district of Ridgefield, consisting of the town of Ridgefield.

The district of Shelton, consisting of the town of Shelton.

The district of Sherman, consisting of the town of Sherman.

The district of Stamford, consisting of the town of Stamford.

The district of Stratford, consisting of the town of Stratford.

The district of Trumbull, consisting of the towns of Trumbull, Easton and Monroe.

The district of Westport, consisting of the towns of Westport and Weston.

(e) Windham County

The district of Windham, consisting of the towns of Windham and Scotland.

The district of Ashford, consisting of the town of Ashford.

The district of Brooklyn, consisting of the town of Brooklyn.

The district of Canterbury, consisting of the town of Canterbury.

The district of Chaplin, consisting of the town of Chaplin.

The district of Eastford, consisting of the town of Eastford.

The district of Hampton, consisting of the town of Hampton.

The district of Killingly, consisting of the town of Killingly.

The district of Plainfield, consisting of the town of Plainfield.

The district of Pomfret, consisting of the town of Pomfret.

The district of Putnam, consisting of the town of Putnam.

The district of Sterling, consisting of the town of Sterling.

The district of Thompson, consisting of the town of Thompson.

The district of Woodstock, consisting of the town of Woodstock.

(f) Litchfield County

The district of Litchfield, consisting of the towns of Litchfield, Morris and Warren.

The district of Barkhamsted, consisting of the town of Barkhamsted.

The district of Canaan, consisting of the towns of Canaan and North Canaan.

The district of Cornwall, consisting of the town of Cornwall.

The district of Harwinton, consisting of the town of Harwinton.

The district of Kent, consisting of the town of Kent.

The district of New Hartford, consisting of the town of New Hartford.

The district of New Milford, consisting of the towns of New Milford and Bridgewater.

The district of Norfolk, consisting of the town of Norfolk.

The district of Plymouth, consisting of the town of Plymouth.

The district of Roxbury, consisting of the town of Roxbury.

The district of Salisbury, consisting of the town of Salisbury.

The district of Sharon, consisting of the town of Sharon.

The district of Thomaston, consisting of the town of Thomaston.

The district of Torrington, consisting of the towns of Torrington and Goshen.

The district of Washington, consisting of the town of Washington.

The district of Watertown, consisting of the town of Watertown.

The district of Winchester, consisting of the towns of Winchester and Colebrook.

The district of Woodbury, consisting of the towns of Woodbury and Bethlehem.

(g) Middlesex County

The district of Middletown, consisting of the towns of Middletown, Cromwell, Durham and Middlefield.

The district of Clinton, consisting of the town of Clinton.

The district of Deep River, consisting of the town of Deep River.

The district of East Haddam, consisting of the town of East Haddam.

The district of East Hampton, consisting of the town of East Hampton.

The district of Essex, consisting of the town of Essex.

The district of Haddam, consisting of the town of Haddam.

The district of Killingworth, consisting of the town of Killingworth.

The district of Old Saybrook, consisting of the town of Old Saybrook.

The district of Portland, consisting of the town of Portland.

The district of Saybrook, consisting of the town of Chester.

The district of Westbrook, consisting of the town of Westbrook.

(h) Tolland County

The district of Tolland, consisting of the towns of Tolland and Willington.

The district of Andover, consisting of the towns of Andover, Bolton and Columbia.

The district of Coventry, consisting of the town of Coventry.

The district of Ellington, consisting of the towns of Ellington and Vernon.

The district of Hebron, consisting of the town of Hebron.

The district of Mansfield, consisting of the town of Mansfield.

The district of Somers, consisting of the town of Somers.

The district of Stafford, consisting of the towns of Stafford and Union.

Sec. 45a-5. [Sec. 45-1d.] Probate district of Griswold established.

The town of Griswold shall, on or after the Wednesday following the first Monday of January, 1979, constitute a probate district by the name of the probate district of Griswold. In 1978, and quadrennially thereafter, a judge of probate for such district shall be elected at the time and in the manner provided by law for the the election of judges of probate. From and after the Wednesday following the first Monday of January, 1979, the probate court for the district of Griswold, shall have the jurisdiction of all probate business arising in the town of Griswold, but all business previously entered or begun in the probate court for the district of Norwich shall be completed in the same manner as if this section had not been passed.

Reviser's comments:

No change.

Although this section is technically obsolete it has been retained here as a guidepost because of its recent vintage.

Sec. 45a-6. [Sec. 45-12.] Record books, records and supplies.

(a) Each judge of probate shall provide suitable record books and supplies for the court in his district. He shall cause a complete record to be made in [such] THE RECORD books of all orders passed by such court [,] and of all wills, inventories, distributions, accounts, bonds and returns made to or lodged with such court [, and the]. THE expense of [such] record books and of [such] supplies [as such] WHICH THE judge deems necessary shall be paid, upon his order, by the town or towns composing [such] THE district in proportion to their [several] LAST PERFECTED grand lists [last perfected when].

(b) WHEN the probate court administrator, by regulation, requires that the courts of probate [shall] use certain record books, forms, supplies or equipment, they shall be furnished by the probate court administrator and the expense [thereof] paid from the fund established under section 45-4h.

Sec. 45a-7. [Sec. 45-13.] Indexes.

A general index shall be kept in each probate court of the records of all estates which have been or are pending [therein], in which shall be entered the name of each such estate and the date and character of each proceeding [therein] IN THE COURT.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-8. [Sec. 45-14.] [Fire-resistive] FIRE-RESISTANT safe or vault and office space to be provided for records.

(a) Each judge of probate shall keep THE RECORDS AND FILES OF THE COURT OF PROBATE FOR THE DISTRICT in a [fire-resistive] FIRE-RESISTANT safe or vault, in office space provided for that purpose by the town or towns composing the district in which he is judge, [the records and files of the court of probate for such district,] except when [such] THE records and files are in actual use for the purpose of examination, recording [or], copying, or entry, [and except] OR when [such] THE records and files, after being recorded or copied, are placed in storage as records and files not in current use. If [no] such safe or vault or office space is NOT provided for that purpose, the chief administrative officers of the town or towns composing [such] THE district shall provide the [same] SAFE OR VAULT OR OFFICE SPACE at the expense of [such] THE town or towns in proportion to their [several] LAST PERFECTED grand lists [last perfected].

(b) If the proper authorities in any probate district fail to provide such [safes] SAFE or [vaults] VAULT or office space, the public records administrator may order [such authority] THE PROPER AUTHORITIES IN THE PROBATE DISTRICT to provide [the same] SUCH SAFE OR VAULT OR OFFICE SPACE. If such provision is not made within a reasonable time thereafter, [said] THE PUBLIC RECORDS

Reviser's comments:

Minor language changes for simplification and clarification.

Section subdivided to improve readability.

administrator shall [report the neglect to] SO ADVISE the commissioner of administrative services, who may seek enforcement of compliance with [such] THE order as provided in section 11-8.

(c) All [fire-resistive] FIRE-RESISTANT rooms or vaults and all safes for the safekeeping of any such public records shall conform to standards fixed by the public records administrator and shall be furnished with fittings of a noncombustible nature.

Sec. 45a-9. [Sec. 45-15.] Certification of records and files.

The records and files of any court of probate may be certified by the judge, clerk or assistant clerk [thereof] OF THE COURT, any one of whom is authorized to use and affix the seal of [such] THE court [, and all]. ALL SUCH CERTIFIED copies of records and files [so certified], with or without the seal of [such] THE court, shall be legal evidence.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-10. [Sec. 45-16.] Copies of probate records [required by veterans administration] to be furnished VETERANS ADMINISTRATION WHEN REQUIRED.

When a copy of any probate record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official charged with the custody of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the authorized representative of the veterans administration, with a certified copy of such record.

Reviser's comments:

Catch-line changed to more clearly reflect content of section.

No other changes.

CHAPTER I

PART II

PROBATE JUDGES

Sec. 45a-11. [Sec. 45-5.] [Judge's term of office.] ELECTION OF JUDGES. TERM OF OFFICE. Clerks.

(a) There shall be a court of probate in each probate district held by one judge [to be] elected by the electors residing in such district at the state election in 1974, and [quadrennially] EVERY FOUR YEARS thereafter.

(b) Each [such] judge OF PROBATE shall hold office for four years [from and after] BEGINNING ON the Wednesday after the first Monday in January next [succeeding] FOLLOWING his election.

(c) [Such] EACH judge, before entering upon his duties, shall be sworn and shall record his certificate of election upon the records of his court.

(d) He shall appoint a clerk and may appoint one or more assistant clerks, each of whom shall be sworn to a faithful performance of his duties and shall, when required, give [such] WHATEVER bond [as such] THE judge deems necessary [, and]. EACH SUCH CLERK shall continue in office until he resigns, is removed or is superseded.

Reviser's comments:

Catch-line changed to more clearly reflect content of section.

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-12. [Sec. 45-6.] Electoral status of judges.

Each judge of probate shall be an elector of a town within the district in which he is elected to serve [and if,]. IF for any reason [,] he ceases to be an elector of a town within such district, he shall thereupon cease to hold office IN SUCH DISTRICT [therein], and such office shall be deemed vacant.

Sec. 45a-13. [Sec. 45-7.] Judge may call assistance.

In the determination of any matter pending before a court of probate, the judge may [call to his] REQUEST assistance FROM any judge of the superior court, [or] any other judge of probate or the probate court administrator who, personally or by his designee, shall assist the judge [with such matter].

Reviser's comments:

For clarification and simplification of language.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-14. [Sec. 45-4c.] Court employees to serve at pleasure of judge.

No change.

Probate court employees shall not be deemed state employees and shall serve at the pleasure of the judge of the court of probate in which they are employed.

Sec. 45a-15. [Sec. 45-8.] Disqualification of judge and of corporation of which he is director or officer.

No change.

When there is so near a relationship between any deceased person or any legatee, devisee, heir, spouse or creditor of such deceased person, and a judge of probate, as between husband and wife, parent and child, brothers and sisters, by nature or marriage, or when any such judge is interested in any matter brought to or pending in his court, or when the powers and duties of any such judge have been suspended in relation to any matter by the chief court administrator as provided in section 45-11a, he or she shall be disqualified to act as judge in relation to the estate of such deceased person or in hearing such matter ; and he or she may decline to act as such judge in any matter if in his or her opinion it would be improper for him or her so to act. No judge of probate shall appoint as a fiduciary any corporation of which he or she is a director or salaried officer unless such corporation has been nominated as such fiduciary by a testator or trustor.

Sec. 45a-16. [Sec. 45-9.] Validity of orders, judgments and decrees.

Every order, JUDGMENT or decree of a court of probate made by a judge who is disqualified shall be valid unless an appeal is taken [therefrom,] as hereinafter specified. All [proper] orders, judgments and decrees of courts of probate, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud.

Sec. 45a-17. [Sec. 45-11b.] Probate judge not to appear as attorney in contested matter in probate court.

[No] A judge of probate shall NOT appear as attorney in any contested matter in any court of probate.

Reviser's comments:

Minor language changes for clarification and simplification.

Reviser's comments:

Minor language change for clarification and simplification.

Sec. 45a-18. [Sec. 45-11c.] Partner or associate of probate judge not to practice law in judge's court.

[No] A partner or associate of a judge of probate shall NOT engage in the practice of law in the court of probate in which such judge holds office. For the purposes of this section, any person who acts in a fiduciary capacity with respect to his spouse, child, parent, grandparent, brother, sister, aunt, uncle, niece or nephew shall not be construed to be engaged in the practice of law.

Sec. 45a-19. [Sec. 45-10.] Citation of another judge.

[When] IF any judge of probate declines TO ACT or is disqualified [to act] FROM ACTING as [such] judge OF PROBATE, or is absent or is unable to discharge his duties, or [when] IF the office of judge of probate in any district becomes vacant, the probate court administrator shall cite any judge of probate [who shall] TO act as judge of probate in the district to which he has been [so] cited, during such inability, absence or vacancy or in the matters [as to] IN which the judge declines to act or is disqualified.

Reviser's comments:

Minor language changes for simplification and clarification.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-20. [Sec. 45-11.] Judge cited may issue order in his own district.

Any judge of probate [,] WHO IS cited and qualified to act in another district, may [, in his own district,] issue any order IN HIS OWN DISTRICT, as acting judge of [such] THE other district, [which shall not require a] AS LONG AS NO prior hearing of adverse parties [,] IS REQUIRED. [but any] ANY such order shall be recorded in the records of [such] THE other district.

Sec. 45a-21. [Sec. 45-18.] Adjournment of court in absence of judge.

Whenever a court of probate assigns a time for a hearing on any matter, and the judge of [such] THE court for any cause is not present at the time assigned, the clerk or assistant clerk of [such] THE court may adjourn the [same] COURT [from time to time] as [may be] necessary.

Reviser's comments:

Minor language changes for clarification and simplification.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-22. [Sec. 45-11j.] Judge to file statement of financial interests.

(a) Each judge of a court of probate shall file under penalty of false statement, a statement of financial interests for the preceding calendar year with the council on probate judicial conduct established in section 45-11d, ~~AS AMENDED BY SECTION 20 OF THIS ACT,~~ on or before April fifteenth next FOLLOWING for any year in which [such] THE judge holds such position.

(b) The statement [,] SHALL BE on a form provided by the council on probate judicial conduct [,] AND shall include the following information for the preceding calendar year [in regard to such] REGARDING THE judge, his or her spouse and the dependent children living in his or her household: (1) the name of all businesses with which [such] THE judge, his or her spouse or any such child is associated; (2) the category or type of all sources of his or her income and that of [such] HIS OR HER spouse or each child, in excess of one thousand dollars, but amounts of income need not be specified, and the names and addresses of specific clients and customers who provide more than five thousand dollars of income, but amounts of income need not be specified; (3) the name of each security in excess of five thousand dollars at fair market value owned by [such] THE judge or spouse or any such child or held in the name of a corporation, partnership or trust for the benefit of [such] THE judge,

Reviser's comments:

Minor language changes for clarification and simplification.

[such] HIS OR HER spouse or any such child except in the case of a trust established by [such] THE judge, spouse or child for the purpose of divesting [such] THE judge or his or her spouse or any such child of all control and knowledge of [such] THE judge's, spouse's or child's assets in order to avoid a conflict of interest during [such] THE judge's term of office, but only the existence of such trust and the name of the trustee shall be included, and the value need not be specified; (4) all real property and its location, whether owned by [such] THE judge, [such] HIS OR HER spouse or any such child or held in the name of a corporation, partnership or trust for the benefit of [such] THE judge, spouse or child [; (5) each]. EACH judge shall file a disclosure of any fees or honorariums received for his or her OWN or his or her spouse's or child's appearance or the delivery of an address to any meeting of any organization within thirty days after receipt of the fee or honorarium.

(c) The statement OR DISCLOSURE filed pursuant to this section shall be a matter of public information, except THAT the list of names filed in accordance with subdivision (2) of subsection (b) of this section shall be sealed and confidential and for the use of the council only if an investigation has been initiated or a hearing is held under section 45-11e, ~~AS AMENDED BY SECTION 21 OF THIS ACT,~~ and the council is of the opinion that disclosure of such list is germane to its investigation or hearing [,] or both. [Such]

THE list may also be subject to a subpoena in any criminal prosecution or impeachment proceedings.

(d) The financial statement AND DISCLOSURE, except as otherwise provided in this section, shall be open to inspection at the office of the probate court administrator.

Sec. 45a-23. [Sec. 45-24.] Connecticut probate assembly; meeting; powers and duties.

(a) There shall be an assembly of the elected and qualified acting judges of the courts of probate, to be known as the Connecticut probate assembly, of which [assembly] all [said] judges OF PROBATE shall be members. The annual meeting of [said] THE assembly shall be held on any day in April in the supreme court room at Hartford. Other stated OR SPECIAL meetings of [said] THE assembly shall be held as provided in its bylaws. [Special meetings may be called at such times and such places as said bylaws may provide.]

(b) [Said] THE assembly shall transact any business which may properly come before [such] ITS meetings and which pertains to [said] THE PROBATE courts, the improvement of and uniformity in their procedure and practice, [and] the administration of justice in the courts of probate and the administration of the assembly [, and]. THE ASSEMBLY may make [to the probate court administrator] such recommendations TO THE PROBATE COURT ADMINISTRATOR as it sees fit regarding any or all of these matters. [It] THE ASSEMBLY may adopt bylaws to govern [said assembly] IT and [the] ITS meetings [thereof].

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Amended by Public Act 79-286.

Sec. 45a-24. [Sec. 45-25.] Officers and committees.

The officers and committees of said assembly and their duties shall be such as may be provided for in its bylaws. Any vacancy occurring in any office shall be filled according to the provisions of the bylaws of said assembly.

Reviser's comments:

No changes.

Sec. 45a-25. [Sec. 45-26.] Payments to state treasurer.

(a) PAYMENTS TO STATE TREASURER ESTABLISHED. Each person who is a judge of probate at any time during any calendar year shall file with the probate court administrator on or before March first of the succeeding year a sworn statement showing the actual gross receipts and itemized costs of his office and the net income for each such calendar year. If such person ceases to hold office, he shall also file with the probate court administrator, on or before March first of the second and third [succeeding] years FOLLOWING, a sworn statement showing his net income from his former office for the first and second calendar years next [after] FOLLOWING the calendar year in which he ceased to hold office. At the time of filing, each such person shall pay to the state treasurer as hereinafter provided the sum required by this section, less [such] sums [as he may have] previously paid to the state treasurer on account [thereof, such payment to]. PAYMENT SHALL be credited by the state treasurer to the fund established by section 45-4h. ~~AS AMENDED BY SECTION 34 OF THIS ACT.~~

(b) PAYMENTS ON BEHALF OF DECEASED JUDGE OF PROBATE. The personal representative of each person who holds the office of judge of probate, at any time during any calendar year, and dies while in office, or within twenty-four months after ceasing to hold

Reviser's comments:

Minor language changes for clarification and simplification.

Section further subdivided and internal catch-lines added to improve readability.

The phrase, "determining net income of" added to correct the erroneous omission of the phrase during the codification of the 1979 edition of the General Statutes.

office, shall file with the probate court administrator, on or before March first next following such death, a sworn statement showing the actual gross receipts and itemized costs of the decedent's office for the preceding calendar year [,] and the decedent's net income from that office for such calendar year [; and]. THE PERSONAL REPRESENTATIVE shall file with the probate court administrator on or before March first of the second year following said death a sworn statement showing the net income to the decedent's estate from such office for the preceding calendar year.

(c) AMOUNTS TO BE PAID TO STATE

TREASURER. Each judge of probate or personal representative except a judge of probate who is probate court administrator shall at the time of filing such returns pay to the state treasurer to be credited to the fund established by section 45-4h, ~~AS AMENDED BY SECTION 34 OF THIS ACT,~~ a [per centage] PERCENTAGE of the annual net income from such office based on the following table:

First \$1000	\$1 nominal
Next \$1000	\$5 nominal
Next \$1000	1%
Next \$1000	2%
Next \$1000	3%
Next \$1000	4%
Next \$1000	5%
Next \$1000	6%
Next \$1000	7%
Next \$1000	8%

Next \$1000	10%
Next \$1000	12%
Next \$1000	14%
Next \$1000	16%
Next \$1000	18%
Next \$1000	20%
Next \$1000	22%
Next \$1000	24%
Next \$1000	26%
Next \$1000	28%
Next \$5000	38%
Next \$5000	48%
Next \$5000	58%
Next \$20,000	68%
Next \$29,800	78%
All over \$84,800	100%

Such payment shall be deemed to be a necessary expense of his office but shall not be deductible from the gross income for the purpose of DETERMINING NET INCOME OF such office under this section.

(d) PAYMENTS BY PROBATE COURT ADMINISTRATOR. (1) Any judge of probate who is the probate court administrator shall pay to the state treasurer, to be credited to said fund, one hundred per cent of the annual net income from his office during the period of time he serves as probate court administrator. (2) For the purposes of this assessment, fees received after BUT EARNED BEFORE his appointment as probate court administrator [but earned prior thereto] shall be subject to the assessment set forth in the table in this section [and fees]. FEES

received after such judge of probate ceases to be the probate court administrator but earned during his term as probate court administrator shall be paid in full to the state treasurer after the deduction of the expenses of his office. (3) The books and records of any judge of probate acting as probate court administrator shall be audited BY THE AUDITORS OF PUBLIC ACCOUNTS at the beginning of his term as probate court administrator and thereafter at least annually during his term as probate court administrator [by the auditors of public accounts] and [shall be so audited] upon completion of his term [of] AS probate court administrator or as judge of probate whichever occurs first. (4) A judge of probate who is probate court administrator shall make no expenditure in his court for salaries, equipment, or any other expenditure exceeding the sum of one hundred dollars in the aggregate, annually, without first having obtained the approval of the chief court administrator.

(e) ESTIMATE OF ANNUAL NET INCOME. [For each calendar year starting with 1968,] ON OR BEFORE JANUARY THIRTY-FIRST OF EACH YEAR, each person required to make payment [hereunder] UNDER THIS SECTION shall estimate such annual net income and shall advise the probate court administrator thereof, upon such forms and pursuant to such regulations as said administrator shall promulgate [, on or before January thirty-first of each year].

(f) PAYMENT BY JUDGE WHO TAKES OFFICE AFTER DEATH, RETIREMENT, RESIGNATION OR REMOVAL OF PREVIOUS INCUMBENT. (1) Each person [taking] WHO TAKES office as judge of probate after February first of any calendar year, as the result of the death, retirement, resignation or removal of the immediately previous incumbent of that office, shall file his estimate of annual net income with the probate court administrator and shall make THE NECESSARY payment to the state treasurer in accordance therewith not later than sixty days after taking office. (2) If, based upon such estimate, the amount payable shall be less than one hundred dollars, the payment thereof shall be made in one payment on or before December thirty-first of the applicable year [; otherwise,]. OTHERWISE, the amount payable shall be made in four substantially equal instalments [,] payable on or before the last day of March, June, September and December of the applicable year [, except that such]. THE estimated payment may be amended and changed at any time during the year in which it is payable by [being increased] INCREASING or [decreased in] DECREASING THE amount [and the]. THE amount of such increase or decrease shall be paid for or adjusted in the instalment or payment due at the time the estimated assessment is next payable after such amendment.

(g) REPORT OF INCOME. Upon the completion of each calendar year, and in any event on or before the first day of March of the succeeding calendar year, each person

required to make payment [hereunder] UNDER THIS SECTION shall make sworn report to the probate court administrator, upon [such] forms and subject to [such] regulations [as said] PROMULGATED BY THE administrator, [may prescribe, which such report shall be open to public inspection,] of the FOLLOWING: (1) THE gross income received by virtue of such office [,]; (2) actual expenses incurred in connection [therewith,] WITH THE OFFICE; (3) the net income of such office prior to the payment of the assessment instalments hereinbefore provided [,]; (4) the amount paid during the preceding calendar year to the state treasurer on account of the foregoing estimate [,]; and (5) the amount of the difference, if any, between the amount so paid and the amount actually due. THIS REPORT SHALL BE OPEN TO PUBLIC INSPECTION.

(h) DEFICIENCY AND OVERPAYMENT. If the amount [theretofore] ALREADY paid was less than the [actual] amount due, such person shall, on or before [said] March first of the [ensuing] FOLLOWING year, pay to the state treasurer the entire deficiency [, and if]. IF the amount [theretofore] ALREADY paid was more than the [actual] amount due, such person shall either, at his election and pursuant to regulations promulgated by the state treasurer, be entitled to a refund of such excess payment to be paid from the fund provided by section 45-4h, ~~AS AMENDED BY SECTION 34 OF THIS ACT,~~ or [, in the alternative,] a credit in the amount of [such] THE overpayment to be charged against

the future obligations of such person to said fund.

(i) PENALTY FOR DEFICIENCY. (1) If the estimated payments made pursuant [hereto] TO THIS SECTION are less than seventy per cent of the [actual] amount due, such person shall be obligated [, and shall] TO pay [,] to such fund a penalty of ten per cent of the amount of [such] THE deficiency, [provided] EXCEPT that no such [deficiency] PENALTY shall be required if the estimated payments were not less than ninety-five per cent of the actual assessment paid for the previous year. (2) Any assessment not paid at the time [herein] prescribed IN THIS SECTION shall incur simple interest at the rate of nine per cent per annum to be payable to the state treasurer and to be added to the fund established under section 45-4h. ~~AS AMENDED BY SECTION 34 OF THIS ACT.~~ Any alleged delinquency of a judge of probate in making payments as required under this section shall be referred by the state treasurer to the attorney general for such action as [said] THE attorney general deems necessary.

(j) CALCULATION OF EXPENSES; NET OPERATING LOSS. (1) As used in [subsection (c)] SUBSECTIONS (c) TO (j), INCLUSIVE, of this section, for any calendar year [beginning with the year 1968], the term "actual expenses incurred in connection therewith may include as an allowable deduction the amount of any net operating loss for a prior calendar year as [hereinafter] provided IN

THIS SECTION. (2) The term "net operating loss" means the excess of itemized costs and expenses of office allowed by this section over the gross income. A net operating loss may be deducted in the calendar year following the year in which [such] THE net operating loss occurred, but (A) if the net income of such subsequent year is not sufficient to pay all of such net operating loss, then the balance of such net operating loss may be deducted in the second calendar year following such net operating loss [, but]; AND (B) if the net income of such second calendar year is not sufficient to pay all of the remaining net operating loss, then the balance of such net operating loss may be deducted in the third calendar year following such net operating loss. In no event shall any such net operating loss or part thereof be deductible for any report beyond the third calendar year in which [such net operating loss] IT occurred.

CHAPTER I

PART III

COUNCIL ON PROBATE JUDICIAL CONDUCT

Sec. 45a-26. [Sec. 45-11d.] Council [on probate judicial conduct] ESTABLISHED.

(a) There shall be a council on probate judicial conduct to consist of one judge of probate elected by the judges of probate, one referee appointed by the chief justice from among the state referees who have retired from the supreme court or superior court, [and] one person appointed by the governor who shall be an attorney-at-law, admitted to practice in this state and actively engaged in the practice of law in this state for at least five years, and two persons appointed by the governor who are not attorneys-at-law. Such appointments shall be made on October 1, 1975 AND EVERY FOUR YEARS THEREAFTER.

(b) The members of the council shall serve for terms of four years and if for any reason they fail to complete their terms, a successor shall be appointed for the remainder of such terms by the same appointing authority as was the member who was succeeded. The council shall elect a chairman from among its members to serve for a term of two years from the date of his election. Members of the council shall receive no compensation for their services but shall be reimbursed for expenses incurred in the performance of their duties from the budget of the probate court administration fund.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line shortened for economy of language.

Sec. 45a-27. [Sec. 45-11e.] Duties and powers of council.

(a) The council on probate judicial conduct shall INVESTIGATE ANY COMPLAINT INVOLVING A JUDGE OF PROBATE, on the written request of the chief justice, chief court administrator, probate court administrator or president-judge of the Connecticut probate assembly [, investigate any complaint involving a judge of probate].

(b) The council may, [of] ON its own motion, [undertake investigations of] INVESTIGATE conduct of judges of probate which may violate any [laws] LAW or [canons] CANON of ethics applicable to judges of probate, or failure to [properly] perform PROPERLY the duties of the office, or the willful failure to file a financial statement or the filing of a fraudulent financial statement required under section 45-11j.

In making any such investigation [said] THE council may use the services of the division of state police within the department of public safety or any chief inspector, inspector or investigator in the division of criminal justice.

(c) If the complaint [so] filed involves the judge of probate who is a member of the council, [such] THE judge shall be disqualified [with regard to] FROM ACTING IN HIS CAPACITY AS A COUNCIL MEMBER IN the investigation and hearing on [such] THE

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

matter and a judge of probate [to act in his stead] shall be appointed TO ACT IN HIS STEAD by the president-judge of the Connecticut probate assembly.

Sec. 45a-28. [Sec. 45-11f.] Hearing.

The council may , after [such] THE investigation PROVIDED UNDER SECTION 45-11e, hold a hearing concerning [such] THE complaint. Hearings shall not be public unless requested by the judge of probate under investigation. The records of the council shall not be public records for the purposes of sections 1-19 and 1-20. Any judge of probate [appearing] WHO IS UNDER INVESTIGATION AND WHO APPEARS before [such] THE hearing shall be entitled to counsel and SHALL have the right to cross-examine witnesses.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-29. [Sec. 45-11g.] Report of council's findings. Reprimand; public censure, impeachment; exoneration.

[Said] (a) THE council shall, after [such] THE hearing PROVIDED UNDER SECTION 45-11f,

prepare a report of its investigation and a recommendation as to whether the judge of probate investigated should be reprimanded, publicly censured or exonerated of the allegations of the complaint.

[(a)] (b) If reprimand is recommended, the chairman shall prepare and forward the reprimand in writing to the judge of probate being reprimanded, signing the reprimand as chairman of the council. A copy of the reprimand shall be furnished the chief justice, the chief court administrator, the probate court administrator and the president-judge of the Connecticut probate assembly. [Such] THE reprimand and all facts [related thereto] RELATING TO IT shall not be a public record as defined in section 1-19.

[(b)] (c) If public censure is recommended, the chairman shall prepare and forward the censure in writing to the judge of probate being censured. A judge may, within twenty days after receiving notice of public censure by the council, appeal [therefrom] to the supreme court of Connecticut. A judge filing an appeal shall give notice of its filing to the council [prior to] BEFORE the expiration of time for

Reviser's comments:

Minor language changes for clarification and simplification.

Section further subdivided to improve readability.

the filing of an appeal. The council shall, within two weeks following receipt of notice of [such] AN appeal, file a finding of fact and conclusions therefrom. The pendency of an appeal shall stay the publication of notice of the censure appealed from and all facts relating [thereto] TO IT. The supreme court may, upon application after hearing with notice to the council and appellant, make [such] orders, including publication of the fact of censure and all matters [related thereto] RELATING TO THE CENSURE, in whole or in part, [as] WHICH WILL best serve the public interest pending final decision on [such] THE appeal. If no [such] appeal is taken by [such] THE judge or upon determination of the appeal at the direction of the supreme court, a copy of the censure shall be furnished to the chief justice, the chief court administrator, the probate court administrator, the president-judge of the Connecticut probate assembly and [to] the town clerk or clerks in each town in the district served by such judge of probate. [Such] THE censure shall be a public record as defined in section 1-19.

[(c)] (d) If, in the judgment of the council [,] the facts so warrant, it may recommend to the house of representatives the institution of impeachment proceedings.

[(d)] (e) If the council exonerates a judge of probate, a copy of the proceedings and report of the council shall be furnished to [such] THE judge and shall be made public upon the written request of [such] THE judge.

Sec. 45a-30. [Sec. 45-11h.] Witnesses before council.

Any person may be compelled, by subpoena signed by competent authority, to appear before [said] THE council to testify [in relation to] REGARDING any complaint brought to or by [said] THE council under section 45-11e and also to produce before [such] THE council, for examination, any books or papers, which in the judgment of the council or any judges of probate under investigation, are relevant to [such] THE inquiry, investigation or hearing. [Such council, while] WHILE engaged in the discharge of its duties, THE COUNCIL shall have the same authority over witnesses as is provided in section 51-35 and may commit for contempt for a period OF no longer than thirty days.

For clarification and simplification of language.

Sec. 45a-31. [Sec. 45-11i.] Expenses of council paid from probate fund.

Any sums expended to implement the provisions of sections 45-11d to 45-11h, inclusive,

shall be appropriated from the probate court administration fund established in accordance with section 45-4h.

Reviser's comments:

No changes.

CHAPTER I

PART IV

PROBATE COURT ADMINISTRATOR

Sec. 45a-32. [Sec. 45-3a.] [Probate court administrator.] APPOINTMENT AND TERM.

(a) There shall be a probate court administrator who shall be appointed from among the judges of the several courts of probate by the chief justice OF THE SUPREME COURT to serve at his pleasure. If [said] THE probate court administrator is unable by reason of sickness, absence or other disability to perform the duties of his office, or if there is a vacancy in the office of probate court administrator, the chief justice shall designate another judge of a court of probate to act in his stead until he resumes his duties or until a new probate court administrator is appointed.

(b) [Such] THE probate court administrator shall devote full time to the duties of his office except that he may serve as a judge of probate but shall not engage in the private practice of law. Any probate court administrator who ceases to serve as a judge of probate may continue to serve as [such] PROBATE COURT administrator [,] at the pleasure of the chief justice.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-33. [Sec. 45-29u.] [Probate court administrator, salary] SALARY and benefits.

(a) The probate court administrator shall be paid by the judicial department [,] AND SHALL BE compensated in the same manner and amount as a superior court judge who has served the maximum number of years for the highest salary provided in section 51-47 [,]

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(b) THE PROBATE COURT ADMINISTRATOR SHALL RECEIVE: (1) retirement benefits provided in sections 51-49 to 51-50b, inclusive, and section 51-51 [,] ; (2) life insurance benefits provided in section 5-257 [,] ; (3) medical insurance benefits as provided in section 5-259 [,]; and (4) any other benefits [as] WHICH may be established for superior court judges by the general assembly or by the judicial department.

(c) [Such] THE JUDICIAL department shall be reimbursed for such salary and benefits by transfer from the fund established in section 45-4h, AS AMENDED BY SECTION 34 OF THIS ACT. Any probate court administrator, who upon his retirement is not eligible to participate in the retirement benefits provided in sections 51-50 and 51-50a, may elect to participate in the benefits of [sections 45-29a to 45-29t, inclusive] PART VI OF THIS CHAPTER [, and any]. ANY contributions paid to the general fund in accordance with section 51-50b shall be transferred to the fund established under

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line shortened for economy of language.

section 45-4h.

Any probate court administrator who has elected [for] retirement under the provisions of section 51-50 shall not be eligible for retirement benefits under [said sections 45-29a to 45-29t, inclusive,]

PART VI OF THIS CHAPTER.

All sums which have been paid into the retirement fund for judges of probate by a probate judge who becomes probate court administrator shall be transferred to the general fund as specified in section 51-50b. For the purposes of fulfilling the time requirements for retirement [as] set forth in [said] sections 51-50 and 51-50a, service by the probate court administrator as a judge of probate [prior to] BEFORE his appointment as [such] administrator shall be included.

(d) If a probate court administrator ceases to be probate court administrator for any reason other than retirement, he may participate in the benefits established in [sections 45-29a to 45-29t, inclusive,]

PART VI OF THIS CHAPTER

and any contributions paid to the general fund in accordance with section 51-50b shall be transferred to the fund established under section 45-4h.

For the purposes of fulfilling the time requirements of sections 45-29e, 45-29f or 45-29g,

service as probate court administrator shall be credited as service as a judge of probate.

Sec. 45a-34. [Sec. 45-4e.] Powers [of administrator]. Annual report. Legislative recommendations.

The probate court administrator may attend to any [and all] matters which he deems necessary for the efficient operation of courts of probate and for the expeditious dispatch and proper conduct of the business of said courts. He shall [, on or before the first day of April of each year,] file with the chief court administrator, ON OR BEFORE THE FIRST DAY OF APRIL OF EACH YEAR, a report [as to] OF the business of his office during the year ending on the previous thirty-first day of December, together with [such] ANY information [as said] WHICH THE chief court administrator may request. He may make recommendations to the general assembly [as to such] FOR changes in the statute law of the state [as] WHICH he deems desirable to improve the administration of the courts of probate.

Reviser's comments:

Minor language changes for clarification and simplification.

Subdivisioning added for clarity.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-35. [Sec. 45-4d.] Administrator to review procedures of probate courts. DUTIES.

(a) The probate court administrator shall regularly review the auditing, accounting, statistical, billing, recording, filing and other procedures of the several courts of probate [and]. HE SHALL HAVE THE POWER TO ISSUE RULES AND REGULATIONS, BINDING ON ALL COURTS OF PROBATE, CONCERNING THE AUDITING, ACCOUNTING, STATISTICAL, BILLING, RECORDING, FILING AND OTHER PROCEDURES FOR THE COURTS OF PROBATE.

(b) HE shall, personally or by his authorized designee, who [shall have] HAS been admitted to the practice of law in this state for at least five years, visit each court of probate at least once during each even-numbered year to examine the records and files of such court, in the presence of the judge of [said] THE court or [said] THE judge's authorized designee [, and]. THE PROBATE COURT ADMINISTRATOR shall make [such] WHATEVER additional inquiries [as] he deems appropriate, to ascertain whether the business of [said] THE court, including the charging of costs and payments to the state treasurer, has been conducted in accordance with law, rules of the courts of probate and the canons of judicial ethics, and to obtain [such] information concerning the business of the courts of probate [as may be] WHICH IS necessary for [said] THE administrator to perform properly the duties of his office. [He shall have the power to issue rules and

Reviser's comments:

Minor language change for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

regulations, binding on all courts of probate, concerning the auditing, accounting, statistical, billing, recording, filing and other procedures for the courts of probate.]

Sec. 45a-36. [Sec. 45-4f.] Rules for probate practice and procedure. Practice book.

(a) The probate court administrator shall, from time to time, recommend to the judges of the supreme court, for adoption and promulgation [,] pursuant to the provisions of section 51-14, uniform rules for practice and procedure in the courts of probate. Any rules for practice and procedure so adopted and promulgated shall be mandatory upon all courts of probate [in this state]. To assist him in formulating such recommendations, the probate court administrator shall meet [, at least annually,] with the probate assembly AT LEAST ANNUALLY, and may meet with members of the bar of this state and with [members of] the general public.

(b) The probate court administrator shall, from time to time, compile INTO A PROBATE PRACTICE BOOK all rules regarding practice and procedure in the courts of probate, and all forms prescribed for use [therein, into a probate practice book, which he] IN PROBATE COURTS. HE shall cause THE PROBATE PRACTICE BOOK to be published, [paying for the same] SHALL PAY FOR THE PROBATE PRACTICE BOOK from the trust fund provided for by section 45-4h, and [which he] shall sell THE PROBATE PRACTICE BOOK, at a price determined by him [, the]. THE proceeds [of sale] FROM THE SALES SHALL [to] be added to and SHALL become a part of such trust fund.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-37. [Sec. 45-4g.] Probate judges and court employees to cooperate with administrator.

The judges and employees of the various courts of probate, and the officers and employees of the probate assembly, shall cooperate with the probate court administrator and shall provide [said] THE administrator or his assistants with [such] information and statistical data bearing on the business of [said] THE PROBATE courts [as] WHICH he [shall request] REQUESTS, except for [confidential] information [involving adoptions] WHICH IS DEEMED CONFIDENTIAL UNDER THE LAWS OF THIS STATE.

Reviser's comments:

Minor language changes for clarification and simplification.

Reference to confidential information broadened in order to include other matters considered to be confidential under the general statutes.

Sec. 45a-38. [Sec. 45-4a.] Office [for probate court administrator] SPACE.

(a) The commissioner of administrative services shall provide such [quarters] OFFICE SPACE for the conduct of the duties of the office of the probate court administrator as [said] THE administrator approves [, and the]. THE expenses [thereof] OF THE OFFICE SPACE shall be paid from the trust fund established under section 45-4h.

(b) [Furniture] THE ADMINISTRATOR SHALL PURCHASE FURNITURE, stationery, office supplies, typewriters, filing cabinets and whatever other equipment, apparatus and supplies, contractual services and [such] other services [the administrator] WHICH HE deems necessary or advisable for the expeditious conduct of the duties of his office [shall be purchased by him] and shall [be paid] PAY for THEM from [such] THE trust fund, subject to the provisions of section 45-4i [provided he]. HE shall make no expenditure exceeding the sum of one hundred dollars for any item or service without approval of the chief court administrator.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-39. [Sec. 45-4b.] Assistants and clerical help for probate court administrator.

(a) Subject to the approval of the chief court administrator, the probate court administrator shall appoint and fix the compensation of [such] assistants and clerical help [as] WHO are necessary to enable him to perform the duties of [his] THE office.

(b) Any such assistants who are attorneys at law shall be admitted to the practice of law in this state and [no such assistant who is an attorney at law] shall NOT engage, directly or indirectly, in the practice of law before any court of probate.

(c) [Any such] THE assistants and clerical help so appointed may be employed by the probate court administrator as employees of the judicial department [, and the].

(d) THE executive secretary of the judicial department shall, on notice from the probate court administrator, include THE ASSISTANTS AND CLERICAL HELP on the payroll of the judicial department [such assistants and clerical help so employed]. On presentation of vouchers by the executive secretary of the judicial department to the probate court administrator, he shall reimburse the judicial department, from the fund established under section 45-4h, for the

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

salary and benefits paid by the judicial department to or for [such] THE assistants and clerical help [so] included on the judicial department payroll.

(e) [Such] THE assistants and clerical help shall be members of the state employees retirement system and, on presentation of vouchers by the chief of the retirement division to the probate court administrator, [said] THE administrator shall reimburse the state employees retirement fund from the fund established under section 45-4h, for [such] retirement benefits paid to [such] THE assistants and clerical help [as] WHICH exceed the contribution to [said] THE state employees retirement fund by [such] THE assistants and clerical help.

Sec. 45a-40. [Sec. 45-4h.] Probate court administration fund. Transfers to retirement fund and general fund.

(a) PROBATE COURT ADMINISTRATION FUND.

The probate court administration fund is established, to consist of the amounts hereinafter provided, to be paid over as herein provided to the state treasurer [, who].

(b) STATE TREASURER CUSTODIAN OF FUND.

THE STATE TREASURER shall be the custodian of the fund, with power to administer [the same] IT, and to invest and reinvest as much of said fund as is not required for current disbursements in accordance with the provisions of the general statutes [relating to] REGARDING the investment of savings banks.

(c) PAYMENTS UPON VOUCHERS. All payments from said fund authorized by sections 45-4a to 45-4i, inclusive,

shall be made upon vouchers approved by the probate court administrator.

(d) TRANSFERS TO RETIREMENT FUND.

Monthly there shall be transferred from the fund established by this section to the retirement fund established by section 45-29b not less than sufficient moneys, taking into account receipts by said retirement fund under the provisions of sections 45-29k and 45-29l,

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Language changes for simplification and clarification.

to enable said retirement fund to meet its obligations as estimated by the retirement commission, until the retirement commission certifies that the retirement fund is on a sound actuarial basis.

(e) CERTIFICATION BY COMMISSION OF AMOUNT. On or before July first annually, the retirement commission shall certify to the state treasurer, on the basis of an actuarial determination, the amount to be transferred to the retirement fund to maintain the actuarial funding program adopted by the retirement commission.

(f) OTHER TRANSFERS TO RETIREMENT FUND. In addition to the aforesaid payments, there shall be transferred from time to time from the fund established by this section to the retirement fund established by section 45-29b such amounts as are determined by the probate court administrator not to be required for other purposes of sections 45-4a to 45-4i, inclusive,

until the retirement commission certifies that the retirement fund is on a sound actuarial basis [, and thereafter]. THEREAFTER there shall be transferred from time to time from the fund established by this section to the general fund such amounts as are determined by the probate court administrator not to be required for the purposes of said sections.

(g) AUTHORIZATION OF TRANSFERS TO MAINTAIN SOUND ACTUARIAL BASIS. If at any time thereafter the retirement commission certifies that the retirement fund established by section 45-29b is no longer on a sound actuarial basis, transfers from this fund to the retirement fund shall be resumed until the retirement commission again certifies that said retirement fund is on a sound actuarial basis, at which time transfers from this fund to the general fund shall be resumed.

(h) ASSESSMENTS SCHEDULE. All payments of assessments imposed by section 45-26, with respect to income received by any judge of probate on or after January 1, 1968, shall be paid in accordance with the schedule set forth in section 45-26.

(i) ACCOUNTING BY STATE TREASURER. The state treasurer shall, on or before October first, annually, give an accounting of the probate court administration fund, showing the receipts and disbursements and the balance or condition thereof, as of the preceding June thirtieth, to the probate assembly and to the joint standing committee on the judiciary.

Sec. 45a-41. [Sec. 45-4i.] Payment of expenses. Transfers from general fund.

If at any time the trust fund established [under] BY section 45-4h, is insufficient to pay the several charges to be paid from it, the comptroller shall draw his order on the treasurer for payment, from the general fund, of such sums as are necessary to pay such charges. [At such times as there is a more than sufficient] WHEN THE amount in the trust fund established by said section IS MORE THAN SUFFICIENT to meet the requirements imposed upon it by law, other than [such] amounts [as] WHICH are required to make the retirement fund established by section 45-29b [actuarially] ACTUARIALLY sound, all as certified by the probate court administrator, there shall be paid over to the general fund from [said] THE trust fund ESTABLISHED BY SECTION 45-4h, any moneys paid from the general fund [pursuant to the provisions of] UNDER this section.

Reviser's comments:

Minor language changes for clarification and simplification.

CHAPTER I

PART V

UNIFORM COSTS

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Sec. 45a-42. [Sec. 45-17a.] Uniform costs [in probate courts] ESTABLISHED.

(a) UNIFORM COSTS ESTABLISHED. The costs charged by courts of probate shall be uniform for all [of] the probate districts established by law.

(b) COSTS FOR SETTLEMENT OF DECEASED'S ESTATE. (1) The basic costs for all proceedings in the settlement of the estate of any deceased person shall be as follows:

With respect to any estate in which any proceedings were commenced or succession tax documents filed:

Prior to January 1, 1968

Costs computed under:
Section 45-17 of the
1961 supplement to the
general statutes

Prior to July 1, 1969
but on or after January
1, 1968

Section 45-17a of the
1967 supplement to the
general statutes

Prior to July 1, 1978,
but on or after
July 1, 1969

Section 45-17a of the
1969 supplement to the
general statutes

(2) On or after July 1, 1978, costs shall be computed as follows: The basis for costs shall be the sum of gross taxable value, as defined in section 12-349, of all estate which passes by will or under the laws

Reviser's comments:

Section further subdivided and internal catch-lines added to improve readability.

Minor language changes for simplification and clarification.

Catch-line shortened for economy of language.

This section amended by Public Act 79-489.

of intestacy and two-thirds of the gross taxable value, as defined in section 12-349, of the first fifty thousand dollars of all estate which passes other than by will or under the laws of intestacy and the full gross taxable value of all in excess of such fifty thousand dollars, in accordance with the following table:

Basis for computation of costs	Total cost
0 to \$1,000	\$10.00
\$1,000 to \$10,000	\$10, plus 1% of all in excess of \$1,000
\$10,000 to \$100,000	\$100, plus .30% of all in excess of \$10,000
\$100,000 to \$200,000	\$370 plus .25% of all in excess of \$100,000
\$200,000 to \$500,000	\$620, plus .2% of all in excess of \$200,000
\$500,000 to \$1,000,000	\$1220, plus .15% of all in excess of \$500,000
\$1,000,000 to \$5,000,000	\$1970, plus .125% of all in excess of \$1,000,000
\$5,000,000 and over	\$6970, plus .1% of all in excess of \$5,000,000

(3) In no event shall any fee exceed seven thousand five hundred dollars.

(c) COSTS FOR FIDUCIARY'S ACCOUNTING WITHOUT HEARING. The basic costs for receiving and placing on file, without hearing, a periodic or other account of a trustee, guardian or conservator or other fiduciary, shall be in accordance with the following schedule:

If the book value or market value or receipts of such trustee, guardian or conservator, whichever is larger: Cost

Less than \$10,000	\$ 10.00
At least \$10,000 and less than \$20,000	\$ 15.00
At least \$20,000 and less than \$30,000	\$ 20.00
At least \$30,000 and less than \$40,000	\$ 25.00
At least \$40,000 and less than \$50,000	\$ 30.00
At least \$50,000 and less than \$75,000	\$ 40.00
At least \$75,000 and less than \$100,000	\$ 50.00
At least \$100,000 and less than \$250,000	\$ 60.00
At least \$250,000 and less than \$500,000	\$ 70.00
At least \$500,000 and less than \$1,000,000	\$ 80.00
\$1,000,000 or more	\$100.00;

(d) COSTS FOR FIDUCIARY'S ACCOUNTING AFTER HEARING. (1) The basic costs for all proceedings in connection with allowance and settlement of a periodic or other account of

a trustee, guardian or conservator, or other fiduciary after notice and hearing, regardless of the date of origin of the estate in which such account is filed, shall be in accordance with the following schedule: If the book value or market value or receipts of such trustee, guardian or conservator, whichever is larger is:

	Cost
Less than \$10,000	\$ 20.00
At least \$10,000 and less than \$20,000	\$ 30.00
At least \$20,000 and less than \$30,000	\$ 40.00
At least \$30,000 and less than \$40,000	\$ 60.00
At least \$40,000 and less than \$50,000	\$ 80.00
At least \$50,000 and less than \$75,000	\$100.00
At least \$75,000 and less than \$100,000	\$120.00
At least \$100,000 and less than \$250,000	\$140.00
At least \$250,000 and less than \$500,000	\$240.00
At least \$500,000 and less than \$1,000,000	\$270.00
\$1,000,000 or more	\$300.00

(2) If more than one account is the subject of a hearing, the charges shall be based on the values in the most recent account being heard, provided if the other accounts which are the subject of a hearing

have not been previously received and placed on file by the court of probate, an additional charge shall be made with respect to said other accounts based on the schedule in subsection (c) above.

(e) COSTS FOR PROCEEDINGS OTHER THAN SETTLEMENT OF DECEASED'S ESTATE OR FIDUCIARY'S ACCOUNTING. The basic costs payable to courts of probate for any proceeding other than in connection with the settlement of the estate of a deceased person or periodic accounts of trustees, guardians, conservators or other fiduciaries shall be as follows: (1) (A) Except for such proceedings for which basic costs are specified in subdivisions (2), (3) and (4) of this subsection or are otherwise specified in the general statutes, there shall be payable to the court of probate with respect to each application, petition or motion filed with the court to commence a matter before it, an entry fee of thirty-five dollars which shall be paid by the person making the application, petition or motion. (B) On each matter commenced by the court on its own motion, an entry fee of thirty-five dollars shall be payable by an interested party as determined by the court. (C) If any contested hearing is included in a matter so entered, or if more than one hearing is held in any matter so entered or the total time on any one hearing in the matter exceeds one hour, an additional charge of fifteen dollars shall be payable to the court by the party paying the entry fee in the matter, or at the discretion

of the court by any interested party against whom the court shall assess such additional charge. Not more than one such additional charge of fifteen dollars shall be made in connection with any one matter so entered regardless of the number of proceedings or hearings held thereunder. (D) For purposes of establishing charges payable to courts of probate hereunder, all applications, petitions, and motions filed and proceedings thereunder, in connection with a matter which has been entered as above, which are necessary to enter a final decree in and are incidental to the action of the court being sought in the matter so entered shall be covered by the entry fee and by any additional charge of fifteen dollars that may have become payable in such matter [, and no]. NO additional charges under this section shall be made for any such incidental applications, petitions or motions, provided once a final decree is entered in any matter and, thereafter, additional action or actions are sought in the court in connection therewith, such additional action or actions shall be treated as a new matter hereunder. (E) For the purpose of this section a motion for appeal shall be incidental to the proceeding and no separate charge shall be made hereunder. (2) For proceedings brought under sections 46b-26, 46b-27 [,] AND 46b-30 [and 46-5g], five dollars. (3) For filing in the probate court under the provisions of any statute any document [in respect of] CONCERNING which the court is not required to take any action, five dollars, which shall be

payable by the person filing such document.

(4) When the state or any of its agencies is an applicant, petitioner, or moving party commencing a matter in a court of probate or is otherwise liable for the charges under this section, the court shall accept such matter without the entry fee accompanying the filing thereof, and shall bill the entry fee to the appropriate agency for subsequent payment, which payment shall be due and payable upon receipt of such bill. (5) The court may in its discretion postpone payment of any entry fee due [hereunder] UNDER THIS SECTION and enter any matter if it appears to the court that to require such entry fee to accompany submission of the matter would cause undue delay or hardship, but in such case the applicant, petitioner or moving party shall be liable for the entry fee and all other charges upon receipt of an invoice therefor from the court of probate. (6) When it appears to the satisfaction of the court, upon affidavit as to the financial condition of an applicant, petitioner or moving party, that [such] THE applicant, petitioner or moving party is unable to pay any entry fee or other charges provided for in this subsection and in subsection (g) [below] OF THIS SECTION, the court may waive or reduce the entry fee and [said] other charges provided for [hereunder] IN THIS SECTION.

(f) OTHER COSTS. In addition to the basic charges and costs specified in subsections (b) to (e), inclusive [above], OF THIS SECTION, the following expenses shall be

payable to the courts of probate: (1) For recording each page or fraction thereof after the first two pages of any one document, two dollars and fifty cents; (2) for each notice in excess of two with respect to any hearing or continued hearing, one dollar; (3) for any expenses incurred by the court of probate for newspaper publication of notices, certified or registered mailing of notices, or for service of process or notice, the actual amount of the expenses so incurred; (4) for providing copies of any document from a file in the court of any matter within the jurisdiction of the court, one dollar per copy for each page or two hundred words or fractional part thereof as the case may be, provided that there shall be furnished without charge to the fiduciary or if none, to the petitioner with respect to any probate matter one uncertified copy of each decree, certificate or other court order setting forth the action of the court on any proceeding in such matter; AND (5) for certifying copies of any document from a file in the court of any matter before the court, one dollar per each copy certified of the first page of a document, and fifty cents for each copy certified of each page after the first page of such document, provided that no charge shall be made for any copy certified or otherwise that the court is required by statute to make.

(g) NO CHARGE FOR SETTLEMENT OF ESTATE OF DECEASED MEMBER OF ARMED FORCES DYING IN TIME OF WAR. No cost shall be charged for any

proceedings in the settlement of the estate of any member of the armed forces or a woman's auxiliary branch thereof who died while in service in time of war as defined in section 27-103.

(h) NO FEES FOR ADOPTION OF HARD-TO-PLACE CHILDREN. No fees shall be charged under this section and section 45-63, ^{for} adoption proceedings involving hard-to-place children.

(i) WHO SHALL PAY COSTS FOR SETTLEMENT OF DECEASED'S ESTATE AND FIDUCIARY ACCOUNTING. The costs, fees and expenses provided for in this section in connection with proceedings under subsections (b), (c) and (d) of this section shall be paid by the executor, administrator or trustee, guardian, conservator or other fiduciary or, if there is no such fiduciary, by the transferee filing the succession tax return under section 12-359. [Such costs, fees and expenses in] IN the case of any proceeding under said subsections commenced on motion of the court SUCH COSTS, FEES AND EXPENSES shall be paid by the party against whom such costs are assessed by the court. In all other cases, the petitioner shall pay such costs, fees and expenses, unless otherwise provided by law.

(j) WAIVER OF INDIGENT'S COSTS. In any case in which a petitioner or applicant to a court of probate claims that unless his

obligation to pay the fees and the necessary costs of the action, including the cost of service of process, is waived, he will be deprived by reason of his indigency of his right to bring a petition or application to such court, he may file with the clerk of [such] THE court of probate an application for waiver of payment of such fees and necessary costs. [Such] THE application shall be under oath, shall state the applicant's financial circumstances, and shall identify the fees and costs sought to be waived and the approximate amount of each. If the court finds that the applicant is, by reason of his indigency, unable to pay such fees and costs it shall order such fees and costs waived. If such costs include the cost of service of process, the court, in its order, shall indicate the method of service authorized, and the cost of such service shall be paid from funds appropriated to the judicial department.

(k) NO SALES OR USE TAX ON FEES UNDER THIS SECTION. The tax imposed under chapter 219 shall not be imposed upon any fee charged under the provisions of this section.

CHAPTER I

PART VI

RETIREMENT BENEFITS

Sec. 45a-43. [Sec. 45-29a.] Definitions.

The following words and phrases as used in [sections 45-29a to 45-29t, inclusive,] THIS PART except as otherwise provided, shall have the following meanings:

[(a) "Employee" means a person employed by any probate court for more than twenty hours per week and more than five months per year; or a person who serves for more than twenty hours per week and more than five months per year performing under any contract of employment with any court of probate;

(b) "Credited service" means (1) all periods during which a person held the office of judge of probate or acting judge of probate, or (2) any period during which a person served as an employee of any probate court or (3) the aggregate of any periods of service provided for in subdivisions (1) and (2) of this subsection;

(c) "Normal retirement age" means the age of sixty-five;

(d) "Member" means any judge of probate or employee who is or may become eligible for retirement benefits under said sections;

(e) "Pay" means the salary, wages or earnings of an employee, but does not include any fees or allowances for expenses;

Reviser's comments:

Subsections alphabetized. Other changes for clarification and simplification.

(f)] (1) "Average final compensation" means, in the case of a judge of probate, his average annual compensation for the three consecutive highest paid years of service while serving in the probate court to which he was elected or by citation [in] TO any other court or courts or any period during which he served as an employee of any probate court, provided, for purposes of this section, the compensation for any one year shall not exceed the maximum net annual income currently allowed by law, and, in the case of an employee, the average annual rate of pay during his three highest paid consecutive years of employment;

(2) "CREDITED SERVICE" MEANS (A) ALL PERIODS DURING WHICH A PERSON HELD THE OFFICE OF JUDGE OF PROBATE OR ACTING JUDGE OF PROBATE, OR (B) ANY PERIOD DURING WHICH A PERSON SERVED AS AN EMPLOYEE OF ANY PROBATE COURT OR (C) THE AGGREGATE OF ANY PERIODS OF SERVICE PROVIDED FOR IN SUBDIVISIONS (A) AND (B) OF THIS SUBSECTION;

[(g) "Old age and survivors system" means the system established under Title II of the Social Security Act, as amended;

(h) "Social Security Act" means the act of congress, approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the Social Security Act, including regulations issued pursuant thereto, as such act has been and may from time to time be amended;]

(3) "EMPLOYEE" MEANS A PERSON EMPLOYED BY ANY PROBATE COURT FOR MORE THAN TWENTY HOURS PER WEEK AND MORE THAN FIVE MONTHS PER YEAR OR A PERSON WHO SERVES FOR MORE THAN TWENTY HOURS PER WEEK AND MORE THAN FIVE MONTHS PER YEAR PERFORMING UNDER ANY CONTRACT OF EMPLOYMENT WITH ANY COURT OF PROBATE;

[[i]] (4) "Fund" means the retirement fund established by section 45-29b;

(5) "MEMBER" MEANS ANY JUDGE OF PROBATE OR EMPLOYEE WHO IS OR MAY BECOME ELIGIBLE FOR RETIREMENT BENEFITS UNDER THIS PART ~~SECTIONS 45-39a THROUGH 45-29t, INCLUSIVE, AS AMENDED BY SECTIONS 1 TO 12, INCLUSIVE, OF PUBLIC ACT 79-454 AND SECTIONS 37 TO 55, INCLUSIVE, OF THIS ACT;~~

(6) "NORMAL RETIREMENT AGE" MEANS THE AGE OF SIXTY-FIVE;

(7) "OLD AGE AND SURVIVORS SYSTEM" MEANS THE SYSTEM ESTABLISHED UNDER TITLE II OF THE SOCIAL SECURITY ACT, AS AMENDED;

(8) "PAY" MEANS THE SALARY, WAGES OR EARNINGS OF AN EMPLOYEE, BUT DOES NOT INCLUDE ANY FEES OR ALLOWANCES FOR EXPENSES;

[[j]] (9) "Retirement commission" means the state retirement commission;

(10) "SOCIAL SECURITY ACT" MEANS THE ACT OF CONGRESS, APPROVED AUGUST 14, 1935, CHAPTER 531, 49 STAT. 620, OFFICIALLY CITED

AS THE SOCIAL SECURITY ACT, INCLUDING
REGULATIONS ISSUED PURSUANT THERETO, AS SUCH
ACT HAS BEEN AND MAY FROM TIME TO TIME BE
AMENDED.

Sec. 45a-44. [Sec. 45-29b.] [Probate]
ESTABLISHMENT OF judges and employees
retirement fund.

The Connecticut probate judges and
employees retirement fund is established, and
shall consist of amounts transferred from the
fund as provided by section 45-4h and
contributions under sections 45-29k and 45-
29l.

Reviser's comments:

No change.

Sec. 45a-45. [Sec. 45-29c.] Retirement qualifications.

(a) Judges of probate courts in office on or after December 31, 1966, and employees of such courts, who have completed at least ten years of credited service shall be eligible to retire and thereupon to receive retirement benefits [upon] ON the first day of the month after attaining the age of sixty-five [and] OR after termination of service as a judge of probate or employee, whichever occurs later; provided any judge or employee who has at least ten years of credited service but less than twelve years and whose credited service terminated before [the effective date of this act] July 1, 1979, shall become eligible to retire and to receive retirement benefits retroactive to January 1, 1979, or to the first day of the month after such termination, whichever is later.

(b) Employees whose credited service began at or after the age of sixty shall be eligible [upon] ON the first day of the month after attaining the age of seventy, regardless of length of service.

(c) Employees who attained the age of seventy [prior to] BEFORE establishment of the retirement fund shall be eligible on January 1, 1968.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

This section was amended by sections 1 and 12 of Public Act 79-454.

Sec. 45a-46. [Sec. 45-29d.] Retirement date
OF EMPLOYEE.

(a) Any employee of a court of probate shall be retired [upon] ON the first day of any month after he has become eligible for retirement, [upon] ON the recommendation of the judge of the probate court by which he is employed.

(b) Any employee who has attained the age of seventy years shall be retired on the first day of the month following the attainment of [such] THAT age, except that any employee, at his request and with the approval of the judge of the probate court, may be retained in the employ of the probate court without further assessment for pension benefits under section 45-29k;

provided such person shall receive no pension payments during the period IN WHICH he is so retained and [shall not increase] his credited service SHALL NOT BE INCREASED by such employment beyond the age of seventy.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-47. [Sec. 45-29e.] Retirement of employee after twenty years of service.

(a) If any employee of a court of probate is separated [,] on or after January 1, 1972, from the service of the court by which he is employed, and after completing at least ten years of credited service but before reaching the normal retirement age, he shall be entitled to a retirement allowance [upon] ON the first day of the month after reaching the normal retirement age [; provided, at].

(b) AT the option of the employee, the retirement allowance may commence on the first day of the month after the date of [such] THE separation DESCRIBED IN SUBSECTION (a) OF THIS SECTION and SHALL be payable in an amount determined by the retirement commission to be the actuarial equivalent of the retirement allowance that would have been payable except for the election of such option. Any such employee who was separated from the service of the court [prior to the effective date of this act] BEFORE JULY 1, 1979, with at least ten but less than twenty years of credited service may elect a retirement allowance retroactive to January 1, 1979, or the first day of the month after such separation, whichever is later.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

This section was amended by sections 2 and 12 of Public Act 79-454.

Sec. 45a-48. [Sec. 45-29f.] Retirement of judge after twelve years of service.

If any judge of probate is separated after January 1, 1972, from the service of his court after having completed ten years of credited service as [such] judge OF PROBATE, he may elect to take a retirement allowance to commence on the first day of the month following the date of separation [, such] . THE allowance [to] SHALL be payable in an amount determined by the retirement commission to be the actuarial equivalent of the retirement allowance that would have been payable except for the election of such option. Any such judge of probate, who was separated from the service of his court [prior to the effective date of this act] BEFORE JULY 1, 1979, with at least ten years but less than twelve years of credited service may elect a retirement allowance retroactive to January 1, 1979, or the first day of the month after such separation, whichever is later.

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by sections 3 and 12 of Public Act 79-454.

Sec. 45a-49. [Sec. 45-29g.] Disability retirement.

(a) Any employee or judge of probate WHO HAS COMPLETED AT LEAST TEN YEARS OF CREDITED SERVICE shall be eligible for retirement and for a retirement allowance [who has completed at least ten years of credited service] if he becomes permanently and totally disabled from engaging in any gainful employment in the service of the court of probate or in the office of judge, as the case may be. Such retirement allowance shall continue during the period of such disability. The existence and continuance of disability shall be determined by the retirement commission upon such medical evidence and other investigation as it requires.

(b) In order to obtain a retirement allowance under this section an employee or judge shall apply in writing for [such] THE allowance to the retirement commission within one year after incurring the disability, or by January 1, 1980, as to an employee or a judge becoming eligible on January 1, 1979 [; and the]. THE allowance may be made retroactive to the first day of the month following the date [at] ON which the compensation of the disabled employee ceased or the disability of the judge commenced, except that for a judge or an employee who has completed at least ten years but less than twelve years of credited service and whose disability commenced before [the effective date of this act] JULY 1, 1979, the

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

This section was amended by sections 4 and 12 of Public Act 79-454.

allowance shall be retroactive to January 1, 1979, or the first day of the month after the commencement of such disability, whichever is later.

Sec. 45a-50. [Sec. 45-29h.] Retirement allowance.

(a) After retirement in accordance with the provisions of [sections 45-29a to 45-29t, inclusive] THIS PART,

each member of the retirement fund who is not entitled to benefits under the old age and survivors insurance system as provided for in sections 7-452 to 7-459, inclusive,

as a result of service in a court of probate in this state shall receive [,] A RETIREMENT ALLOWANCE during his lifetime, [a retirement allowance,] payable monthly, equal to one-twelfth of two per cent of his average final compensation for each year of credited service [; and each].

(b) EACH member who is entitled to benefits under the old age and survivors insurance system as provided for in sections 7-452 to 7-459, inclusive, as a result of service in a court of probate in this state shall receive [,] A RETIREMENT ALLOWANCE during his lifetime, [a retirement allowance,] payable monthly, equal to one-twelfth of the sum of [(a)] (1) and [(b)] (2) following: [(a)] (1) One per cent of average final compensation up to and including four thousand eight hundred dollars for each year of credited service; [(b)] (2) two per cent of average final compensation in excess of

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

This section was amended by sections 5 and 12 of Public Act 79-454.

four thousand eight hundred dollars for each year of credited service.

(c) [No] ANY retirement allowance under this section, plus benefits, if any, under [said] THE old age and survivors insurance system on account of service in a court of probate, shall NOT exceed, on an annual basis, eighty per cent of the member's average final compensation, and [no] such RETIREMENT allowance shall NOT be less than three hundred sixty dollars annually.

Sec. 45a-51. [Sec. 45-29i.] Reemployment after retirement.

[If an] AN employee WHO is retired under [sections 45-29a to 45-29t, inclusive,]
THIS PART

and WHO again accepts appointment as an employee of a court of probate [, under which appointment] TO RENDER services [are to be rendered] for more than ninety working days in any year, [he] shall receive no retirement allowance while so employed.

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by sections 6 and 12 of Public Act 79-454.

Sec. 45a-52. [P.A. 79-454, Sec. 7.] Cost of living adjustment.

On July 1, 1980 and on July first of each subsequent year, the state retirement commission shall determine the percentage of increase or decrease in the average monthly nationwide consumer price index for the most recent fiscal year compiled and published by the federal government from the average monthly nationwide consumer price index compiled and published by the federal government for the next preceding fiscal year. Subject to the further limitations of this section, the percentage of increase or decrease so determined on July first of each year shall be applied to increase or decrease by such percentage the amount of the retirement allowance in effect on June thirtieth of the next preceding year for each member who was a retired member on said June thirtieth and was then receiving a retirement allowance under section 45-29h of the general statutes, and for the spouse of each deceased member who had elected the husband and wife retirement income option, or any other spouse, receiving a continuing reduced retirement allowance or retirement income payments under section 45-29j of the general statutes on said June thirtieth; and the amount of retirement allowance or retirement income payable during the twelve-month period commencing on the July first adjustment date shall be the amount so in effect and being received on said June thirtieth increased or decreased as above. No adjustment shall be

Reviser's comments:

No change.

made on any July first if the increase or decrease in such index determined as above is less than one per cent, and adjustments for increases in excess of three per cent shall be limited to three per cent. In no event shall the amount of monthly retirement allowance or retirement income payment for a member or spouse receiving such an allowance or payment on June 30, 1979, be reduced by any adjustment under this section below the amount of such monthly retirement allowance or retirement income in effect on June 30, 1979 nor shall the amount of monthly retirement allowance or payment of a member or spouse whose initial amount of such allowance or payment becomes payable after June 30, 1979 be reduced by any adjustment under this section below such initial amount of monthly retirement allowance for such member or such initial amount of allowance or payment to such spouse.

Sec. 45a-53. [Sec. 45-29j.] Husband and wife retirement income option.

(a) Any member may, subject to [such] regulations [as] ISSUED BY the retirement commission [establishes], elect to receive a reduced retirement allowance with the provision that [such] THE reduced retirement allowance, or such part [thereof as] WHICH is specified by such person in his notice of election, shall be continued after his death to his spouse named in [such] THE election for [so] AS long as his spouse lives. The reduced retirement allowance shall be in [such] an amount [as] WHICH the retirement commission determines to be the actuarial equivalent of the retirement allowance that would have been payable had not the election been made. Unless the member files a written notice of his election of this option with the retirement commission at least three years before retirement, he shall be subject to [such] requirements [as said] PRESCRIBED BY THE commission [prescribes] at the time of making [such] THE election. If a member whose election of this option has been approved by the retirement commission dies before retirement but after completion of the age and service requirements that would permit him to retire upon his own application, a retirement allowance shall be payable to his spouse commencing at his death, in accordance with regulations to be established by the retirement commission.

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by sections 8 and 12 of Public Act 79-454.

(b) Except as provided in subsection (c) of this section, if any member WHO HAS NOT EXERCISED HIS OPTION UNDER SUBSECTION (a) OF THIS SECTION dies after January 1, 1968, [who has not exercised his option under subsection (a) of this section,] and before his retirement income payments begin but after completion of the age and service requirements that would permit him to retire on his own application, and he is survived by a spouse, a retirement income [,commencing at his death,] shall be paid monthly TO HIS SPOUSE, COMMENCING AT HIS DEATH AND ENDING UPON THE SUBSEQUENT REMARRIAGE OR DEATH OF THE SPOUSE, in accordance with the regulations of the state retirement commission [, to such spouse], as if he had exercised an option under [said] THIS section to provide an amount equal to one-third of the retirement allowance that such employee or judge was receiving at the time of his death or which he would have received if he had retired on the date of his death. [Such payments shall continue until such spouse remarries or dies.]

(c) The surviving spouse of (1) a judge or employee whose separation from service occurred [prior to the effective date of this act] BEFORE JULY 1, 1979, but after December 31, 1966, and (2) whose years of credited service at separation totalled, in the case of a judge, ten or more but less than twelve years, and in the case of an employee, ten or more but less than twenty years, (3) who has not elected or who did not have in effect at

his death the option provided for in subsection (a) of this section, and (4) who died after January 1, 1968, and on or before July 1, 1979, and before his retirement income payments began, shall receive a retirement income, retroactive to the date of his death or January 1, 1979, whichever is later. Such payments shall be paid monthly in accordance with the regulations of the state retirement commission to such spouse, as if such judge or employee had exercised an option under subsection (a) to provide an amount equal to one-third of the retirement allowance that such judge or employee would have received if he had retired on the date of his death. Such payment shall continue until such spouse remarries or dies.

Sec. 45a-54. [Sec. 45-29k.] Retirement contributions of employees.

(a) Each employee shall contribute to the fund five per cent of [his pay as to] that portion of HIS pay [with respect to] FROM which contributions are not to be deducted under the federal old age and survivors insurance system as provided for in sections 7-452 to 7-459, inclusive,

and two and one-quarter per cent [as to] OF that portion of pay [with respect to] FROM which contributions are to be [so] deducted. [, said contributions] CONTRIBUTIONS ARE to be deducted [from such pay] by the employing court of probate, or, in the case of employees of the probate court administrator, by [said] THE administrator, and forwarded not less frequently than quarterly to the retirement commission to be credited to the fund.

(b) Any employee [leaving] WHO LEAVES the employment of the court before becoming eligible for retirement may withdraw [, on request to the retirement commission,] the total of all contributions made by him, without interest, AT ANY TIME WITHIN TEN YEARS FROM THE DATE OF CESSATION OF EMPLOYMENT BY REQUEST TO THE COMMISSION, provided THAT, if he makes no such request within ten years after leaving, [such] HIS contributions shall revert to the fund. Any employee who withdraws his contributions from the fund and is subsequently reinstated shall

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by sections 9 and 12 of Public Act 79-454.

not receive credited service for such prior employment in the computation of any benefit with respect to him under the retirement plan unless the withdrawn contributions have been repaid with interest at a rate to be determined by the commission. Any employee who was ineligible for retirement benefits at the time of his employment and who has not made contributions under this section, who becomes eligible, or whose spouse becomes eligible, as a result of [this act] PUBLIC ACT 79-454, for any benefit under the retirement plan shall receive credited service for any employment provided such employee makes such contributions with interest at a rate to be determined by the commission.

Sec. 45a-55. [Sec. 45-291.] Retirement contributions of judges.

(a) Each judge of probate shall contribute to the fund five per cent of THAT PORTION OF his annual compensation [as to that portion] with respect to which contributions are not made to the federal old age and survivors system as provided for in sections 7-452 to 7-459, inclusive,

and two and one-quarter per cent [as to] OF that portion [with respect to] FROM which such contributions are made. [, such contributions] CONTRIBUTIONS ARE to be forwarded by [such] THE judge of probate to the retirement commission to be credited to the retirement fund on his account.

(b) [Such] RETIREMENT contributions to the fund shall be made quarterly, beginning on April first of each year, and each quarterly payment shall approximate as closely as possible one-fourth of the estimated annual contribution based upon the estimated annual net income of the office, provided, if the amount to be forwarded exceeds three hundred dollars, [such] remittances shall be made not less frequently than monthly.

(c) When the actual net income for a particular year becomes known, the probate judge shall add to his next payment the amount of any deficiency, or subtract from his next payment the amount of any excess

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by sections 10 and 12 of Public Act 79-454.

contributions for said year. If a judge has no net income in any particular year, the probate court administrator shall report accordingly to the retirement commission.

(d) Any judge leaving office before becoming eligible for a retirement allowance may, [withdraw] on request to the retirement commission, WITHDRAW the total of all contributions made in his behalf, without interest, provided, if he makes no such request within ten years after leaving office, [such] HIS contributions shall revert to the fund. Any judge who withdraws his contributions from the fund and is subsequently reinstated shall not receive credited service for such prior time in office in the computation of any benefit under the retirement plan unless the withdrawn contributions have been repaid with interest at a rate to be determined by the commission. Any judge who was ineligible for retirement benefits at the time he became a judge and who has not made contributions under this section, who becomes eligible, or whose spouse becomes eligible, as a result of [this act] PUBLIC ACT 79-454, for any benefit under the retirement plan, shall receive credited service for any time in office, provided such judge makes such contributions with interest at a rate to be determined by the commission.

Sec. 45a-56. [Sec. 45-29m.] Refund of contributions after death.

[In case of the death before retirement of a member who has not elected an option in accordance with the provisions of section 45-29j, or whose election of such option has not become effective, or whose election of such option has become effective but who has not completed the age and service requirements that would permit him to retire on his own application, or in case of the death of both a member whose election of such option has become effective and his spouse after a retirement allowance has become payable, his]

(a) A MEMBER'S contributions to the fund, without interest [,] AND less any retirement allowance paid to him or his spouse, shall be paid from the fund on the order of the retirement commission to the beneficiary or beneficiaries, if any, named by [such] THE member, IN THE FOLLOWING CASES: (1) THE DEATH BEFORE RETIREMENT OF A MEMBER WHO HAS NOT ELECTED AN OPTION UNDER THE PROVISIONS OF SECTION 45-29j, ~~AS AMENDED BY SECTION 45 OF THIS ACT~~, OR WHOSE ELECTION OF THAT OPTION HAS NOT BECOME EFFECTIVE, OR WHOSE ELECTION OF THAT OPTION HAS BECOME EFFECTIVE, BUT WHO HAS NOT COMPLETED THE AGE AND SERVICE REQUIREMENTS THAT WOULD PERMIT HIM TO RETIRE ON HIS OWN APPLICATION; OR (2) THE DEATH OF BOTH A MEMBER WHOSE ELECTION OF THAT OPTION HAS BECOME EFFECTIVE AND HIS SPOUSE AFTER A RETIREMENT ALLOWANCE HAS BECOME PAYABLE.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

(b) If no named beneficiary survives the member, or the survivor of the member and his spouse, payment shall be made to the executors or administrators of [such] THE ESTATE OF THE member or his spouse, as the case may be, except that, if the amount is less than one thousand dollars, the refund may be made [, at the option of the retirement commission,] in accordance with the terms of section 45-266.

AT THE OPTION OF THE
RETIREMENT COMMISSION.

Sec. 45a-57. [Sec. 45-29n.] Employment by more than one probate court.

(a) Any employee of a court of probate who accepts employment with another court of probate shall be credited for retirement purposes with [his] THE entire period of HIS service with all [such] courts OF PROBATE and his contributions shall not be refunded to him as provided in section 45-29k.

(b) The retirement commission shall make regulations [as to] REGARDING all matters relating to such transfers of employment and service as the commission [may find] FINDS necessary for the uniform and equitable administration of this section, [having regard] GIVING CONSIDERATION to the welfare of transferees and the interests of the courts.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-58. [Sec. 45-29o.] Benefits not assignable.

Any assignment by a member or beneficiary of any allowance or benefit payable under the terms of sections 45-29a to 45-29s, inclusive,

shall be null and void. Each such allowance and benefit shall be for the support of the member or beneficiary entitled [thereto] TO IT and shall be exempt from the claims of THAT PERSON'S creditors [of such person], provided, if the provisions of this section are contrary to the laws governing a particular set of circumstances, as to that set of circumstances, any allowance or benefit hereunder shall be exempt to the maximum extent permitted by law.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-59. [Sec. 45-29p.] Disposition of retirement contributions.

All contributions received pursuant to [sections 45-29a to 45-29s, inclusive] THIS PART, shall be paid over by the retirement commission to the state treasurer [, who]. THE STATE TREASURER shall be the custodian of the fund with power to invest and reinvest as much of [said] THE fund as is not required for current disbursements in accordance with the provisions of the general statutes relating to the investments of savings banks or, when deemed prudent, in accordance with the law governing the investment of trust funds. All benefits, allowances, and other payments authorized by [said sections] THIS PART shall be made from the fund upon vouchers approved by the retirement commission.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-60. [Sec. 45-29q.] Administration of retirement allowances.

(a) The administration of the system of retirement allowances herein established, except as [the same relate] THE ADMINISTRATION RELATES to the custody and investment of the fund, shall be entrusted to the retirement commission [, which]. THE COMMISSION may employ actuarial, clerical and other assistance necessary for [the purpose] ITS PURPOSES and [which] may make reasonable regulations for carrying out the provisions of sections 45-29a to 45-29s, inclusive, including designation of the times and manner in which the courts of probate shall make the [several] payments required by said sections.

(b) Each court of probate shall furnish, at [such] THE times and in [such] THE manner [as] WHICH the retirement commission directs, information concerning the names, ages, length of service and compensation of employees and judges of [such] THE PROBATE courts and any other data which the retirement commission determines to be necessary for [the proper execution of] IMPLEMENTING said sections and give prompt notice of all appointments, removals, deaths, resignations, leaves of absence and changes in compensation of employees and judges.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-61. [Sec. 45-29r.] Liability of courts.

(a) Each court of probate shall be liable to the fund for the cost of maintaining for its employees the retirement system herein provided for, including all contributions collected from amounts otherwise payable to employees and judges.

(b) The liability of a court under this section shall be enforceable by the retirement commission through appropriate action in the superior court.

Reviser's comments:

Section subdivided to improve readability.

Sec. 45a-62. [Sec. 45-29s.] Liability of retirement fund in event of statutory change.

[In case of the amendment or repeal of] IF ANY OF sections 45-29a to 45-29s, inclusive,

ARE AMENDED OR REPEALED, the liability of the retirement fund TO A MEMBER OR PERSON CLAIMING THROUGH THAT MEMBER shall be limited [in the case of a member or person claiming through such member] to the contributions made by such member, without interest. All future retirement allowances vested by the retirement of members shall be paid in full in accordance with the terms of said sections [and the]. THE rights of the retirement commission to compel the payment by the courts of probate of the sum or sums necessary to provide [such] THE retirement allowances granted to eligible employees and judges formerly employed by [such] THE courts OF PROBATE shall not be affected by such repeal or amendment.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-63. [Sec. 45-29t.] Service as judge and employee.

If a person has served as a judge of probate, or acting judge of probate, or both, and also as an employee, and has completed at least ten years of credited service as defined in subdivision (3) of subsection (b) of section 45-29a,

his average final compensation will be determined separately for the portion of his retirement allowance based on service as a judge and the portion of his retirement allowance based on his service as an employee [, and such]. SUCH allowance shall be a total of the two.

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by sections 11 and 12 of Public Act 79-454.

CHAPTER II

PROBATE COURT PROCEDURES

CHAPTER II

PART I

PROBATE COURT PROCEEDINGS GENERALLY

Sec. 45a-64. [Sec. 45-30.] Giving of orders of notice.

[In any proceeding in, or matter pending before, a court of probate, any] ANY order of notice of a hearing [thereon] IN ANY PROCEEDING IN, OR MATTER PENDING BEFORE, A COURT OF PROBATE, WHICH IS required by law to be given to interested persons, may be made by the judge, the clerk or the assistant clerk of such court of probate.

Sec. 45a-65. [Sec. 45-31.] Manner of notice to be fixed by order of court.

Courts of probate may make any proper order [providing] for [the] notice to be given to any person residing out of or absent from this state and, except as otherwise provided, to any person within the state to whom particular notice of any proceeding before such court is required by law [, and the]. THE notice given under [such] THE order shall be a legal notice to such person.

Reviser's comments:

Minor language changes for clarification and simplification.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-66. [Sec. 45-32.] Giving of public notice.

Whenever [,] PUBLIC NOTICE IS REQUIRED in any proceeding in, or matter pending before, a court of probate, [public notice is required, such notice,] except as provided in this chapter, SUCH NOTICE shall be by publication in [some] A newspaper having a circulation in the district in which [such] THE court is held, for [such] THE length of time [as such] WHICH THE court [may direct, and such] DIRECTS. THE court may prescribe such further notice as it deems requisite.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-67. [Sec. 45-33.] Special notice to be given on written request.

(a) Any person who is interested in any estate, trust or other matter pending in any court of probate, or who is interested in any application that may be made to any court of probate for the probating of a will or the granting of administration, may, in person or by attorney, file with [such] THE court a written request for special notice to be given to him or his attorney of any application to [such] THE court and of any order passed by [such] THE court of probate in such estate, trust or other matter [, which]. THE request shall state the estate, trust or other matter, cause or proceeding [in] OF which notice is desired and the post-office address of the person desiring the notice. Thereupon [such] THE court of probate shall give NOTICE to such person or his attorney [notice] of any hearing in such estate, trust or other matter at least seven days before the time assigned [therefor] FOR THE HEARING, in [such] WHATEVER manner [as] the court finds to be reasonable under the circumstances.

(b) Any request for a special notice in the matter of probating a will or granting administration, before any application is made therefor, shall be obligatory upon [such] THE court for a period of thirty days from the date of filing the same.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-68. [Sec. 45-20.] Court may modify or revoke ex parte [orders] ORDER OR DECREE.

(a) Any court of probate may modify or revoke any [order or] decree OR ORDER made by it ex parte before any appeal [therefrom, and] IS TAKEN: (1) if THE DECREE OR ORDER WAS made in reference to the settlement of any estate, before the final settlement [thereof] OF THE ESTATE, upon the written application of any INTERESTED person [interested therein,]; and (2) [after] IF a hearing [thereon] IS HELD ON SUCH MATTER, FOLLOWING notice of the time and place of [which] THE hearing [has been given in the manner prescribed by the court] to the person having charge of such estate and to all other interested parties, IN THE MANNER PRESCRIBED BY THE COURT.

(b) Upon any modification or revocation there shall be the same right of and time for appeal as in THE case of any other order or decree.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-69. [Sec. 45-22.] [Appointment of committee] COMMITTEE APPOINTMENT and fees [thereof].

(a) In any matter pending in any court of probate, the court may appoint a committee to hear the evidence and report [the same] IT to the court [whenever it], IF THE COURT is of the opinion that the questions involved [are such as] ought to be sent to a committee.

(b) [Such] THE committee shall be sworn to faithfully perform the duties of [such] ITS appointment and shall have all the powers conferred by law upon courts of probate [relative to] FOR procuring the attendance of witnesses and [to] FOR punishing for contempt.

(c) The [fees of such committee] COMMITTEE'S FEES shall not exceed five dollars per diem and shall be fixed by the court and paid by the executor, administrator, trustee, conservator or guardian, as the case may be.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-70. [Sec. 45-262.] Examination of witnesses.

(a) Any court of probate may, upon written application of the fiduciary having in his control any estate before such court [,] or of any person having an interest in such estate, summon any person to appear and give testimony under oath on matters relating to such estate [, and the]. ~~THE~~ attendance of any person who has been served with any subpoena may be secured by a capias.

(b) [No] A person shall NOT be excused from answering any question on the ground that his answer will tend to convict him of fraud [;], but his answer shall not be used as evidence against him in any criminal prosecution except for perjury.

Sec. 45a-71. [Sec. 45-19.] Return of compliance with order of court.

When a court of probate orders any person to do any act, [he] SUCH PERSON shall, upon compliance [therewith] WITH THE ORDER, make written return under oath to the court, which shall be prima facie evidence of the due execution of [such] THE order, except that such returns made by employees of courts of probate shall not be required to be made under oath.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-72. [Sec. 45-16b.] Participation of
[welfare, finance and control department]
DEPARTMENTS OF HUMAN RESOURCES, INCOME
MAINTENANCE OR ADMINISTRATIVE SERVICES
employees in proceedings.

In any proceeding in the probate court
in which the state is interested through the
department of human resources, the department
of income maintenance or the department of
administrative services, any employee of any
such department shall be permitted to
participate fully in [such] THE proceeding in
the same manner as any other interested party
before [such] THE court [, and the]. THE
judge of [such] THE court shall not require
that the state be represented by an attorney-
at-law as a condition of [such]
participation.

Reviser's comments:

Minor language changes for clarification
and simplification.

This section amended by Public Act
79-560, sections 15 and 39.

Sec. 45a-73. [Sec. 45-54.] Appointment of guardian ad litem FOR MINORS AND INCOMPETENT, UNDETERMINED AND UNBORN PERSONS.

(a) [When, in] IN any proceeding before a court of probate, or the superior court, whether acting upon an appeal from probate or otherwise, [it appears that one or more persons as individuals, or as members of a designated class or otherwise, have or may have an interest in such proceeding, and that one or more of such persons are minors, incompetent persons or persons undetermined or unborn at the time of such proceeding,] the court may appoint a guardian ad litem for any [of such minors] MINOR or incompetent, undetermined or unborn [persons] PERSON, or may appoint one guardian ad litem for two or more of such minors or incompetent, undetermined or unborn persons, IF IT APPEARS TO THE COURT THAT ONE OR MORE PERSONS AS INDIVIDUALS, OR AS MEMBERS OF A DESIGNATED CLASS OR OTHERWISE, HAVE OR MAY HAVE AN INTEREST IN THE PROCEEDINGS, AND THAT ONE OR MORE OF THEM ARE MINORS, INCOMPETENT PERSONS OR PERSONS UNDETERMINED OR UNBORN AT THE TIME OF THE PROCEEDING.

(b) THE APPOINTMENT SHALL NOT BE MANDATORY, BUT SHALL BE WITHIN THE DISCRETION OF THE COURT.

(c) Any order or decree passed or action taken in any such proceeding shall affect all [such] THE minors, incompetent persons or persons thereafter born or determined for

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

whom [such] THE guardian ad litem has been appointed, in the same manner as if they had been of [full] THE age OF MAJORITY and competent and present in court after legal notice at the time of [such] THE action or the [passing] ISSUANCE of [such] THE order or decree.

(d) Any appointment of a guardian ad litem may be made with or without notice and, if it appears to [such] THE court that it is for the best interests of a minor having a parent or guardian to have as guardian ad litem some person other than [such] THE parent or guardian, [such] THE court may appoint [some] A disinterested person to be [such] THE guardian ad litem.

(e) When [such] THE appointment is made in [connection] CONNECTION with the settlement of [the] A DECEDENT'S estate [of a deceased person] or the settlement of the account of a trustee or other fiduciary, the person so appointed shall be authorized to represent [such] THE minor or incompetent, undetermined or unborn person in all proceedings for the settlement of [such] THE estate or [such] account and subsequent accounts of [such] THE trustee or other fiduciary, or until his appointment is terminated by death, resignation or removal.

(f) [Such] THE guardian AD LITEM may be removed by the court which appointed him, without notice, whenever it appears to [such]

THE court to be [for] IN the best interests
of the ward or wards of [such] THE guardian.

(g) Any guardian ad litem appointed
under the provisions of this section may be
allowed reasonable compensation by the court
appointing him and [the same] shall be paid
as a part of the expenses of administration.
[Such appointment shall not be mandatory, but
shall be within the discretion of the court.]

CHAPTER II

PART II

PROBATE BONDS

Sec. 45a-74. [Sec. 45-34.] Probate bonds
GENERALLY.

Every probate bond shall be payable to the state [, and shall be taken for] IN an amount satisfactory to the court of probate before which it is given, with one or more INDIVIDUAL sureties [,] WHO ARE residents of this state, or with a surety company. authorized to do business in this state, whose sufficiency shall be approved by [such] THE court [, and]. A BOND shall be conditioned [for] UPON the faithful discharge by the principal in the bond of the duties of his trust according to law.

Reviser's comments:

Minor language changes for clarification and simplification.

Cross reference: 52-74
52-117
52-140

Sec. 45a-75. [Sec. 45-37.] Officials or employees of PROBATE court not to issue probate bonds.

For clarification and simplification of language.

[No] A judge of probate or officer or employee of any court of probate shall NOT ACT AS SURETY FOR, AND SHALL NOT personally or as agent for any surety or bonding company, issue a probate bond to , any administrator, executor, trustee or other person required to furnish a bond in any proceeding pending before any [such] judge OF PROBATE or court OF PROBATE.

Sec. 45a-76. [Sec. 45-38.] Additional bonds.

For clarification and simplification of language.

The court of probate may, [in any case,] for cause, require additional bonds to be given and SHALL, [on neglect of] IF the principal [in] WHO EXECUTED the bond [to] DOES NOT obey [such] THE requirement, [shall] remove him from his office and trust.

Sec. 45a-77. [Sec. 45-35.] Substitution of new bond.

(a) Either the principal or the surety, or the heirs, executors or administrators of the surety, upon any bond taken by any court of probate, may make written application to [such] THE court for an order permitting or requiring a new bond to be given in place of the existing bond. Thereupon [such] THE court shall cause reasonable notice of [such] THE application to be given to the surety, if the application is made by the principal, or to the principal, if the application is made by the surety, [or] his heirs, executors or administrators, and to all persons whom [such] THE court finds to be interested in the estate for the security of which [such] THE bond was given, to appear and be heard upon [such] THE application at a time and place stated in the notice.

(b) If, upon [such] hearing, [such] THE court finds that to grant [such] THE application would not prejudice [such] THE estate, it may [consent to the giving by such] AUTHORIZE THE principal [of] TO GIVE a new probate bond, or order him to give [such] A new bond within [such] A time [as] WHICH it may limit. If the principal, having been ordered to give a new bond, fails to do so within the time limited by the court, it may remove him and appoint another in his stead [;but, if such]. IF THE new bond is given to the approval of [such] THE court, the surety on the original bond and his representatives

Reviser's comments:

Minor language changes for clarification and simplification.

shall not be liable for any breach [thereof thereafter] OF THE BOND committed AFTER THE COURT APPROVES THE BOND.

Sec. 45a-78. [Sec. 45-39.] Filing and recording bonds.

The court of probate shall cause all bonds taken by it to be filed and recorded. In case of the loss of any [such] bond, a certified copy of the record of the [same] BOND shall be admissible in evidence.

For clarification and simplification of language.

Sec. 45a-79. [Sec. 45-40.] Action on probate bond BY AGGRIEVED PERSON.

(a) Any person claiming to be aggrieved by the breach of a probate bond, as representative of the estate in connection with which [such] THE bond was given, or in his own right or in the right of himself and all others having an interest in the estate, may bring an action to recover for [such] THE breach in his own name under the following conditions: (1) Before bringing [such] THE action, [such] THE person shall secure the consent of the judge of the court of probate in which [such] THE bond was given; [but, if] (2) IF THE PROBATE [such] judge refuses to grant permission, [such] THE person may make written application to a judge of the SUPERIOR court before which the proposed action will be returnable [, upon which]. UPON RECEIPT OF THE application [such] THE SUPERIOR COURT judge shall issue a rule to show cause why permission should not be granted, specifying a time when, and place where, the matter will be heard and directing that it be served in [such] A manner [as] WHICH he deems proper, upon the representative of the estate, if he is not the applicant, and upon [such] other persons [as may] WHO appear to have an interest in the matter[; and if such]. IF THE judge, upon [such] hearing, finds that just cause exists for the bringing of the action, he shall grant permission to the applicant to bring it.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

(b) If, upon an application made by one not acting as a representative of the estate, the judge concludes that the action ought to be prosecuted in behalf of all persons interested in the estate in connection with which the bond was given, he may order that, if [such] THE action is brought by the applicant, it shall be brought in behalf of all such persons; but, in that event, such persons need not be named in the writ or complaint.

(c) When permission to bring the action is granted to the representative of the estate or to one acting [in] ON behalf of himself and all others interested in the estate, the judge shall require that the applicant give a bond, with sufficient surety, in an amount acceptable to him, in the nature of a probate bond [,]. THE BOND SHALL BE conditioned [that] UPON the [applicant will] APPLICANT'S well and truly [account] ACCOUNTING for any moneys recovered in [such] THE action and for his doings in connection [therewith] WITH THE ACTION and with the securing of payment of any moneys adjudged to be due [; and, if] . IF permission to bring the action is granted by a judge other than the judge of probate, [such] THE bond shall be transmitted, with the endorsement of its acceptance, to the court of probate in which the estate is in settlement, [there] to be filed THERE. [; provided, if such] IF THE action is brought by a representative of the estate and the judge deems the bond already given by him

sufficient to cover any amount which may be recovered in the action, no additional bond need be required.

(d) The plaintiff in any action brought by him as representative of the estate or in his behalf and that of all persons interested in it shall account for any moneys recovered to the court of probate in which the estate is in settlement[, which]. THE court may allow to the plaintiff a reasonable sum for his disbursements and services in [such] THE action and in any subsequent proceedings to enforce payment of any sum recovered, to be paid from the amount recovered or by [such] THE estate.

Sec. 45a-80. [Sec. 45-41.] Enforcement of judgment ON BOND.

(a) Any representative of an estate or any person suing in his own behalf and that of all others interested in the estate, who secures a judgment upon a probate bond, may file a judgment lien in his own name as [such] representative OF THE ESTATE or as representing himself and [such] ALL other INTERESTED persons. He may, with the permission of the judge of the court of probate in which the estate is in settlement, bring any proper action to enforce [such] THE lien [; he]. HE may, by order of the court of probate secured [as provided in] UNDER section 45-236,

sell any such lien or any real [estate] PROPERTY obtained by the enforcement [thereof] OF THE LIEN or upon execution and he may release [such] THE lien by a certificate of discharge.

(b) If any person bringing such an action in his own behalf and that of all others interested in the estate dies or is guilty of a breach of duty, the court of probate in which the estate is in settlement may appoint some other person in his stead [, who,]. SUCH OTHER PERSON SHALL, upon giving a bond as provided in section 45-40,

acceptable to [said] THE court, [shall] be vested with the same rights and subject to the same duties as the person in whose stead he is acting with reference to [such] THE action, the

enforcement of any judgment recovered or lien thereon and the discharge of any such lien.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

CHAPTER II

PART III

COMPROMISE, SETTLEMENT AND
ARBITRATION OF CLAIMS

Sec. 45a-81. [Sec. 45-231.] [Courts of probate] COURT may authorize [compounding] COMPROMISE AND SETTLEMENT of claims. CONVEYANCE OF REAL PROPERTY.

[The court of probate, after public notice and hearing, may authorize] (a) COURT MAY AUTHORIZE COMPROMISE AND SETTLEMENT OF CLAIMS. UPON APPLICATION BY executors, guardians, conservators, administrators, trustees in insolvency and trustees appointed, or whose appointment has been approved, by [such] THE court OF PROBATE, THE COURT MAY, AFTER PUBLIC NOTICE AND HEARING, AUTHORIZE SUCH FIDUCIARIES to compromise and settle any doubtful or disputed claims or actions, or any appeal from probate in favor of or against the estates or persons represented by them.

(b) COURT MAY AUTHORIZE CONVEYANCE OF REAL PROPERTY TO ACCOMPLISH COMPROMISE OR SETTLEMENT OF CLAIM. BOND. In order to accomplish such compromise or settlement, the court may authorize the conveyance, with or without requiring a bond, of the whole or any part of, or any easement or other interest in, any real [estate] PROPERTY situated in this state forming part of the trust estate or owned by any such trustee, executor or administrator or owned by any deceased person, ward or incapable person for whom such an executor, guardian, conservator or administrator was appointed.

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Other changes for clarification and simplification of language.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-32. [Sec. 45-232.] COURT MAY AUTHORIZE submission of claims to arbitration.

(a) [Whenever any] AN executor, administrator, conservator, guardian, trustee in insolvency or trustee appointed, or whose appointment has been approved, by a court of probate, may [have any claim as such, or in behalf of the interest which he represents, against any person or to any property, or when any person may have any claim against, or to any property in the control of, any such executor, administrator, trustee, conservator or guardian, in such capacity, such executor, administrator, trustee, conservator or guardian may] apply in writing to the court of probate having jurisdiction of [such] HIS trust for an order authorizing him to submit the matter in controversy to the [arbitrament] ARBITRATION of [such] persons [as] WHO are mutually agreed upon by [such] THE applicant and the other party to [such] ANY MATTER IN controversy WHICH IS DESCRIBED IN SUBSECTIONS (a) AND (b) OF THIS SECTION, IF: (1) HE HAS ANY CLAIM IN HIS CAPACITY AS SUCH FIDUCIARY, OR ON BEHALF OF THE INTEREST WHICH HE REPRESENTS, AGAINST ANY PERSON OR TO ANY PROPERTY; OR (2) ANY PERSON HAS ANY CLAIM AGAINST OR TO ANY PROPERTY WHICH IS IN HIS CONTROL IN HIS CAPACITY AS SUCH FIDUCIARY.

(b) [Such] THE court [, after a hearing of which such notice has been given to the parties in interest as it orders,] may

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

authorize [such] THE submission to
[arbitrament] ARBITRATION FOLLOWING A HEARING
OF WHICH NOTICE HAS BEEN GIVEN TO THE PARTIES
IN INTEREST AS ORDERED BY THE COURT.

Sec. 45a-83. [Sec. 45-233.] Award of
arbitrators.

The award made upon [such] submission TO
ARBITRATION shall be in writing, signed by
the arbitrator or arbitrators and returned to
[such] THE court of probate [, and, when].
WHEN THE AWARD IS so made and accepted by the
court and lodged on file, THE AWARD shall be
final and binding upon all parties, UNLESS
REMONSTRANCE IS TAKEN UNDER SECTION 45-234.

Reviser's comments:

Minor language changes for clarification
and simplification.

Sec. 45a-84. [Sec. 45-234.] Remonstrance against award. EFFECT OF REFUSAL OF COURT TO ACCEPT AWARD.

Any party interested may remonstrate against the acceptance of [such] THE award OF ARBITRATION on any ground which would be sufficient to set aside such an award in a court of equity. If the allegations in the remonstrance are found TO BE true and sufficient, the court OF EQUITY shall refuse to accept the award, and the matter in controversy may again be submitted to [arbitrament] ARBITRATION, and the proceedings [thereon] shall be the same as [hereinbefore] provided IN SECTIONS 45-232 TO 45-234, INCLUSIVE.

Sec. 45a-85. [Sec. 45-235.] Costs of arbitration.

(a) The fees FOR THE SERVICES of the judge of probate [for his services] shall be paid by the applicant [, and the].

(b) THE fees and charges of the arbitrator or arbitrators shall be taxed by [such] THE judge and apportioned by him between the parties as he judges proper and shall be paid by them according to [such] THE apportionment [, and no other].

(c) OTHER costs shall NOT be allowed.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

CHAPTER II
PROBATE COURT

PART IV

SALE OR PARTITION OF ESTATES

Sec. 45a-86. [Sec. 45-236.] Sale of choses in action and [other estate] PERSONAL PROPERTY.

[The] BEFORE THE FINAL SETTLEMENT OF ANY ESTATE, THE court of probate [, before the final settlement of any estate,] may order the sale of the credits and choses in action belonging [thereto] TO SUCH ESTATE, and may at any time order the sale of personal [estate] PROPERTY, and in THE case of an insolvent debtor's estate of all or any [estate] PROPERTY, as it finds for the interest of [such] THE estate, in [such] A manner and after [such] notice [as] WHICH it judges reasonable [, and such]. THE court, in making orders for the sale of [such] THE property DESCRIBED IN THIS SECTION, MAY ORDER [the same] IT to be sold at public or private sale at the discretion of the person authorized to make [such] THE sale.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-87. [Sec. 45-237.] Sale of personal property by other than fiduciary.

(a) [The court of probate may, upon] UPON the written application of any fiduciary described in section 45-238,

after public notice and [such] other notice [as] WHICH the court may order and after hearing, [if it finds that to grant such application would be for the best interest of the parties in interest,] THE COURT OF PROBATE MAY authorize a person other than the fiduciary to sell the whole or any part of or any interest in any personal [estate] PROPERTY of any incapable person, minor, missing person, deceased person or trustee, or ANY PROPERTY to which [such] THE fiduciary may hold legal title in such capacity, if: (1) such person has first given a probate bond that he will faithfully administer and account for the [avails] PROCEEDS of [such] THE sale according to law; AND (2) THE COURT FINDS THAT TO GRANT THE APPLICATION WOULD BE IN THE BEST INTERESTS OF THE PARTIES IN INTEREST. If any party having an interest in such personal [estate] PROPERTY is not in being or is not ascertained or is under a disability, the court shall appoint a guardian ad litem to represent the interest of [any] such party at [such] THE hearing, unless such party already is represented by a guardian or by a conservator. Such order, and the sale thereunder, shall be conclusive upon all persons then or thereafter existing whose interests have been so represented.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

(b) [Such] THE person selling the personal [estate] PROPERTY shall pay to the fiduciary the sum for which such personal [estate] PROPERTY was sold.

(c) At any sale so made, the fiduciary may be a purchaser. The court of probate shall direct whether the sale shall be public or private, and, if public, the notice thereof which shall be given, and, if private, may authorize [such] THE sale at [such] A price and upon [such] terms, including such mortgage or mortgages, as it considers reasonable or advisable.

Sec. 45a-88. [Sec. 45-238.] Sale or mortgage of real [estate] PROPERTY. APPLICATION. PROCEDURE. WHEN GUARDIAN AD LITEM APPOINTED.

(a) [The court of probate may, upon] UPON the written application of the conservator of the estate of any incapable person, guardian of the estate of any minor, administrator or trustee appointed by [it] THE COURT, including a trustee of a missing person, the executor or trustee under any will admitted to probate by [such] THE court [,] or any overseer appointed under the provisions of [section 54-37] SUBSECTION (f) OF SECTION 53a-47, after public notice and [such] other notice [as] WHICH the court may order and after hearing, [if it finds that to grant such application would be for the best interest of the parties in interest,] THE COURT MAY authorize the sale or mortgage of the whole or any part of, or any easement or other interest in, any real [estate] PROPERTY in this state of any incapable person, minor, missing person, deceased person or trustee, or of any real [estate] PROPERTY the legal title to which has been acquired by such administrator, executor or trustee, [and] IF THE COURT FINDS IT WOULD BE FOR THE BEST INTERESTS OF THE PARTIES IN INTEREST TO GRANT THE APPLICATION.

(b) THE COURT may empower [such] THE conservator, guardian, administrator, executor, trustee or overseer to execute a conveyance of [the same] SUCH PROPERTY or to execute a note and a mortgage to secure [the

Reviser's comments:

Reference to section 54-37, which has been repealed, is deleted. Reference to section 53a-47(f) substituted in lieu thereof.

Other changes for clarification and simplification of language.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

same] SUCH PROPERTY upon his first giving a probate bond faithfully to administer and account for the [avails] PROCEEDS of [such] THE sale or mortgage according to law. [Such] THE application shall set forth a description of the [estate] PROPERTY to be sold or mortgaged.

(c) If any person having an interest in such real [estate] PROPERTY is not in being or is not ascertained or is under a disability, the court shall appoint a guardian ad litem to represent the [interest] INTERESTS of such person at [such] THE hearing, unless such person already is represented by a guardian or by a conservator.

(d) [Such] THE order [,] and the sale or mortgage [thereunder] UNDER THE ORDER [,] shall be conclusive upon all persons then or thereafter existing whose interests have been so represented.

Sec. 45a-89. [Sec. 45-243.] Sale OR MORTGAGE of real [estate] PROPERTY by successor to original appointee OR SURVIVOR OF TWO OR MORE APPOINTEES.

(a) [When any conservator, guardian, administrator, executor, trustee or overseer appointed under the provisions of section 54-37, who has been authorized under the provisions of sections 45-238 to 45-244, inclusive, to sell or mortgage any real estate, has died, resigned or been removed without having sold or mortgaged such real estate, the court of probate by which such sale or mortgage was authorized may, upon] UPON written application by [his] THE duly appointed successor OF ANY CONSERVATOR, GUARDIAN, ADMINISTRATOR, EXECUTOR, TRUSTEE OR OVERSEER APPOINTED UNDER SUBSECTION (f) OF SECTION 53a-47, WHO HAS BEEN AUTHORIZED UNDER SECTIONS 45-238 TO 45-244, INCLUSIVE,

TO SELL OR MORTGAGE ANY REAL PROPERTY, AND WHO HAS DIED, RESIGNED OR BEEN REMOVED WITHOUT HAVING SOLD OR MORTGAGED SUCH REAL PROPERTY, THE COURT OF PROBATE WHICH AUTHORIZED THE SALE OR MORTGAGE MAY authorize the sale or mortgage of [such] THE real [estate] PROPERTY remaining unsold or unmortgaged upon his giving such probate bond, if any, and upon such further notice, if any, as said court orders [; and said].

(b) THE court may likewise, upon similar application, authorize the survivor or survivors, as the case may be, of two or more

Reviser's comments:

Reference to section 54-37, which has been repealed, is deleted, and reference to section 53a-47(f) is substituted.

Other changes for clarification and simplification of language.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

executors, administrators, trustees,
conservators or guardians to sell or mortgage
any real [estate] PROPERTY that the original
fiduciaries were authorized to sell or
mortgage upon giving such probate bond, if
any, and upon such further notice, if any, as
[said] THE court orders.

Sec. 45a-90. [Sec. 45-241.] Public or private sale OF REAL PROPERTY. Distribution of proceeds.

(a) The court of probate in ordering a sale under the provisions of sections 45-238 to 45-244, inclusive,

shall direct whether the sale shall be public or private [, and, if public]. IF A PUBLIC SALE IS DIRECTED, THE COURT SHALL DIRECT the notice thereof which shall be given [, and, if private,]. IF A PRIVATE SALE IS DIRECTED, THE COURT may, if it appears TO BE for the best interests of the estate, determine the price and the terms of [such] THE sale, including purchase money mortgage or mortgages, as it considers reasonable and advisable.

(b) The net proceeds of [such] THE sale shall be divided or distributed in the same manner as such real [estate] PROPERTY would have been divided or distributed if [the same] IT had not been sold.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-91. [Sec. 45-244.] Sale OF REAL PROPERTY by other than fiduciary. When fiduciary may purchase.

(a) Any court of probate to which an application to sell real [estate] PROPERTY has been made under the provisions of section 45-238, may authorize a person other than the fiduciary to sell [the same] IT in accordance with the provisions of sections 45-238 and 45-241

if such person and the fiduciary have given probate bonds, unless exempted therefrom under section 45-240, that they will faithfully administer and [accourt] ACCOUNT for the [avails] PROCEEDS of [such] THE sale according to law[; and such].

(b) THE person selling the real [estate] PROPERTY shall pay to the fiduciary the sum for which such real [estate] PROPERTY was sold.

(c) At any sale so made the fiduciary may be a purchaser.

Reviser's comments:

Typographical error corrected. Other changes for clarification and simplification of language.

Section subdivided to improve readability.

Sec. 45a-92. [Sec. 45-242.] Mortgage of real [estate] PROPERTY; amount and interest rate; individual liability of fiduciary.

(a) An application to mortgage real [estate] PROPERTY made under the provisions of sections 45-238 to 45-244, inclusive, ~~AS AMENDED BY SECTIONS 80 TO 85, INCLUSIVE, AND SECTION 315 OF THIS ACT,~~ shall set forth the amount of money necessary to be raised and the purposes for which [such] THE money is required.

(b) The order of the court upon [such] THE application to mortgage shall fix the amount for which the mortgage may be given and the rate of interest which may be paid thereon.

(c) The note and mortgage legally executed by such conservator, guardian, administrator, executor, trustee or overseer shall bind the estate, but shall not bind such fiduciary individually.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-93. [Sec. 45-240.] When probate bond not required.

The court of probate may dispense with the requirement of a probate bond as set forth in this [chapter] PART if [such]: (1) THE fiduciary is a bank or trust company authorized to do business and maintaining a place of business in this state [or]; (2) THE FIDUCIARY IS a foreign bank or trust company which has qualified and been approved as such fiduciary [or if]; (3) the fiduciary is excused by the will from giving a probate bond [,] ; or [if] (4) the court of probate determines that a bond is not required for the protection of interested parties.

Reviser's comments:

Minor language changes for clarification and simplification.

CHAPTER II

PART V

ESTATE ACCOUNTS

Sec. 45a-94. [Sec. 45-267.] Jurisdiction of accounts of fiduciaries. NOTICE AND HEARING ON ALLOWANCE.

(a) Courts of probate shall have jurisdiction of the interim and final accounts of testamentary trustees, trustees appointed by [such] THE courts of probate, conservators, guardians, persons appointed by [such] PROBATE courts to sell the land of minors, executors, administrators and trustees in insolvency, and, to the extent provided for in this section, SHALL HAVE JURISDICTION of accounts of the [doings] ACTIONS of trustees of inter vivos trusts and attorneys-in-fact acting under powers of attorney created in accordance with section 45-69o.

(b) A trustee or settlor of an inter vivos trust or an attorney-in-fact or the grantor of such power of attorney may make application to [either] the court of probate for the district where the trustee or the attorney-in-fact has his or its principal place of business or TO the court of probate for the district where the trustee or any one of them or the settlor or the attorney-in-fact or the grantor of [such] THE power resides or, in the case of a deceased settlor or grantor, to the court of probate having jurisdiction over the estate of [such] THE settlor or grantor for submission [,] to the jurisdiction of [such] THE court [,] of an account for allowance of [such] THE trustee's

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

or [said] attorney's [doings] ACTIONS under such trust or power.

(c) [Such] THE action to submit an accounting to the court, whether by an inter vivos trustee or attorney acting under a power of attorney created in accordance with [said] section 45-69o

or whether pursuant to petition of another party, shall not subject the trust or the power of attorney to the continuing jurisdiction of the probate court.

(d) Upon the allowance of any such account, the court shall determine the rights of the fiduciaries or the attorney-in-fact rendering the account and of the parties interested [therein] IN THE ACCOUNT, subject to appeal as in other cases [, provided such]. THE court shall cause notice of the hearing on the [same] ACCOUNT to be given in such manner and to such parties as it directs.

Sec. 45a-95. [Sec. 45-267a.] Statement in lieu of account when fiduciary is sole beneficiary.

Whenever the fiduciary of a decedent's estate is the sole beneficiary of the estate, the fiduciary may, in lieu of any other accounting required under this chapter, file with the court of probate having jurisdiction of the estate a statement under oath that all debts, funeral expenses, taxes and expenses of administration have been paid. [Such] THE statement shall include the total of any amount reported on the return of claims filed under section 45-207, ~~AS AMENDED BY SECTION 270 OF THIS ACT~~, and an itemized list of all funeral expenses, taxes and expenses of administration. The court of probate may thereafter enter a decree releasing and discharging [such] THE fiduciary and the sureties on his bond, if any, from any further liability [, and any]. ANY fiduciary so discharged shall be excused from filing an accounting and any further returns with [such] THE court; provided [such] THE court may, for cause shown, refuse to accept [such] THE statement and require an accounting from [such] THE fiduciary.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-96. [Sec. 45-268.] Accounts to be rendered at least every three years. NATURE OF ACCOUNT. EXCEPTIONS.

(a) All conservators, guardians, persons appointed by the court of probate to sell land of minors and trustees, including those entrusted with testamentary trusts unless excused by the will creating the trust, shall [at least once during each three-year period and more frequently if required to do so by the will or trust instrument creating the trust] render periodic accounts of their trusts under oath to the court of probate having jurisdiction for allowance, AT LEAST ONCE DURING EACH THREE-YEAR PERIOD AND MORE FREQUENTLY IF REQUIRED TO DO SO BY THE WILL OR TRUST INSTRUMENT CREATING THE TRUST. Periodic accounts for filing only may be submitted to the court at any time during each [such] three-year period [, and upon]. UPON receipt of [such an] A PERIODIC account, the court shall cause notice [thereof] OF IT and of its availability for examination at the court to be given in such manner and to such parties as it deems reasonable. Any such party may apply to the court for a hearing on [such] THE account. If an application for such a hearing is not received by the court from a party in interest within the time [limited therefore] STATED in [such] THE notice, the periodic account will be filed without hearing thereon and without allowance or disallowance thereof, and shall not be recorded. At the end of each three-year period from the date

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

of the last allowance of a periodic account, or upon the earlier receipt of a final account, there shall be a hearing on all periodic accounts not previously allowed, and the final account, if any, in accordance with sections 45-269 and 45-270, ~~AS AMENDED BY SECTIONS 89 AND 90 OF THIS ACT.~~

(b) Each such periodic account shall [embrace] INCLUDE an inventory of the trust estate showing fully how the principal of the fund is invested and the items of income and expenditure [, except that, if]. IF there has been no change in the identity of the items comprising the principal of the fund since the last account which has been accepted and approved, it shall not be necessary to include an inventory of the trust estate.

(c) If the estate held by any person in any such fiduciary capacity is less than two thousand dollars, or, in the case of a corporate fiduciary under the supervision of the banking commissioner within the department of business regulation or any other fiduciary bonded by a surety company authorized to do business in this state, ten thousand dollars, he shall not be required to render such account unless so ordered by the court.

Sec. 45a-97. [Sec. 45-269.] Allowance of [annual] INTERIM accounts. NOTICE. HEARING.

The court of probate shall direct what notice, if any, shall be given to the parties in interest of the filing of any [such] account DESCRIBED IN SECTION 45-268, ~~AS AMENDED BY SECTION 88 OF THIS ACT~~, and of the hearing thereon, and may adjust and allow the [same, and] ACCOUNT. THE COURT MAY make any order necessary and proper to secure the execution of the duties of such fiduciary, subject to appeal as in other cases.

Sec. 45a-98. [Sec. 45-270.] NOTICE AND hearing on final accounts.

When an executor, administrator, conservator, guardian, trustee in insolvency or trustee of a testamentary trust exhibits his final account to the court of probate for allowance, [such] THE court shall appoint a time and place for a hearing on the [same] ACCOUNT and shall cause [such] notice of [such] THE hearing to be given as it directs. Such fiduciary shall [make] SWEAR OR AFFIRM UNDER oath to the truth of [such] THE account.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-99. [Sec. 45-271.] Settlement of account of deceased fiduciary.

Whenever an executor, administrator, conservator, guardian, trustee in insolvency or trustee of any testamentary trust dies before completing and accounting for his trust, the executor or administrator of [such decedent] THE DECEASED FIDUCIARY shall settle the DECEASED FIDUCIARY'S account [of such decedent] in the court of probate [, and the]. THE amount found due from or to [him] THE DECEASED FIDUCIARY shall be paid in the same manner as it would have been paid to or by [such decedent] HIM if the account had been settled in his lifetime.

Reviser's comments:

Minor language changes for clarification and simplification.

CHAPTER II

PART VI

PROBATE APPEALS

Sec. 45a-100. [Sec. 45-288.] Appeals from probate.

Any person aggrieved by any order, denial or decree of a court of probate in any matter, unless otherwise specially provided by law, may appeal therefrom to the superior court for the judicial district [where] IN WHICH such court of probate is held [, but, except] . EXCEPT in the case of an appeal by the state, [he] THE AGGRIEVED PERSON shall give security for costs in the amount of one hundred fifty dollars, which may be paid to the clerk, or a recognizance with surety annexed to the appeal and taken before the clerk or a commissioner of the superior court or a bond substantially in accordance with the bond provided for appeals to the supreme court.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-101. [Sec. 45-289.] Time of taking appeals.

[All such appeals,] (a) AN APPEAL UNDER SECTION 45-288, ~~AS AMENDED BY SECTION 92 OF THIS ACT,~~ by those of [full] THE age OF MAJORITY and WHO ARE present or who have legal notice to be present, shall be taken within thirty days [, and, if they]. IF SUCH PERSONS have no notice to be present and are not present, then APPEAL SHALL BE TAKEN within twelve months, except FOR APPEALS BY SUCH PERSONS from a decree of termination of parental rights or adoption, in which case [if they have no notice to be present and are not present, then such] appeal must be taken within ninety days [instead of twelve months].

(b) [No] AN appeal from any probate order for the payment of claims or dividends on claims against any insolvent estate shall NOT be allowed [but] UNLESS IT IS TAKEN within thirty days after the making of such order [; and no].

(c) AN order, denial or decree of a court of probate shall NOT be invalid [by reason] BECAUSE of the disqualification of the judge unless appeal therefrom is taken within thirty days.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-102. [Sec. 45-291.] Appeals by minors or nonresidents.

(a) Except as [hereinafter] provided IN THIS SECTION, all appeals by persons who are minors at the time of the making of the order, denial or decree appealed from shall be taken within twelve months after they arrive at [full] THE age [provided, in] OF MAJORITY.

(b) IN the case of any minor who has a guardian or guardian ad litem appointed and qualified by any court of probate in this state at the time of the making of [such] THE order, denial or decree, the time in which [such] THE minor or anyone on his behalf may appeal therefrom shall be one month from the date of such order, denial or decree if [such] THE guardian or guardian ad litem has had legal notice, as provided [in respect to] FOR the particular proceeding, of the time and place of the hearing on such proceeding concerning which such order, denial or decree was made [, and all].

(c) ALL appeals by persons not inhabitants of this state who were not present at such time and did not have legal notice to be present shall be taken within twelve months thereafter.

(d) Any executor, administrator or trustee of an estate may cause written notice of any order, denial or decree of the court of probate concerning such estate to be given

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

to any person of [full] THE age OF MAJORITY,
or to the guardian or guardian ad litem of
any minor who has not had legal notice of the
hearing on the proceeding at which [such] THE
order, denial or decree was passed and who
may be aggrieved thereby [, in which]. IN ANY
SUCH case [such] THE person, minor, guardian
or guardian ad litem may appeal only within
one month after [the receipt of] RECEIVING
such notice [by him].

Sec. 45a-103. [Sec. 45-290.] Amendment to
appeal.

In the event of any defect in the form
of an appeal taken under the provisions of
section 45-288, ~~AS AMENDED BY SECTION 92 OF
THIS ACT,~~ by any aggrieved person, such
person may obtain [,] from the court of
probate [,] an amendment to [such] THE appeal
correcting [such] THE defect, provided the
order for amendment is granted not later than
ninety days [subsequent to] AFTER the date of
the order, denial or decree of the court of
probate from which the appeal was originally
taken.

Reviser's comments:

Minor language changes for clarification
and simplification.

Sec. 45a-104. [Sec. 45-292.] Appeals from [doings] ACTIONS of commissioners.

(a) When any person is aggrieved by the [doings] ACTIONS of commissioners on any insolvent estate and the matter in demand exceeds fifty dollars, he may, within one month after the report of the commissioners is accepted, appeal to the superior court [to be held] in the judicial district in which the probate district or any part thereof [, wherein] IN WHICH such estate is in settlement [,] is situated, on giving bond as hereinbefore provided in case of a probate appeal.

(b) The allowance or disallowance of two or more separate claims may be joined in a single appeal, if the matter in demand in each such claim exceeds fifty dollars.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed for simplification.

Sec. 45a-105. [Sec. 45-293.] Interest of appellant to be stated.

In each appeal from probate or from the [doings] ACTIONS of commissioners, the interest of the appellant shall be stated in the motion for appeal, unless such interest appears on the face of the proceedings and records of such court of probate.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-106. [Sec. 45-294.] Order of notice.

The court of probate, in allowing an appeal, shall make such order of notice to persons interested as it deems reasonable. When [such] THE notice has been given by the appellant and proved to the court to which the appeal is taken, [said] THE court may hear the appeal without further notice.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec.45a-107. [Sec. 45-295.] Appellee to give bond in superior court.

(a) In any appeal from any order or decree of a court of probate, if the appellee is the party who applied for [such] THE order or decree and if [such] THE appellee appears in the superior court to contest the matter [of such appeal] BEING APPEALED, the court may, at its discretion, order [such] THE appellee to give bond for the payment to the appellant of his costs of suit if judgment is rendered for the appellant.

(b) If the appellee neglects to comply with the order of the court, the court may make any disposition of the case favorable to the appellant that it deems proper.

For clarification and simplification of language.

CHAPTER III

CHANGE OF NAME

Sec. 45a-108. [Sec. 45-29v.] Jurisdiction to grant change of name.

[Except with respect to a change of name granted in accordance with section 46b-63, the] THE courts of probate shall have concurrent jurisdiction with the superior court, as provided in section 52-11, to grant a change of name, EXCEPT WITH RESPECT TO A CHANGE OF NAME GRANTED IN ACCORDANCE WITH SECTION 46b-63.

Reviser's comments:

Minor language changes for simplification and clarification.

CHAPTER IV

PART I

GUARDIANS AND CONSERVATORS GENERALLY

Sec. 45a-109. [P.A. 79-460, Sec. 3.]
Residence of ward defined.

For the purposes of PARTS I, II AND III
OF THIS chapter [777] the residence of a
minor means his actual residence and not that
imputed to him by the residence of his
parents or guardian.

Reviser's comments:

No change, except for internal reference.

Sec. 45a-110. [Sec. 45-58.] Administrator of veterans' affairs [. Party] TO BE PARTY in interest.

(a) The administrator of veterans' affairs, created by act of the congress of the United States, or his successor, shall be a party in interest in any proceedings brought under any provision of the general statutes for the appointment of a guardian of a veteran of any war or other beneficiary on whose account benefits of compensation, adjusted compensation, pension or insurance or other benefits are payable by the veterans administration [, and said].

(b) THE administrator OF VETERANS' AFFAIRS or his successor shall be an interested party in the administration of the estate of any [such] ward on whose account [such] THE benefits are payable or whose estate includes assets derived from benefits paid by the veterans administration, its predecessor or successor [, and written].

(c) WRITTEN notice shall be given by registered or certified mail, unless waived in writing, to the division of the office of the veterans administration having jurisdiction over the area in which the court is located, of the time and place for hearing on any petition or pleading or in connection with any proceeding pertaining to or affecting in any manner the administration of the estate of any beneficiary of the veterans administration. [Such notice] NOTICE shall

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

be [given at such] MAILED IN time [as] to
reach such office [in due course of mail] not
less than ten days before the date of [such]
THE hearing or other proceeding.

Sec. 45a-111. [Sec. 45-60.] Compensation of guardian or conservator of social services beneficiary or veteran.

For clarification and simplification of language.

(a) Compensation payable to the conservator or guardian of any minor or incompetent person WHO IS supported wholly or in part by the state in any humane institution, or WHO IS receiving benefits under any of the state's programs of public assistance, shall be based upon services rendered and shall not exceed five per cent of the gross income to [such] THE estate during the period covered by any account [; provided such] . THE conservator or guardian shall be entitled to compensation of not less than fifty dollars for any accounting period continuing for at least a year. [In the event of] IF extraordinary services ARE RENDERED by any conservator or guardian, the court of probate, upon petition and hearing [thereon], may authorize reasonable additional compensation [therefor]. A copy of the petition and notice of hearing [thereon] shall be lodged in the office of the commissioner of administrative services in Hartford at least ten days [in advance of such] BEFORE THE hearing. [No] A commission or compensation shall NOT be allowed on any moneys or other assets received from a prior guardian or conservator nor upon any amount received from liquidation of loans or other investments.

(b) Compensation payable to the conservator or guardian of any incompetent or minor veteran or other beneficiary of the veterans administration for administering moneys paid by the United States through the veterans administration, or revenue or profit from any

property wholly or partially acquired therewith, shall be based upon services rendered and shall not exceed five per cent of the amount of moneys received during the period covered by the account. [In the event of] IF extraordinary services ARE RENDERED by any conservator or guardian, the court of probate, upon petition and hearing [thereon], may authorize reasonable additional compensation [therefor]. A copy of the petition and notice of hearing [thereon] shall be given to the proper office of the veterans administration in the manner provided [in the case of] FOR hearing on other petitions or pleadings filed by [such] conservators or guardians. [No] A commission or compensation shall NOT be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments.

Sec. 45a-112. [Sec. 45-59.] Investment of funds in insurance and annuity contracts BY CONSERVATOR OR GUARDIAN OF ESTATE.

Upon application of a conservator or the guardian of the estate of a ward, the court of probate may authorize [such] THE conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company authorized to conduct business in this state, on the life of the ward or incapable person, or on the life of a person in whose life the ward or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward or incapable person whose funds are invested [therein] IN IT.

For clarification and simplification of language.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-113. [Sec. 45-51.] Testamentary guardian.

(a) The surviving parent of any minor may by will appoint a PERSON WHO SHALL BE guardian of [such] THE PERSON AND PROPERTY OF THE minor [and the]. THE person so appointed shall, on giving a probate bond, have the same power over the person and [estate] PROPERTY of [such] THE minor as guardians appointed by the court of probate [; but no such]. SUCH appointment shall NOT supersede the PREVIOUS appointment of a guardian [theretofore] made by the court of probate having jurisdiction.

(b) The ward of a testamentary guardian [, however,] may, when of legal age for choosing a guardian, choose a guardian of his person to supersede [such] THE testamentary guardian [; and the]. SUCH guardian [so chosen], when approved by the court of probate of the district [wherein such] IN WHICH THE ward resides, upon giving a sufficient bond, shall be the guardian of the person of [such] THE ward [; but, when]. IF the custody of any child has been committed to either parent by the superior court, such parent alone shall have the power of appointing a guardian as [aforesaid, who] PROVIDED IN THIS SECTION. SUCH GUARDIAN shall receive [such] THE trust subject to the control of the court of probate as [hereinbefore] specified IN THIS SECTION [,] and [also] subject to the provisions and restrictions to which [such] THE trust was subject in the hands of [such] THE parent at the time of his decease.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-114. [Sec. 45-60a.] Payment by guardian or conservator of funeral expenses of deceased ward or incompetent person.

(a) Upon the death of a minor [with respect] to whose estate a guardian has been duly appointed by a court of probate, has qualified and is acting as such, and upon the death of [an incompetent] A person who had been duly adjudicated [as such] INCOMPETENT by a court of probate and [with respect] to whose estate a conservator has been duly appointed, has qualified and is acting as such, THE GUARDIAN OR CONSERVATOR MAY PAY THE ADMINISTRATION EXPENSES NECESSARY TO THE SETTLEMENT OF THE FIDUCIARY'S FINAL ACCOUNT AND THE FUNERAL EXPENSES, INCLUDING THE COST OF A SUITABLE MONUMENT AND CEMETERY PLOT, AND TAKE CREDIT FOR THEM ON HIS FINAL ACCOUNT if (1) the estate consists entirely of personalty and (2) the estate remaining in the hands of the guardian or conservator at the time of the death of the ward or incompetent is not more than sufficient to pay expenses incurred during the lifetime of [such] THE ward or incompetent and not paid as of the date of death [, administration expenses necessary to the settlement of the fiduciary's final account and the funeral expenses, including cost of a suitable monument and cemetery plot, then such guardian or conservator may pay such expenses and take credit therefor on his final account. When applicable, such]. THE payments shall be subject to the limitations set forth in sections 17-83g and 17-300.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

(b) If the estate is less than sufficient to pay all such expenses in full, the provisions of section 45-229, ~~AS AMENDED BY SECTION 265 OF THIS ACT~~, as to order of payment shall govern.

CHAPTER IV

PART II

GUARDIANS OF THE PERSON

Sec. 45a-115. [P.A. 79-460, Sec. 4.] Father and mother joint guardians; removal. Guardians defined.

The father and mother of every [legitimate] MINOR child [under eighteen years of age] are [constituted] joint guardians of the person of [such] THE minor, and the powers, rights and duties of the father and the mother in regard to [such] THE minor shall be equal. [Upon the death of] IF either father or mother[,] DIES OR IS REMOVED AS GUARDIAN, the [surviving] OTHER parent of [such] THE MINOR child shall become the sole guardian of the person of [such child] THE MINOR. [The mother of each illegitimate child under eighteen years of age shall be the sole guardian of the person of such child. Upon the application of a selectman of the town in which any such minor resides or of a relative of any such minor, praying for the removal as guardian of one or both of the parents of such child, the court of probate for the district in which such child resides shall set a time and place for a hearing on such application and shall order notice thereof to be given, by registered or certified mail or otherwise, to the parents of such child at least ten days before the time set for such hearing, unless the parent to be affected thereby is over eighteen years of age and a written waiver of such notice, signed by the parent to be affected thereby, is lodged in such court or unless the court finds that such minor has no parent in the United States. If it appears that the

Reviser's comments:

Section appears as is in Public Act 79-460, section 4.

location or address of a parent of such child is unknown, notice to him or her may be given by publication in some newspaper having a circulation in the last-known place of abode of such parent at least ten days before the time of such hearing. If such court finds that notice to the parent or parents has been given as directed in such order, or that a waiver has been filed as hereinbefore provided, and that either or both are unfit persons to have charge of such child or have abandoned or neglected to make suitable provision for the support or education of such child or are not residents of the United States or if the judge, after an investigation made at his request by the commissioner of human services or by any institution or agency accredited by said commissioner, finds, after such notice and public hearing, that the removal of the parent or parents as guardians is for the best interests of the child, it may remove as guardian such parent or parents. If of two parents only one is so removed, the other parent shall thereupon become sole guardian of the person of such minor. If both parents or the sole living parent is so removed, such court shall thereupon appoint a guardian of the person of such minor subject to the provisions of section 45-46. Any guardian of the person of a minor so appointed may be removed by the court of probate making such appointment and another person appointed guardian of the person if the court of probate making such appointment, after like notice to such guardian and hearing, finds

such removal and the appointment of a new guardian to be for the best interests of the child. The court of probate shall appoint a guardian ad litem to make any application hereunder, represent or appear on behalf of any parent who is less than eighteen years of age or incompetent.]

Sec. 45a-116. [P.A. 79-460, Sec. 7.] Custody of child pending application to probate court for removal of guardian or termination of parental rights; warrants.

(a) When application has been made for the removal of one or both parents as guardians or of any other guardian of the person of [such child] A MINOR, or when an application has been made for the termination of the parental rights of any parties who may have parental rights with regard to any minor child, or when, in any proceeding the court has reasonable grounds to believe that any minor child has no guardian of his OR HER person, the court of probate in which [such] THE proceeding is pending may [if it deems it necessary,] ISSUE AN ORDER AWARDING TEMPORARY CUSTODY OF THE MINOR TO A PERSON OTHER THAN THE PARENT OR GUARDIAN, WITH OR WITHOUT THE PARENT'S OR GUARDIAN'S CONSENT, ONLY IF THE PARENT OR OTHER GUARDIAN HAS PERFORMED ACTS OF OMISSION OR COMMISSION SET FORTH IN SUBDIVISION (2) OR (3) OF SECTION 10 OF THIS ACT AND THESE ACTS PLACE THE HEALTH OR WELFARE OF THE MINOR CHILD IN DANGER. THE COURT MAY ISSUE THE ORDER WITHOUT TAKING INTO CONSIDERATION THE STANDARDS SET FORTH IN SUBDIVISION (2) OR (3) OF SECTION 10 OF THIS ACT, IF THE PARENT OR OTHER GUARDIAN CONSENTS TO THE MINOR'S TEMPORARY REMOVAL.

(b) THE COURT MAY order the custody of [such child] THE MINOR to be given to ONE OF THE FOLLOWING, TAKING INTO CONSIDERATION THE STANDARDS SET FORTH IN SECTION 12 OF THIS

Reviser's comments:

Section appears as is in Public Act 79-460, section 7.

ACT: (1) [the] THE commissioner of [human resources or some proper person or to] CHILDREN AND YOUTH SERVICES; (2) the board of managers of any child-caring institution or organization [,]; or (3) any children's home or similar institution licensed or approved by the commissioner of [human resources,] CHILDREN AND YOUTH SERVICES; OR (4) ANY OTHER PERSON [pending the determination of the matter, and may enforce such order by a warrant directed to a proper officer commanding him to take possession of the child and to deliver such child into the custody of the person, board, home or institution designated by such order; and said court may, if either or both parents are removed as guardians or if any other guardian of the person is removed, or if said parental rights are terminated, enforce its decree, awarding the custody of the child to the person or persons entitled thereto, by a warrant directed to the proper officer commanding him to take possession of the child and to deliver such child into the care and custody of the person entitled thereto. Such officer shall make return to such court of his doings under either such warrant.]

(c) THE MINOR SHALL BE RETURNED TO THE PARENT'S OR GUARDIAN'S CUSTODY WITHIN THIRTY DAYS FOLLOWING THE ISSUANCE OF AN ORDER UNDER SUBSECTION (a) OF THIS SECTION, UNLESS A HEARING HAS BEEN HELD UNDER SECTION 9 OF THIS ACT. IF SUCH A HEARING IS NOT HELD WITHIN THIRTY DAYS, THE COURT SHALL HOLD A HEARING TO SHOW CAUSE WHY THE TEMPORARY CUSTODY

SHOULD CONTINUE UNTIL A DECISION IS RENDERED
BY THE COURT FOLLOWING A HEARING ON THE
MERITS HELD UNDER SECTION 9 OF THIS ACT.

(d) A COPY OF ANY ORDER ISSUED UNDER
THIS SECTION SHALL BE MAILED IMMEDIATELY TO
THE LAST KNOWN ADDRESS OF THE PARENT OR OTHER
GUARDIAN FROM WHOSE CUSTODY THE MINOR HAS
BEEN REMOVED, UNLESS THE COURT FINDS THAT IT
IS NOT IN THE BEST INTERESTS OF THE MINOR TO
DO SO.

Sec. 45a-117. [P.A. 79-460, Sec. 13.]
Appointment of guardian for minor; BOND;
rights same as of sole surviving parent.

(a) [When] IF any [child under the age of fourteen years] MINOR has no parent or guardian of his OR HER person, the court of probate for the district in which [such child] THE MINOR resides may, on its own motion, appoint a guardian of the person of [such child] THE MINOR, TAKING INTO CONSIDERATION THE STANDARDS PROVIDED IN SECTION 12 OF THIS ACT. [Such court, in appointing a guardian of the person of any minor, shall take of such guardian a bond, except when such guardian is the commissioner of social services or, after April 1, 1975, the commissioner of children and youth services, but such bond may be without surety. Such guardian shall have the same right to the custody and control of the child which the sole surviving parent of a child has.]

(b) WHEN APPOINTING A GUARDIAN UNDER THIS SECTION, THE COURT SHALL TAKE INTO CONSIDERATION THE MINOR'S WISHES, IF HE OR SHE IS OVER THE AGE OF FOURTEEN.

(c) THE GUARDIAN SHALL HAVE THE SAME RIGHT TO CUSTODY AND CONTROL WHICH THE SOLE SURVIVING PARENT OF A MINOR HAS.

Reviser's comments:

Section appears as is in Public Act 79-460, section 13.

CHAPTER IV
PART III
GUARDIANS OF THE ESTATE

Sec. 45a-118. [Sec. 45-47.] Appointment of guardian for minor's estate.

(a) When a minor is entitled to [estate] PROPERTY, the court of probate for the district in which [such] THE minor resides may assign a time and place for a hearing on the appointment of a guardian of the estate of [such] THE minor. [, and] THE COURT shall cause the same notice [thereof] OF HEARING to be given to the parents or guardian of the person of [such] THE minor as provided in section 45-43, ~~AS AMENDED BY SECTION 4 OF PUBLIC ACT 79-460,~~ [as to] FOR hearings on the removal of a parent, subject to waiver of notice as provided [therein] IN SUCH SECTION. THE COURT [and] shall also notify [such] THE minor to be present at the [same time and place] hearing , if he is fourteen years of age or over.

(b) If [such] THE court finds that there is no guardian of the estate of [such] THE minor, it may appoint one of the parents or the guardian of the person of [such] THE minor to be guardian of his estate. If neither parent nor [such] THE guardian of the person of [such] THE minor will accept [such] THE appointment, or if the parents or guardian of the person of [such] THE minor are not proper persons to act as guardian of his estate, [such] THE court may appoint any proper person chosen by [such] THE minor if [such] THE minor is fourteen years of age or over. [; but, if such] IF THE minor [neglects to make choice or] fails to choose a proper

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

person or is not of sufficient age, the court of probate shall appoint some proper person, who, as guardian of the estate of [such] THE minor, shall have charge of all [estate] THE MINOR'S PROPERTY [of such minor], whether acquired [thereafter] BEFORE or [theretofore] AFTER THE GUARDIAN'S APPOINTMENT, but shall have no control over his person. [; and, when] IF any minor [having] WHO HAS a guardian marries and owns or thereafter acquires property, the guardianship [as to] of such property shall continue during such person's minority.

Sec. 45a-119. [Sec. 45-48.] Bond to be filed by guardian OF MINOR'S ESTATE.

[No] AN appointment of a guardian of the estate of any minor shall NOT take effect until the person appointed has filed in the court of probate making the appointment a bond as provided in section 45-34, ~~AS AMENDED BY SECTION 66 OF THIS ACT.~~

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-120. [Sec. 45-49.] Minor's property to be received or used only by guardian of estate. Release.

(a) [No] A parent of a minor, guardian of the person of a minor or spouse of a minor shall NOT receive or use any property belonging to [such] THE minor [to] IN an amount exceeding five thousand dollars in value unless appointed guardian of the estate of [such] THE minor. [; provided any such] SUCH parent, guardian or spouse may hold property as a custodian under the provisions of chapter 781 without being so appointed.

(b) A release given by both parents or by [such] THE parent [as] WHO has legal custody of a minor or by [such] THE guardian or spouse shall, [where] IF the amount does not exceed five thousand dollars in value, be valid and binding upon [such] THE minor.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-121. [Sec. 45-50.] [Guardian of] APPOINTMENT OF GUARDIAN OF ESTATE OF nonresident minor.

When a minor [residing without] WHO RESIDES OUTSIDE this state and [having] WHO HAS no guardian within this state owns [estate] PROPERTY in this state, the court of probate for the district in which [such estate] THE PROPERTY or any part [thereof] OF IT LIES may [be may] appoint a guardian of [such] THE minor who shall have [the] charge OF and [management of such] MANAGE THE [estate] PROPERTY.

Sec. 45a-122. [Sec. 45-52.] Lease of minor's real estate BY GUARDIAN OF ESTATE.

The guardian OF THE ESTATE of any minor may [lease real estate of his ward upon such terms and for such length of time, not extending beyond the minority of the ward, as] APPLY TO the court of probate of the district in this state [by] which [such guardian was] appointed HIM, AND MAY, upon application, [and] hearing [, after] AND public notice, [approves] LEASE HIS WARD'S REAL PROPERTY UPON TERMS AND FOR A LENGTH OF TIME, NOT EXCEEDING THE WARD'S MINORITY, WHICH ARE APPROVED BY THE COURT.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-123. [Sec. 45-53.] Inventory of ward's property BY GUARDIAN OF ESTATE.

(a) Each guardian OF AN ESTATE appointed by a court of probate shall return to the court appointing or approving him, within two months after the acceptance by [such] THE guardian of [such] THE trust, an inventory under oath of all the property belonging to his ward, if any.

(b) Any guardian who fails to return [such] THE inventory to [such] THE court within [said] THAT time shall be fined not more than twenty dollars.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-124. [Sec.45-55.] Removal [by foreign guardian] of ward's personal property BY FOREIGN GUARDIAN OF ESTATE.

(a) When any personal property in this state belongs to any person residing out of this state who has a guardian, trustee or other legal custodian of his estate, appointed under the laws of the place of his residence, [such] THE custodian may apply in writing to the court of probate of the district in which the principal part of [such] THE estate in this state is LOCATED, alleging : (1) that he has been legally appointed [such] custodian in the jurisdiction in which the person to whom [such estate] THE PROPERTY belongs resides [,] ; AND (2) that he has given bond and security [therein] in an amount double the value of all the estate of [such] THE person ; and (3) that a removal of [such estate] THE PROPERTY from this state will not conflict with the terms and limitations by which [such] THE person owns it.

(b) If [such] THE PROBATE court finds [such] THE allegations true and the applicant files in [such] THE PROBATE court for record an exemplified copy of the record of the court by which he was appointed, [such] THE PROBATE court may, after a hearing upon [such] THE application, upon such notice as it orders to the person having [such estate] THE PROPERTY in his custody and to the owner [thereof] OF THE PROPERTY, and after proof that all known debts chargeable against it and contracted in this state have been paid or satisfied, appoint [such] THE applicant to be guardian, conservator or trustee of such estate without further bond [and] . THE PROBATE COURT MAY authorize the person having [such estate] THE

For clarification and simplification of language.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

PROPERTY in his custody to deliver it to [such] THE applicant, who may demand, sue for and recover it and remove it from this state.

Sec. 45a-125. [Sec. 45-56.] Removal [by foreign guardian] of proceeds of sale of ward's real estate BY FOREIGN GUARDIAN OF ESTATE.

[When] IF any foreign guardian OF THE ESTATE of a minor WHO IS also residing [without] OUTSIDE this state has obtained an order FROM ANY COURT OF PROBATE IN THIS STATE HAVING JURISDICTION to sell real [estate] PROPERTY of [such] THE minor WHICH IS situated in this state [from any court of probate in this state having jurisdiction] and has given bond as provided by law, the court of probate [granting such order] may, upon [like] application and [like] proceedings [had] as specified in section 45-55, ~~AS AMENDED BY SECTION 111 OF THIS ACT,~~ authorize [such] THE foreign guardian to receive the proceeds of the sale of [such] THE real [estate] PROPERTY sold under order and to remove the [same out of] PROCEEDS FROM this state into the jurisdiction in which [such] THE guardian and his ward reside. [, and such] THE guardian and his surety shall thereupon be discharged from all liability on [such] THE bond.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-126. [Sec. 45-57.] Guardians OF ESTATE of minors may make partition.

[When] IF any minor [is interested] HAS AN INTEREST in any real [estate] PROPERTY as A tenant in common with any other person, the guardian OF THE ESTATE of [such] THE minor may, by an instrument in writing executed as deeds of land are executed, make partition of [such] THE real [estate] PROPERTY with the other parties in interest [, but no such] . SUCH deed of partition shall NOT be valid until the approval of the court of probate having jurisdiction of the estate of [such] THE minor is endorsed [thereon; and such] ON IT. THE deed of partition and the approval of the court of probate shall be recorded in the land records of the town or towns where the land is situated.

Sec. 45a-127. [Formerly part of Sec. 45-257.] COURT MAY ORDER GUARDIAN TO CONVEY PROPERTY.

The court of probate in which the guardian of any minor has been appointed may, concurrently with courts of equity, order such guardian to convey the interest of his ward in any real property which ought in equity to be conveyed to another person.

For clarification and simplification of language.

Reviser's comments:

Minor language changes made to material taken from section 45-257. Placement of transferred material here makes it easier to locate and completes the statutory scheme on powers of guardians.

CHAPTER IV

PART IV

GUARDIANS OF MENTALLY RETARDED PERSONS

Sec. 45a-128. [Sec. 45-78a.] "Mentally retarded person," defined.

For clarification and simplification of language.

As used in this [chapter]PART, a mentally retarded person is a person certified as incapable to manage himself or his affairs, or both, by reason of mental retardation, permanent in nature, by at least two licensed physicians or one [such] LICENSED physician and one certified psychologist, having qualifications to make [such] THE certification.

Sec. 45a-129. [Sec. 45-78b.] Application for appointment of guardian.

For clarification and simplification of language.

When it appears to the satisfaction of [the] A court of probate [for the district in which he resides] that a person WHO RESIDES IN SUCH DISTRICT is a mentally retarded person, who requires in his best interests the appointment of a guardian of his person or of his property or of both, [such] THE court may [, upon application of both natural or adoptive parents of such person, if living, or upon application of one such parent and the consent of the other, if living, or upon application of any other interested person and the consent of both parents or the surviving parent, if only one such parent is living, appoint such guardian] APPOINT A GUARDIAN, UPON APPLICATION OF THE FOLLOWING: (1) BOTH NATURAL OR ADOPTIVE PARENTS, IF LIVING; OR (2) ONE PARENT, WITH THE CONSENT OF THE OTHER, IF LIVING; OR (3) ANY OTHER INTERESTED PERSON, WITH THE CONSENT OF BOTH PARENTS OR THE SURVIVING PARENT, IF ONLY ONE PARENT IS LIVING.

Sec. 45a-130. [Sec. 45-78d.] Hearings on appointment and discharge of guardian; termination of guardianship.

(a) [Such guardianship] GUARDIANSHIP OF A MENTALLY RETARDED PERSON shall not terminate upon [his] THE attainment of the age of majority or upon [his] THE marriage OF THE MENTALLY RETARDED PERSON but shall continue during [the] HIS life [of such mentally retarded person], or until terminated by the court, except that the prior appointment of a guardian of his person shall terminate upon subsequent marriage.

(b) A person of the age of eighteen years or over for whom such a guardian has been previously appointed, or anyone on his behalf, may petition the court which made [such] THE appointment to have the guardian discharged and a successor appointed, or to have the guardian of his property designated as a limited guardian.

(c) Upon such a petition for review or upon a petition for appointment of a guardian for a mentally retarded person over the age of eighteen, the court shall conduct a hearing at which the retarded person shall be present.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-131. [Sec. 45-78c.] Appointment of limited guardian.

[When] IF it appears to the satisfaction of [such] THE court that any [such] mentally retarded person for whom an application for guardianship is made is over the age of eighteen years and is wholly or substantially self-supporting by means of his wages or earnings from employment, [such] THE court may appoint a limited guardian of the property of [such] THE mentally retarded person. [, which] THE guardian shall receive, manage, disburse and account for only [such] property [of such mentally retarded person as shall be] WHICH IS received from sources other than the wages or earnings of [such] THE mentally retarded person.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-132. [Sec. 45-78e.] Alternate and standby guardian.

(a) Upon the application or consent of both parents, natural or adoptive, if living, or of the surviving parent, a standby guardian of the person or property, or both, of a mentally retarded person may be appointed by the court of probate. (b) [Such] THE court may also, upon application or consent of [such] THE parents or surviving parent, appoint an alternate to [such] THE guardian, to act if [such] THE guardian dies, becomes incapacitated or renounces his guardianship after the death of the last surviving parent of [such] THE retarded person. [(b)] (c) [Such] THE standby guardian or alternate, in the event of [such] THE guardian's death, incapacity or renunciation, shall, without further proceedings, be empowered to assume the duties of his office immediately upon THE death or adjudication of incompetency of the last surviving of the natural or adoptive parents of [such] THE mentally retarded person, subject only to confirmation of his appointment by the court of probate within sixty days following assumption of his duties of [such] THE office. (d) If the mentally retarded person is over the age of eighteen, the court, before confirming the appointment of the standby guardian, shall conduct a hearing at which [such] THE mentally retarded person shall be present. (e) After the appointment of a standby guardian, the court shall have and retain jurisdiction over the mentally retarded person for whom [such] THE guardian has been appointed to take such steps relating to [such] THE standby guardianship as may be deemed necessary or proper for the welfare of [such] THE retarded person.

For clarification and simplification of language.

Section further subdivided to improve readability.

Sec. 45a-133. [Sec. 45-78f.] Corporate guardians.

[No] A corporation may NOT be appointed guardian of the person under the provisions of this chapter except that a nonprofit corporation, organized and existing under the laws of this state and having the corporate power to act as guardian of mentally retarded persons, may be appointed as the guardian of the person only of such mentally retarded person.

Sec. 45a-134. [Sec. 45-78g.] Conduct of proceedings.

[Except where contrary to the provisions of this chapter, the] THE provisions of chapter 779 [,] shall apply to all proceedings under this chapter and to the proceedings and activities of any fiduciary appointed hereunder, EXCEPT WHERE CONTRARY TO THE PROVISIONS OF THIS PART.

Reviser's comments:

Minor language changes for clarification and simplification.

Reviser's comments:

Minor language changes for clarification and simplification.

CHAPTER IV

Part v

CONSERVATORS

Sec. 45a-135. [Sec. 45-70a.] Definitions.

For the purposes of this [chapter]PART, the following terms shall have the following meanings:

[(a) "Conservator of the person" means a person, legally authorized state official or a private nonprofit corporation, except a hospital or nursing home as defined in section 19-602, appointed by the probate court under the provisions of this chapter to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the court of probate for the appointment of a conservator of the person.

(b)] (a) "Conservator of the estate" means a [person, a legally authorized state official, or a] private profit or nonprofit corporation except a hospital or nursing home as defined in section 19-602, ~~AS AMENDED BY SECTIONS 1 AND 3 OF PUBLIC ACT 79-467,~~ LEGALLY AUTHORIZED STATE OFFICIAL, OR OTHER PERSON, appointed by the court of probate under the provisions of this [chapter]PART to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the court of probate for the appointment of a conservator of the estate.

[(c) "Voluntary representation" means the appointment of a conservator of the person or estate, or both, upon request of

Reviser's comments:

Minor language changes for clarification and simplification.

Subsections alphabetized to improve readability.

the respondent, without a finding that such respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.]

(b) "CONSERVATOR OF THE PERSON" MEANS A PRIVATE NONPROFIT CORPORATION, EXCEPT A HOSPITAL OR NURSING HOME AS DEFINED IN SECTION 19-602, ~~AS AMENDED BY SECTIONS 1 AND 8 OF PUBLIC ACT 79-467~~, LEGALLY AUTHORIZED STATE OFFICIAL, OR OTHER PERSON, APPOINTED BY THE PROBATE COURT UNDER THE PROVISIONS OF THIS CHAPTER TO SUPERVISE THE PERSONAL AFFAIRS OF A PERSON FOUND TO BE INCAPABLE OF CARING FOR HIMSELF OR HERSELF OR OF A PERSON WHO VOLUNTARILY ASKS THE COURT OF PROBATE FOR THE APPOINTMENT OF A CONSERVATOR OF THE PERSON.

(c) "INCAPABLE OF CARING FOR ONE'S SELF" MEANS A MENTAL, EMOTIONAL OR PHYSICAL CONDITION RESULTING FROM MENTAL ILLNESS, MENTAL DEFICIENCY, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS OR ALCOHOL, OR CONFINEMENT WHICH RESULTS IN THE PERSON'S INABILITY TO PROVIDE MEDICAL CARE FOR PHYSICAL AND MENTAL HEALTH NEEDS, NUTRITIOUS MEALS, CLOTHING, SAFE AND ADEQUATELY HEATED AND VENTILATED SHELTER, PERSONAL HYGIENE AND PROTECTION FROM PHYSICAL ABUSE OR HARM AND WHICH RESULTS IN ENDANGERMENT TO SUCH PERSON'S HEALTH.

(d) "INCAPABLE OF MANAGING HIS OR HER AFFAIRS" MEANS THAT A PERSON HAS A MENTAL, EMOTIONAL OR PHYSICAL CONDITION RESULTING

FROM MENTAL ILLNESS, MENTAL DEFICIENCY, PHYSICAL ILLNESS OR DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS OR ALCOHOL, OR CONFINEMENT, WHICH PREVENTS THAT PERSON FROM PERFORMING THE FUNCTIONS INHERENT IN MANAGING HIS OR HER AFFAIRS, AND THE PERSON HAS PROPERTY WHICH WILL BE WASTED OR DISSIPATED UNLESS PROPER MANAGEMENT IS PROVIDED, OR THAT FUNDS ARE NEEDED FOR THE SUPPORT, CARE OR WELFARE OF THE PERSON OR THOSE ENTITLED TO BE SUPPORTED BY THAT PERSON AND THAT THE PERSON IS UNABLE TO TAKE THE NECESSARY STEPS TO OBTAIN OR PROVIDE FUNDS WHICH ARE NEEDED FOR THE SUPPORT, CARE OR WELFARE OF THE PERSON OR THOSE ENTITLED TO BE SUPPORTED BY SUCH PERSON.

[(d)] (e) "Involuntary representation" means the appointment of a conservator of the person or the estate, or both, after a finding by the court of probate that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

[(e)] (f) "Respondent" means an adult person for whom an application for involuntary representation has been filed, or an adult person who has requested voluntary representation.

(g) "VOLUNTARY REPRESENTATION" MEANS THE APPOINTMENT OF A CONSERVATOR OF THE PERSON OR ESTATE, OR BOTH, UPON REQUEST OF THE RESPONDENT, WITHOUT A FINDING THAT THE RESPONDENT IS INCAPABLE OF MANAGING HIS OR

HER AFFAIRS OR INCAPABLE OF CARING FOR
HIMSELF OR HERSELF.

[(f)] (h) "Ward" means a person for whom
involuntary representation is granted under
this chapter.

[(g) "Incapable of managing his or her
affairs" means a mental, emotional or
physical condition resulting from mental
illness, mental deficiency, physical illness
or disability, advanced age, chronic use of
drugs or alcohol or confinement, which
prevents such person from performing the
functions inherent in managing his or her
affairs, and the person has property which
will be wasted or dissipated unless proper
management is provided or that funds are
needed for the support, care or welfare of
the person or those entitled to be supported
by such person and that the person is unable
to take the necessary steps to obtain or
provide such funds.

(h) "Incapable of caring for one's self"
means a mental, emotional or physical
condition resulting from mental illness,
mental deficiency, physical illness or
disability, advanced age, chronic use of
drugs or alcohol, or confinement which
results in the person's inability to provide
medical care for physical and mental health
needs, nutritious meals, clothing, safe and
adequately heated and ventilated shelter,
personal hygiene and protection from physical

abuse or harm and which results in
endangerment to such person's health.]

Sec. 45a-136. [Sec. 45-70.] Naming of own conservator for future incapacity.

For clarification and simplification of language.

(a) Any person who has attained at least eighteen years of age, and who is of sound mind, may designate in writing a person or persons whom he desires to be appointed as conservator of his person or estate or both, if he is thereafter found to be incapable of managing his affairs.

(b) [Such] THE designation shall be executed, witnessed and revoked in the same manner as provided for wills in sections 45-161 and 45-162 ; provided, any person who is so designated as a conservator shall not qualify as a witness.

(c) Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of section 45-70d, if appointed thereafter as a conservator.

Sec. 45a-137. [Sec. 45-70e.] Application for voluntary representation.

Any person may [make application] APPLY to the court of probate in the district in which he resides or has his domicile for voluntary representation either for the appointment of a conservator of the person or a conservator of the estate, or both. If [such] THE application excuses bond, no bond shall be required by the court unless later requested by the respondent or unless [such] facts are brought to the attention of the court that a bond is necessary for the protection of the respondent. Upon receipt of [such] THE application, the court shall set a time and place for hearing and shall give such notice as it may direct to the petitioner, [to] the [spouse of the petitioner] PETITIONER'S SPOUSE, if any, [to] the commissioner of [administration] ADMINISTRATIVE services, if the respondent is receiving aid or care from the state, [or] AND to other interested parties, if any. After seeing the respondent in person and hearing his or her reasons [therefor] FOR THE APPLICATION, the court may grant voluntary representation and thereupon shall appoint a conservator of the person or estate or both, and shall not make a finding that the petitioner is incapable. [Such] THE conservator of the person or estate or both, shall have all the powers and duties set forth in this chapter.

Reviser's comments:

Minor language changes for clarification and simplification.

"Administration" changed to "administrative" to correct drafting error.

This section was amended by section 4 of Public Act 79-358.

Sec. 45a-138. [Sec. 45-70f.] Release from
voluntary representation.

Any person who is under voluntary
representation as provided by section 45-70e
shall be released from [such] VOLUNTARY
representation upon giving thirty days'
written notice to the court of probate.

For clarification and simplification
of language.

Sec. 45a-139. [Sec. 45-70b.] Application for involuntary representation.

(a) An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and stating the reasons for [such] THE alleged incapability. [Such] THE application shall be filed in the court of probate in the district in which the respondent resides or has his domicile.

(b) Any person who wilfully files a fraudulent or malicious application for involuntary representation or any person who conspires with another person to file or cause to be filed such an application or any person who wilfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in this [chapter] PART shall be fined not more than one thousand dollars or imprisoned not more than one year or both.

For clarification and simplification of language.

Section subdivided to improve readability.

Sec. 45a-140. [Sec. 45-70c.] Notice of hearing.

(a) Upon [such] AN application for involuntary representation, [such] THE court shall issue a citation to the following enumerated parties to appear before it at a time and place named [therein] IN THE CITATION, which shall be served on [said] THE parties at least seven days before [such] THE hearing date. Notice of [such] THE hearing shall be sent within thirty days after receipt of [such] THE application. (1) The court shall direct that personal service be made, by a sheriff or his deputy, constable or an indifferent person, upon the following: (A) The respondent and if the respondent is in a hospital, nursing home or some other institution, in addition to the respondent, upon the person in charge of [such] THE hospital, nursing home or [such] other institution. (B) The RESPONDENT'S spouse [of the respondent], if any, if the spouse is not the applicant. (2) The court shall order such notice as it directs to the following: (A) The applicant; (B) the person in charge of welfare in the town where the respondent is domiciled or resident and if THERE IS no such person, the first selectman or chief executive officer of [such] THE town if the respondent is receiving assistance from [such] THE town; (C) the commissioner of human resources, if the respondent is in a state operated institution or receiving aid, care or assistance from the state; (D) by registered or certified mail, [to] the

Reviser's comments:

Minor language changes for clarification and simplification.

Subsection (a) was amended by section 3 of Public Act 79-358.

Subsection (b) was amended by section 1 of Public Act 79-501.

administrator of veterans affairs [when] IF the respondent is receiving veterans' benefits or to the veterans home and hospital, or both, if the respondent is receiving aid or care from such hospital, or both; (E) the commissioner of administrative services, if the respondent is receiving aid or care from the state; (F) THE children of the respondent and if none, THE parents of the respondent and if none, THE brothers and sisters of the respondent or their representatives. (3) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent.

(b) (1) The notice required by subdivision (1) of subsection (a) of this section shall specify (A) the nature of involuntary representation sought and the legal consequences thereof, (B) the facts alleged in the application, (C) the time and place of the hearing. (2) [Such] THE notice shall further state that the respondent has a right to be present at the hearing and has a right to be represented by an attorney at his or her own expense. If the respondent is unable to request or obtain counsel for any reason, the court shall appoint an attorney to represent the respondent at any hearing held under this chapter. If the respondent is unable to pay for the services of such attorney, the cost shall be paid from funds appropriated to the judicial department for such purpose. If the respondent notifies the court in any manner that he or she wants to

attend the hearing on [said] THE application but is unable to do so because of physical incapacity, the court shall schedule the hearing on [said] THE application at a place which would facilitate attendance by the respondent but if not practical, then the judge shall visit the respondent, if HE OR SHE IS in the state of Connecticut [prior to], BEFORE the hearing. Notice to all other persons required by this section shall state only the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.

Sec. 45a-141. [Sec. 45-70d.] Hearing.

(a) At any hearing for involuntary representation, the court shall receive evidence [as to] REGARDING the condition of the respondent, including a written report or testimony by one or more physicians licensed to practice medicine in the state who have examined the respondent within thirty days preceding the hearing. [Such] THE report or testimony shall contain specific information regarding the disability and the extent of its incapacitating effect. The court may waive the requirement that medical evidence be presented if it is shown that [such] THE evidence is impossible to obtain because of the absence of the respondent or his or her refusal to be examined by a physician or that the alleged incapacity is not medical in nature. [, in which case] IF THIS REQUIREMENT IS WAIVED, the court shall make a specific finding in any decree issued on the petition [as to] STATING why medical evidence was not required.

(b) Notwithstanding the provisions of section 45-3, the court may hold the hearing on [said] THE application at a place within the state other than its usual courtroom if it would facilitate [the presence of] ATTENDANCE BY the respondent.

(c) If the court finds by clear and convincing evidence that the respondent is incapable of managing his or her affairs then the court shall appoint a conservator of

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

[such person's] HIS OR HER estate. If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself, then the court shall appoint a conservator of [the] HIS OR HER person [of the respondent].

(d) [In] WHEN selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. The respondent may, by oral or written request, if at the time of [such] THE request he or she has sufficient capacity to form an intelligent preference, nominate a conservator who shall be appointed unless the court finds the appointment of [such] THE nominee is not in the best interests of the respondent. [, in which] IN SUCH case, or in the absence of any such nomination, the court may appoint any qualified person, authorized public official or corporation in accordance with subsections (a) and (b) of section 45-70a, ~~AS AMENDED BY SECTION 123 OF THIS ACT.~~

(e) Upon the request of the respondent [,] or his or her counsel, made within thirty days of the date of the decree, the court shall make and furnish findings of fact to support its conclusion.

(f) If the court appoints a conservator of the estate of [such] THE respondent, it shall require a bond of [such] THE conservator in [such] AN amount [as] WHICH it deems necessary to protect the estate of the respondent. The court may, if it deems it

necessary for the protection of the
respondent, require a bond of any conservator
of the person appointed hereunder.

Sec. 45a-142. [Sec. 45-72.] Appointment of temporary conservator.

(a) Upon written application by the husband, wife or any relative, or by the first selectman, the chief executive officer or the head of the department of welfare of the town of residence or domicile, of any respondent, or by the commissioner of children and youth services, or by the board of directors of any charitable organization, as defined in section 19-3231, or the chief administrative officer [or his designee] of any nonprofit hospital OR HIS DESIGNEE, the court of probate may, if it finds [such] THE respondent to be incapable of managing his or her affairs or incapable of caring for himself or herself, appoint a temporary conservator. [, who] THE TEMPORARY CONSERVATOR shall have charge of the [estate and] PROPERTY OR of [such] THE person OF THE RESPONDENT or [of the estate or of such person] BOTH for such period of time or for such specific occasion as the court finds to be necessary, provided [no such] A temporary appointment shall NOT be valid for more than thirty days.

(b) [No such] AN appointment shall NOT be made unless: (1) [there] THERE is presented to the judge a certificate, signed by two physicians licensed to practice medicine or surgery in this state, stating that they have examined [such] THE person and that it is their opinion that his condition [is such as to render] RENDERS him incapable

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

This section was amended by sections 83 and 111 of Public Act 79-631.

[,] ; and [further, unless] (2) the court finds that irreparable injury to the mental or physical health or financial or legal affairs of the respondent will result if [no] A conservator is NOT appointed forthwith.

(c) The court may, if it deems it to be in the best [interest] INTERESTS of the respondent, hold a hearing on any application for temporary conservator under this section, in which case the provisions of section 45-70c, ~~AS AMENDED BY SECTION 3 OF PUBLIC ACT 79-358 AND SECTION 128 OF THIS ACT~~, shall apply, except that the seven-day notice requirement set forth in [said] section 45-70c, ~~AS AMENDED BY SECTION 3 OF PUBLIC ACT 79-358 SECTION 128 OF THIS ACT~~, shall be waived. [Such] THE certificate shall state the date of examination, which shall not be more than three days [prior to] BEFORE the date of signature. The judge may, in his discretion, require a temporary conservator to give a bond, conditioned upon the faithful performance of his duties, in an amount to be determined by the judge.

Sec. 45a-143. [Sec. 45-75.] Duties of conservator of the estate.

(a) The conservator of the estate shall, within two months after the date of his or her appointment, return an inventory under oath of the estate of his or her ward. [, and] THE CONSERVATOR shall manage all [such estate] THE PROPERTY and apply so much of the net income [thereof as may be required] OF THE PROPERTY, and, if necessary, any part of the principal of the [estate] PROPERTY, WHICH IS REQUIRED to support [such] THE ward and those members of [such] THE ward's family whom he has the legal duty to support and to pay his debts, and may sue for and collect all debts due him.

(b) Any conservator of the estate of a married person may apply such portion of the [estate] PROPERTY of [such] THE ward to the support, maintenance and medical treatment of the WARD'S spouse [of such ward as] WHICH the court of probate, upon hearing after notice, decides to be proper under the circumstances of the case.

(c) Notwithstanding the provisions of section 45-268, ~~AS AMENDED BY SECTION 88 OF THIS ACT,~~ the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under section 45-70c, AS

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

~~AMENDED BY SECTION 3 of public act 79-358 AND
SECTION 128 OF THIS ACT.~~

Sec. 45a-144. [Sec. 45-75a.] Duties, RESPONSIBILITIES AND POWERS of conservator of the person.

(a) The conservator of the person shall have THE FOLLOWING DUTIES, RESPONSIBILITIES AND POWERS: (1) [the] THE duty and responsibility for the general custody of the respondent [,] ; (2) the power to establish his or her place of abode within the state [,] ; (3) the power to give consent for his or her medical or other professional care, counsel, treatment or service [and] ; (4) the duty to provide for the care, comfort and maintenance of the ward [,] ; (5) THE DUTY to take reasonable care of the respondent's personal effects ; and (6) THE DUTY to report AT LEAST ANNUALLY to the probate court [who] WHICH appointed [such] THE conservator [at least annually] REGARDING the condition of the respondent [, all] . THE PRECEDING DUTIES, RESPONSIBILITIES AND POWERS SHALL BE CARRIED OUT within the limitations of the resources available to the ward, either through his own estate or [by reason of] THROUGH private or public assistance.

(b) The conservator of the person shall not have the power or authority to cause the respondent to be committed to any institution for the treatment of the mentally ill except under provisions of chapters 304c, 306 and 359.

For clarification and simplification of language.

Section subdivided to improve readability.

Catch-line changed to more accurately reflect content of section.

Sec. 45a-145. [Sec. 45-75b.] Court to resolve conflicts between conservators.

If a person has both a conservator of the person and a conservator of the estate who are not [one and] the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the court of probate [making the appointment of such] WHICH APPOINTED THE conservators [which] . UPON HEARING, THE COURT shall [, after hearing held,] order the course of action which in the court's discretion is in the best [interest] INTERESTS of the person under conservatorship.

For clarification and simplification of language.

Sec. 45a-146. [Sec. 45-74.] Appointment or removal of conservator to be recorded on land records.

(a) The court appointing a conservator [over] OF the property or person of any person who has been adjudged incapable and who owns real [estate] PROPERTY in this state or any interest [therein] IN SUCH PROPERTY or mortgage or lien [thereon] ON SUCH PROPERTY shall forthwith order [such] THE conservator to immediately record, in the land records of each town where [such] THE real [estate] PROPERTY is situated, a certificate setting forth the name and residence of [such] THE person, the name of the conservator, the date of his appointment and the court by which [such] THE appointment was made. [; and, upon] UPON the resignation or removal of [any such] THE conservator, unless another [such] conservator is immediately appointed by the same court to succeed him, [such] THE court shall forthwith order [such] THE conservator to record in the land records of each town where [such] THE real [estate] PROPERTY is situated a certificate setting forth the name and residence of [such] THE person and of [such] THE conservator, [and] the date of [such] resignation or removal and the court in which [such] THE proceedings [were had] TOOK PLACE.

(b) [Such] THE conservator shall record [such] THE notice pursuant to [such] THE order and, upon failure to do so within two months after [such] THE appointment,

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

resignation or removal, shall be fined not more than fifty dollars.

(c) The record in [such] THE court of the appointment, resignation or removal of [such] THE conservator shall not be constructive notice of the incompetency or competency of the owner of [such] THE real [estate] PROPERTY or OF AN interest [therein] IN REAL PROPERTY or OF A mortgage or lien [thereon] ON SUCH PROPERTY to make valid contracts relative [thereto] TO SUCH PROPERTY, until [such] THE certificate [of the same] is recorded as [aforesaid] PROVIDED IN SUBSECTION (a) OF THIS SECTION.

Sec. 45a-147. [Sec. 45-73.] Contracts and funds of alleged incapable person pending application for appointment of conservator.

(a) [Whenever] IF an application for the appointment of a conservator has been made, [if during the pendency of such] AND IF, WHILE THE application IS PENDING, the applicant records [,] AN ATTESTED COPY OF THE APPLICATION AND OF THE CITATION ON IT with the town clerk of any town within which real [estate] PROPERTY of the alleged incapable person is situated and with the town clerk of the town in which he resides [, an attested copy of such application and of the citation thereon, no] ANY conveyance of real [estate] PROPERTY in such town and [no] ANY contract made by such person between the time the [same] APPLICATION is recorded and the time of the adjudication of the court upon [such] THE application, shall NOT be valid without the approval of [such] THE court.

(b) If, during the pendency of [such] THE application, the applicant lodges with any bank, trust company or other depository an attested copy of [such] THE application and of the citation [thereon] ON IT, [no] such bank, trust company or depository shall NOT allow any funds of the alleged incapable person to be withdrawn, between the time [such] THE application is lodged and the time of the adjudication of the court [thereon] ON IT, without the approval of [such] THE court.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-148. [Sec. 45-76.] Conservator of nonresident's property.

(a) [When] IF any person residing out of and owning property in this state is incapable of managing his affairs, the court of probate for the district in which [such] THE property or some part of it is situated shall, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of [such] THE incapable person in the state where he resides, appoint a conservator of the property in this state of [such] THE incapable person. [, who]

(b) THE CONSERVATOR OF THE PROPERTY IN THIS STATE shall give a probate bond, and [such] THE PROBATE court may, when it finds it [for] IN the interest of [such] THE incapable person that [such estate] THE PROPERTY be sold, order its sale upon the written application of the conservator and empower him to sell and convey it. [; but not such] AN appointment or order of sale shall NOT be made except after a hearing of which public notice has been given.

(c) The proceeds of the sale of [such property] both real and personal PROPERTY may be transferred to the conservator, committee or guardian having charge of the person and estate of [such] THE incapable person in the state where he resides, [upon such] FOLLOWING THE application and proceedings [had as] WHICH are required by section 45-55, ~~AS AMENDED BY SECTION 112 OF THIS ACT.~~

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-149. [Sec. 45-77.] Termination of conservatorship.

[When a ward is found by] IF the court of probate having jurisdiction [, upon hearing after such notice as the court prescribes,] FINDS A WARD to be capable of caring for himself or herself, [such] THE court shall, UPON HEARING AND AFTER NOTICE, order that the conservatorship of the person be terminated. [, and when such] IF THE court finds upon hearing [,] and after [such] notice [as] WHICH the court prescribes, that a ward is capable of managing his or her own affairs, [such] THE court shall order that the conservatorship of the estate be terminated and that the remaining portion of his or her [estate] PROPERTY be restored to [such] THE ward. [, and whenever] IF any ward having a conservator dies, his or her property other than [such as] PROPERTY WHICH has accrued from the sale of his or her real [estate] PROPERTY shall be delivered to his or her executor or administrator. [, and the] THE unexpended [avails] PROCEEDS of his or her real [estate] PROPERTY sold as aforesaid shall go into the hands of [such] THE executor or administrator, to be distributed as such real [estate] PROPERTY would have been. [, and in] IN either case the conservator shall file in the court his or her final account, and the court shall audit [such] THE account and allow the [same] ACCOUNT if it is found TO BE correct. [In any case in which] IF the ward is living, [such] THE ward and his or her attorney, if any, shall be entitled to notice by regular mail of any hearing held on [such] THE final account.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-150. [Sec. 45-77a.] Transfer of records upon removal of person under representation.

When any person under voluntary or involuntary representation becomes a settled inhabitant of any town in the state in a probate district other than [in] the one in which a conservator was appointed, and is an actual resident [therein] IN SUCH DISTRICT, the court of probate in which [such] THE conservator was appointed shall, upon motion of the conservator, the first selectman or the chief executive officer of the town in which the person under conservatorship resides or of the husband or wife or a relative of [such] THE person under conservatorship, transfer the file to the probate district in which the person under conservatorship resides at the time of the application. A transfer of [such] THE file shall be accomplished by the probate court in which the conservator was originally appointed BY making copies of all recorded documents in [said] THE court and certifying each of them and then causing them to be delivered to the court for the district in which the person under conservatorship resides. [Upon such] WHEN THE transfer IS MADE, the court of probate in which the person under conservatorship resides at the time of transfer shall thereupon assume jurisdiction over the conservatorship and all further accounts shall be filed with such court.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-151. [Formerly part of Sec. 45-257.]
COURT MAY ORDER CONSERVATOR TO CONVEY
PROPERTY.

The court of probate in which the conservator of any incapable person has been appointed may, concurrently with courts of equity, order such conservator to convey the interest of his ward in any real property which ought in equity to be conveyed to another person.

Reviser's comments:

Minor language changes made to material taken from section 45-257. Placement of transferred material here makes it easier to locate and completes the statutory scheme on powers of conservators.

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THE LAW REVISION COMMISSION'S
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VOLUME II

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OF TITLE 45

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PROBATE COURTS AND PROCEDURE

VOLUME II

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CHAPTER V

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CHAPTER V

PART I

TERMINATION OF PARENTAL RIGHTS
AND ADOPTION GENERALLY

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Sec. 45a-152. [Sec. 45-61a.] Rule of construction.

The provisions of sections 17-32b, ~~AS AMENDED BY SECTIONS 52 AND 111 OF PUBLIC ACT 79-631, 17-43a, 17-49, 45-43, AS AMENDED BY SECTION 3 OF PUBLIC ACT 79-460,~~ 45-61a to 45-67, inclusive, ~~AS AMENDED BY SECTIONS 140 TO 154, INCLUSIVE, AND SECTION 156 OF THIS ACT,~~ and 52-231a shall be liberally construed in the best interests of any child for whom a petition has been filed under said sections.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-153. [Sec. 45-61b.] Definitions.

As used in this part and sections 17-32b, ~~AS AMENDED BY SECTIONS 52 AND 111 OF PUBLIC ACT 79-631~~, 17-43a, 17-43b, 17-49, 45-43, ~~AS AMENDED BY SECTION 3 OF PUBLIC ACT 79-460~~, 45-44, ~~AS AMENDED BY SECTION 7 OF PUBLIC ACT 79-460~~, 45-289, ~~AS AMENDED BY SECTION 93 OF THIS ACT~~, and 52-231a:

[(a) "Statutory parent" means the commissioner of children and youth services or that child-placing agency appointed by the court for the purpose of giving a minor child or minor children in adoption;

(b) "Child-placing agency" means any agency within or without the state of Connecticut licensed or approved by the commissioner of children and youth services in accordance with sections 17-49a and 17-50, and in accordance with such standards which shall be established by regulations of the department of social services by October 1, 1974;

(c) "Child care agency" means any agency licensed or approved in accordance with the provisions of sections 17-48 and 17-50, and in accordance with such standards which shall be established by regulations of the department of social services by October 1, 1974;

(d) "Parent" means natural or adoptive parent;

Reviser's comments:

Minor language changes for clarification and simplification.

Definitions alphabetized to facilitate use.

This section was amended by sections 76 and 111 of Public Act 79-631.

Commissioner of social services and department of social services changed to commissioner and department of children and youth services respectively in accordance with department reorganization.

"By October 1, 1974" language omitted as obsolete.

(e) "Adoption" means the establishment by court order of the legal relationship of parent and child;

(f) "Guardianship" means guardianship, unless otherwise specified, of the person of a minor and refers to the obligation of care and control, the right to custody and the duty and authority to make major decisions affecting such minor's welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment;]

(a) "ADOPTION" MEANS THE ESTABLISHMENT BY COURT ORDER OF THE LEGAL RELATIONSHIP OF PARENT AND CHILD;

(b) "CHILD CARE AGENCY" MEANS ANY AGENCY LICENSED OR APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 17-48, ~~AS AMENDED BY SECTIONS 71 AND 111 OF PUBLIC ACT 79-631,~~ AND 17-50, ~~AS AMENDED BY SECTIONS 73 AND 111 OF PUBLIC ACT 79-631,~~ AND IN ACCORDANCE WITH STANDARDS WHICH SHALL BE ESTABLISHED BY REGULATIONS OF THE COMMISSIONER OF CHILDREN AND YOUTH SERVICES;

(c) "CHILD-PLACING AGENCY" MEANS ANY AGENCY WITHIN OR WITHOUT THE STATE OF CONNECTICUT LICENSED OR APPROVED BY THE COMMISSIONER OF CHILDREN AND YOUTH SERVICES IN ACCORDANCE WITH SECTIONS 17-49a AND 17-50, ~~AS AMENDED BY SECTIONS 72, 73 AND 111 OF PUBLIC ACT 79-631,~~ AND IN ACCORDANCE WITH

STANDARDS WHICH SHALL BE ESTABLISHED BY REGULATIONS OF THE DEPARTMENT OF CHILDREN AND YOUTH SERVICES;

(d) "GUARDIANSHIP" MEANS GUARDIANSHIP, UNLESS OTHERWISE SPECIFIED, OF THE PERSON OF A MINOR AND REFERS TO THE OBLIGATION OF CARE AND CONTROL, THE RIGHT TO CUSTODY AND THE DUTY AND AUTHORITY TO MAKE MAJOR DECISIONS AFFECTING THE MINOR'S WELFARE, INCLUDING, BUT NOT LIMITED TO, CONSENT DETERMINATIONS REGARDING MARRIAGE, ENLISTMENT IN THE ARMED FORCES AND MAJOR MEDICAL, PSYCHIATRIC OR SURGICAL TREATMENT;

(e) "PARENT" MEANS A NATURAL OR ADOPTIVE PARENT;

(f) "STATUTORY PARENT" MEANS THE COMMISSIONER OF CHILDREN AND YOUTH SERVICES OR THE CHILD-PLACING AGENCY APPOINTED BY THE COURT FOR THE PURPOSE OF GIVING A MINOR CHILD OR MINOR CHILDREN IN ADOPTION;

(g) "Termination of parental rights" means the complete severance by court order of the legal relationship, with all its rights and responsibilities, between the child and his parent or parents so that the child is free for adoption except it shall not affect the right of inheritance of [such] THE child or the religious affiliation of [such] THE child.

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Sec. 45a-154. [Sec. 45-61e.] Guardian ad litem for minor or incompetent parent.

(a) When, with respect to any petition filed under section 17-43a, section 45-61c, ~~AS AMENDED BY PUBLIC ACT 79-223 AND SECTIONS 33, 77, 85 AND 111 OF PUBLIC ACT 79-631 AND SECTION 144 OF THIS ACT,~~ or section 45-61d, ~~AS AMENDED BY SECTION 1 OF PUBLIC ACT 79-592 AND SECTIONS 78 AND 111 OF PUBLIC ACT 79-631 AND SECTION 145 OF THIS ACT,~~ it appears that either parent of [such] THE child is a minor or incompetent, the court shall appoint a guardian ad litem for such parent. THE [which] guardian AD LITEM shall be an attorney-at-law authorized to practice law in Connecticut or any duly authorized officer of a child-placing agency [, which] IF THE agency is not the petitioner.

(b) [Such] THE guardian ad litem may be allowed reasonable compensation by the court appointing him which shall be assessed against the petitioner.

(c) If the court finds the petitioner is unable to pay [such] THE compensation, it shall, in the case of both a court of probate and the superior court, be paid from funds appropriated to the judicial department.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Sec. 45a-155. [Sec. 45-61k.] Validity of proceedings prior to statutory changes.

Reviser's comments:

Minor language changes for clarification and simplification.

(a) Notwithstanding any provision of sections 17-32b, ~~AS AMENDED BY SECTIONS 52 AND 111 OF PUBLIC ACT 79-631, 17-43a, 17-43b, 17-49, 45-43, AS AMENDED BY SECTION 4 OF PUBLIC ACT 79-460, 45-44, AS AMENDED BY SECTION 7 OF PUBLIC ACT 79-460, 45-61a to 45-61i, inclusive, AS AMENDED BY SECTIONS 140 TO 148, INCLUSIVE, OF THIS ACT, 45-62, AS AMENDED BY SECTION 151 OF THIS ACT, 45-63, AS AMENDED BY SECTION 150 OF THIS ACT, 45-63a, AS AMENDED BY SECTIONS 82 AND 111 OF PUBLIC ACT 79-631 AND SECTION 153 OF THIS ACT, 45-64a, AS AMENDED BY SECTION 151 OF THIS ACT, 45-67, AS AMENDED BY SECTION 154 OF THIS ACT, 45-289, AS AMENDED BY SECTION 93 OF THIS ACT,~~ and 52-231a, to the contrary, any adoption completed after October 1, 1973, in which the application and agreement of adoption were received by the court of probate [prior to] BEFORE October 1, 1973, shall be valid, provided [said] THE adoption would have been valid under the general statutes in effect on September 30, 1973.

(b) Applications for termination of parental rights, appointment of statutory parents or for adoptions or any actions taken in accordance with [such] THE applications which were received by the court of probate prior to May 10, 1974, shall be valid if they conform to the provisions of sections 17-32a, 17-32b, 17-41, 17-43a, 17-49, 45-43, 45-61a to 45-61i, inclusive, 45-62, 45-63, 45-63a,

45-64a, 45-67, 45-69b and 52-231a in effect
on May 9, 1974.

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CHAPTER V

PART II

TERMINATION OF PARENTAL RIGHTS

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Sec. 45a-156. [Sec. 45-61c.] Who may petition to terminate parental rights.

(a) Any of the [following-named] FOLLOWING persons may petition the court of probate to terminate parental rights of all persons who may have parental rights [with respect] to any minor child and may, if adoption is contemplated, petition the court for the appointment of a statutory parent or for the termination of parental rights of only one parent provided the application so states: (1) Either or both parents, including a parent who is a minor; [, or] (2) the guardian of [such] THE child; [(2)] (3) the selectmen of any town having [in] charge OF any foundling child; [(3)] (4) a duly authorized officer of any child care agency or child-placing agency or organization or any children's home or similar institution approved by the commissioner of children and youth services; [(4)] (5) a blood relative of the child, descended from a common ancestor not more than three generations removed from [such] THE child, [when] IF the parent or parents have abandoned or deserted [such] THE child; provided in any case hereunder where the minor child with respect to whom the petition is brought has attained the age of fourteen, [such] THE minor child shall join in the petition.

(b) A petition under this section shall be filed in the court of probate for the district [within] IN which the petitioner or the child resides or, in the case of a minor

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by Public Act 79-223, and sections 33, 77, 85 and 111 of Public Act 79-631.

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WHO IS under the guardianship of any child CARE AGENCY or child-placing agency, IN THE COURT OF PROBATE for the district [wherein] IN WHICH the main office or any local office of [such] THE agency is located. [Where such] IF THE petition is filed with respect to a child born out of wedlock, [such] THE petition shall state whether there is a putative father to whom notice shall be given under subdivision (2) of section 45-61d, ~~AS AMENDED BY SECTION 1 OF PUBLIC ACT 79-592, SECTIONS 78 AND 111 OF PUBLIC ACT 79-631, AND SECTION 145 OF THIS ACT.~~

(c) If any petitioner under subsection (a) is a minor or incompetent, the guardian ad litem, appointed by the court [,] in accordance with section 45-61e, ~~AS AMENDED BY SECTION 142 OF THIS ACT,~~ must approve the application in writing, [prior to] BEFORE action by the court.

(d) [Prior to] BEFORE a hearing on the merits in any case in which a petition for termination of parental rights is contested in a court of probate, [said] THE court OF PROBATE shall, on the motion of any legal party except the petitioner or may on its own motion or that of the petitioner, under rules [to be] adopted by the judges of the superior court, transfer the case to the superior court. Upon [such] transfer, the clerk of the court of probate shall transmit to the clerk of the superior court the original files and papers in the case. The superior court, upon hearing after notice as provided

in sections 45-61d, ~~AS AMENDED BY SECTION 4
OF PUBLIC ACT 79-592, SECTIONS 78 AND 111 OF
PUBLIC ACT 79-631 AND SECTION 145 OF THIS
ACT,~~ and 45-61f, ~~AS AMENDED BY SECTION 3 OF
PUBLIC ACT 79-592, SECTIONS 78 AND 111 PUBLIC
ACT 79-631, AND SECTION 146 OF THIS ACT,~~ may
grant [such] THE petition as provided in
section 45-61f, ~~AS AMENDED BY SECTION 3 OF
PUBLIC ACT 79-592, SECTIONS 79 AND 111 OF
PUBLIC ACT 79-631, AND SECTION 146 OF THIS
ACT.~~

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Sec. 45a-157. [Sec. 45-61d.] Hearing [re] ON termination of parental rights [,]; time, place, notice.

(a) Upon receipt of a petition for termination of parental rights, the court of probate or the superior court, on a case transferred to it from the court of probate in accordance with the provisions of subsection (d) of section 45-61c, ~~AS AMENDED BY SECTION 144 OF THIS ACT~~, shall set a time and place for hearing [such] THE petition. [which] THE time FOR HEARING shall be not more than thirty days after the filing of [such] THE petition. [and]

(b) THE COURT shall order notice of [such] THE hearing to be given, by registered or certified mail or otherwise, at least ten days [prior to] BEFORE the date for [such] THE hearing. [,] NOTICE SHALL BE GIVEN to the following persons as applicable: (1) The parent or parents of [such] THE minor child, including any parent [or parents] who [have] HAS been removed as guardian [or guardians] on or after October 1, 1973, under section 45-43, ~~AS AMENDED BY SECTION 4 OF PUBLIC ACT 79-468~~; (2) the father of any minor child born out of wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, or (B) he has acknowledged in writing to be the father of such child, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

This section was amended by section 1 of Public Act 79-592 and sections 78 and 111 of Public Act 79-631.

certificate, or (E) he has filed a claim for paternity as provided under section 2 of [this act] PUBLIC ACT 79-592; (3) the guardian or any other person whom the court shall deem appropriate; (4) the commissioner of children and youth services.

(c) If it appears that the location or address of any person entitled to notice is unknown, notice to [such] THE person may be given by publication in a newspaper having a circulation, IN the last-known place of residence of [such] THE person at least ten days before the time of [such] THE hearing.

Sec. 45a-158. [Sec. 45-61f.] [Conduct of] WHO MAY BE HEARD AT hearing. Investigation and report. Grounds for [appointment of guardian or statutory parent] TERMINATION OF PARENTAL RIGHTS.

(a) WHO MAY BE HEARD AT HEARING. At the hearing held on any petition for the termination of parental rights filed in the court of probate, [or] brought under section 17-43a to the superior court or [brought before] TRANSFERRED TO the superior court [on transfer to it] from the court of probate [, filed] under section 17-43a, section 45-61c, ~~AS AMENDED BY PUBLIC ACT 79-223 AND SECTIONS 33, 77, 85 AND 111 OF PUBLIC ACT 79-631 AND SECTION 144 OF THIS ACT,~~ or section 45-61d, ~~AS AMENDED BY SECTION 1 OF PUBLIC ACT 79-592, SECTIONS 79 AND 111 OF PUBLIC ACT 79-631 AND SECTION 145 OF THIS ACT,~~ any party to whom notice was given [,] shall have the right to appear and be heard with respect to the petition.

(b) PROCEDURE IF CLAIM FOR PATERNITY FILED. The court shall, if a claim for paternity has been filed in accordance with section 2 of [this act] PUBLIC ACT 79-592, continue the hearing under the provisions of this section until the claim for paternity is adjudicated, provided the court may combine the hearing on the claim for paternity with the hearing on the termination of parental rights petition.

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Minor language changes for clarification and simplification.

This section was amended by section 3 of Public Act 79-592 and section 79 and 111 of Public Act 79-631.

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(c) INVESTIGATION AND REPORT. (1) The court may, and in any contested case shall, request the commissioner of children and youth services or any child-placing agency licensed by the commissioner to make an investigation and written report to it, within ninety days from the receipt of such request [, which]. THE report shall indicate the physical, mental and emotional status of the child and shall contain such facts as may be relevant to determine whether the proposed termination of parental rights will be for the welfare of the child, including the physical, mental, social and financial condition of the natural parents, and any other factors which the commissioner or such agency finds relevant to determine whether the proposed termination will be for the welfare of the child. [In any case where]

(2) IF such a report has been requested, upon the expiration of such ninety-day period or upon receipt of the report, whichever is earlier, the court shall set a day for a hearing not more than thirty days thereafter [, and]. THE COURT shall give reasonable notice of such adjourned hearing to all parties to the first hearing, including the child, if over fourteen years of age, and to such other persons as the court shall deem appropriate. [Such] (3) THE report shall be admissible in evidence, subject to the right of any interested party to require that the person making it appear as a witness, if available, and subject himself to examination.

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(d) GROUNDS FOR TERMINATION OF PARENTAL RIGHTS. At [such] THE ADJOURNED hearing or at the initial hearing where no investigation and report has been requested, the court MAY APPROVE THE PETITION TERMINATING THE PARENTAL RIGHTS AND MAY APPOINT A GUARDIAN OF THE PERSON OF THE CHILD, OR IF THE APPLICATION REQUESTS, THE COURT MAY APPOINT A STATUTORY PARENT, upon finding that: (1) [over] OVER an extended period of time but not less than one year the child has been abandoned by the parent, provided the court may waive the requirement that one year expire [prior to] BEFORE the termination of parental rights if it finds that from the totality of the circumstances surrounding the child, such waiver is necessary to promote the best [interest] INTERESTS of the child; or (2) that the child has been denied, by reason of acts of parental commission or omission, the care, guidance or control necessary for his physical, educational, moral or emotional well-being whether such denial is the result of the physical or mental incapability of the parent or conditions attributable to parental habits, misconduct or neglect, and these parental acts or deficiencies [are such as to] support the conclusion that the parent cannot exercise, or should not, in the best [interest] INTERESTS of the child, be permitted to exercise, parental rights and duties, or (3) where there are no identifiable acts of parental commission or [omission] OMISSION as set forth in subdivision (2), but it nevertheless appears to the court that [(a)] (A) there is no

ongoing parent child relationship which is defined as the relationship that develops as a result of a parent having met on a continuing, day to day basis the physical, emotional, moral and educational needs of the child and [(b)] (B) to allow further time for the establishment or reestablishment of [such] THE parent child relationship would be detrimental to the best interests of the child; or (4) that both parents, or the sole parent, of [such] THE child consent to termination of their parental rights with respect to such child [, may approve the petition terminating the parental rights and appoint a guardian of the person of such child, or, if the application so requests, the court may appoint a statutory parent. Where the parental rights of only one parent are being terminated, the remaining parent shall be sole parent and natural guardian]. Notwithstanding [anything contained in] THE PROVISIONS OF this section, the court after hearing may enter a decree terminating the parental rights of any parent or putative father if said parent or putative father consents to said termination, and waives notice thereof.

(e) EFFECT OF TERMINATION OF PARENTAL RIGHTS OF ONLY ONE PARENT. IF THE PARENTAL RIGHTS OF ONLY ONE PARENT ARE BEING TERMINATED, THE REMAINING PARENT SHALL BE SOLE PARENT AND NATURAL GUARDIAN.

Sec. 45a-159. [Sec. 45-61h.] [Statutory] APPOINTMENT AND DUTIES OF STATUTORY parent [, appointment, duties]. REMOVAL OR RESIGNATION.

(a) APPOINTMENT OF STATUTORY PARENT. [In any case where] IF a child is free for adoption as provided in section 45-61j, ~~AS AMENDED BY SECTIONS 81 AND 111 OF PUBLIC ACT 79-631 AND SECTION 149 OF THIS ACT,~~ and [where] a petition for appointment of a statutory parent has been made under section 45-61c, ~~AS AMENDED BY PUBLIC ACT 79-223 AND SECTIONS 33, 77, 85 AND 111 OF PUBLIC ACT 79-631 AND SECTION 144 OF THE ACT,~~ and no such appointment has been made under section 17-43a or section 45-61f, ~~AS AMENDED BY SECTION 3 OF PUBLIC ACT 79-592, SECTIONS 79 AND 111 OF PUBLIC ACT 79-631 AND SECTION 146 OF THIS~~ ACT, the court of probate shall appoint a statutory parent for the child. [, which] THE statutory parent shall be the commissioner of children and youth services or a child-placing agency. Notice of [said] THE proceeding shall be sent to the guardian of the person, the child, if over the age of fourteen, the applicant, the commissioner of children and youth services, and the proposed statutory parent by registered or certified mail or otherwise, at least ten days [prior to] BEFORE the date of [such] THE hearing. Notice is not required for any party who files in court a written waiver of [such] notice.

(b) DUTIES OF STATUTORY PARENT. [Such] THE statutory parent shall be the guardian of

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Minor language changes for clarification and simplification.

This section was amended by sections 80 and 111 of Public Act 79-631.

the person of [such] THE child, [and] shall be responsible for the welfare of the child and the protection of his interests and shall retain custody of [such] THE child until he attains the age of eighteen unless, [prior to] BEFORE that time, he [shall be] IS legally adopted or committed to the commissioner of children and youth services or a licensed child-placing agency.

[(b)] (c) REMOVAL OR RESIGNATION OF STATUTORY PARENT. Any statutory parent may resign or be removed for good cause shown. Upon filing of an application for the removal of a statutory parent or [the] filing of a resignation of a statutory parent [,] in the court of probate [wherein such] IN WHICH THE statutory parent was appointed, the court shall schedule a hearing, on [such] THE removal application or resignation. Notice of such hearing shall be sent in accordance with section 45-61d, ~~AS AMENDED BY SECTION 4 OF PUBLIC ACT 79-592, SECTIONS 78 AND 111 OF PUBLIC ACT 79-631 AND SECTION 145 OF THIS ACT,~~ except that notice need not be sent to any parties whose rights have previously been terminated. At [such] THE hearing the court may accept [such] THE resignation, remove [such] THE statutory parent, or deny [such] THE application for removal. If a statutory parent is removed or resigns, the court of probate shall appoint a new statutory parent or a guardian of the person.

CHAPTER V

PART III

ADOPTION GENERALLY

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Sec. 45a-160. [Sec. 45-61i.] [Adoption, written agreements, ex parte decree, consent] WHO MAY GIVE CHILD IN ADOPTION.

(a) The following persons may give a child in adoption: [(a)] (1) A statutory parent appointed under the provisions of section 17-43a, section 45-61f, ~~AS AMENDED BY SECTION 3 OF PUBLIC ACT 79-592, SECTIONS 79 AND 111 OF PUBLIC ACT 79-631 AND SECTION 146 OF THIS ACT,~~ or section 45-61h, ~~AS AMENDED BY SECTIONS 80 AND 111 OF PUBLIC ACT 79-631 AND SECTION 147 OF THIS ACT,~~ may, by written agreement, subject to the approval of the court of probate as provided in section 45-63, ~~AS AMENDED BY SECTION 150 OF THIS ACT,~~ give in adoption to any adult person any minor child of whom he is the statutory parent; provided, if [such] THE child has attained the age of fourteen, [such] THE child shall consent to [such] THE agreement.

[(b)] (2) Subject to the approval of the court of probate as provided in section 45-63, ~~AS AMENDED BY SECTION 150 OF THIS ACT,~~ any parent of a minor child [who] MAY AGREE IN WRITING WITH HIS OR HER SPOUSE THAT THE SPOUSE SHALL ADOPT OR JOIN IN THE ADOPTION OF THE CHILD; IF THAT PARENT is [(1)] (A) the surviving parent [when] IF the other parent has died [, or (2)]; (B) the mother of a child born out of wedlock, provided THAT if there is a putative father [,] who has been notified under the provisions of section 45-61d, ~~AS AMENDED BY SECTION 1 OF PUBLIC ACT 79-592, SECTIONS 78 AND 111 OF PUBLIC ACT 79-~~

Reviser's comments:

Minor language changes for clarification and simplification.

Section further subdivided to improve readability.

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~~631 AND SECTION 145 OF THIS ACT~~, the rights of [such] THE putative father have been terminated; [or, (3)] (C) a former single person who adopted a child and thereafter married; or [, (4)] (D) the sole guardian of the person of [said] THE child, IF the other parent's parental rights [having] HAVE been terminated or the other parent [having] HAS been removed as guardian of the person [prior to] BEFORE October 1, 1973 [, may agree in writing, with the person to whom they are married that such person shall adopt or join in the adoption of such child].

[(c)] (3) Subject to the approval of the court of probate as provided in section 45-63, ~~AS AMENDED BY SECTION 150 OF THIS ACT~~, the guardian or guardians of the person of any minor child who is free for adoption in accordance with section 45-61j, ~~AS AMENDED BY SECTIONS 81 AND 111 OF PUBLIC ACT 79-631 AND SECTION 149 OF THIS ACT~~, may agree in writing with a blood relative descended from a common ancestor not more than three generations removed from [such] THE child that [such] THE blood relative shall adopt [such] THE child. For the purposes of this subsection "blood relative" shall include, but not be limited to, the father of an illegitimate child who has been adjudged by a court of competent jurisdiction to be the father of [such] THE child, or who has acknowledged his paternity under the provisions of section 46b-172, with further blood relationship to the child determined through [such] THE father.

[(d)] (b) If all parties consent to the adoption under [subsections (b) and (c)] SUBDIVISIONS (2) AND (3) OF SUBSECTION (a) OF THIS SECTION, then the application to be filed under section 45-63, ~~AS AMENDED BY SECTION 150 OF THIS ACT,~~ shall be combined with the consent termination of parental rights to be filed under section 45-61f, ~~AS AMENDED BY SECTION 3 OF PUBLIC ACT 79-592, SECTIONS 79 AND 111 OF PUBLIC ACT 79-631 AND SECTION 146 OF THIS ACT.~~ [No] AN application made under [subsections (b) and (c)] SUBDIVISIONS (2) AND (3) OF SUBSECTION (a) of this section shall NOT be granted in the case of any child who has attained the age of fourteen without [such] THE child's consent.

Sec. 45a-161. [Sec. 45-61j.] When child free for adoption.

A minor child shall be considered free for adoption and the court of probate may grant an application for the appointment of a statutory parent if any of the following have occurred: (a) The child has no living parents; (b) [removal of] the parents WERE REMOVED as guardians of the person [has occurred prior to] BEFORE October 1, 1973, in accordance with the provisions of Connecticut law in effect [prior to] BEFORE October 1, 1973; (c) [termination of] ALL parental rights [of all persons has occurred] HAVE BEEN TERMINATED under Connecticut law; (d) (1) in the case of any child from outside [of] the United States, its territories or the commonwealth of Puerto Rico placed for adoption by the commissioner of children and youth services or by any child-placing agency, the petitioner has filed an affidavit that [such] THE child has no living parents or that [such] THE child is free for adoption and that the rights of all parties in connection with [such] THE child have been properly terminated under the laws of the jurisdiction in which the child was domiciled [prior to] BEFORE being removed to the state of Connecticut; or (2) in the case of any child from any of the United States, its territories or the commonwealth of Puerto Rico placed by the commissioner of children and youth services or a child-placing agency, the petitioner has filed an [affadavit] AFFIDAVIT that [such] THE child has no living

Reviser's comments:

Minor language changes for clarification and simplification.

This section was amended by sections 81 and 111 of Public Act 79-631.

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parents or has filed in court a certified copy of the court decree [wherein] IN WHICH the rights of all parties in connection with [such] THE child have been terminated under the laws of the jurisdiction in which the child was domiciled [prior to] BEFORE being removed to the state of Connecticut, and [said] THE child-placing agency obtained guardianship or other court authority to place the child for adoption. If no such affidavit or certified decree has been filed, then termination of parental rights proceedings shall be required in accordance with this chapter and sections 17-43a, 17-43b, 45-43, ~~AS AMENDED BY SECTION 4 OF PUBLIC ACT 79-460~~, 45-44, ~~AS AMENDED BY SECTION 7 OF PUBLIC ACT 79-460~~, 45-289, ~~AS AMENDED BY SECTION 93 OF THIS ACT~~, and 52-231a.

Sec. 45a-162. [Sec. 45-63.] Application and agreement of adoption. Investigation, report, assessment of fees. Hearings and decree.

(a) APPLICATION AND AGREEMENT OF ADOPTION. (1) Each adoption matter shall be instituted by filing an application in a court of probate, together with the written agreement of adoption, in duplicate.

(2) ONE OF THE DUPLICATES SHALL BE SENT FORTHWITH TO THE COMMISSIONER OF CHILDREN AND YOUTH SERVICES.

(3) The application shall incorporate a declaration that to the best of the knowledge and belief of the declarant there is no other proceeding pending or contemplated in any other court affecting the custody of the child to be adopted, or if there is such a proceeding, a statement in detail of the nature of the proceeding and averring that the proposed adoption would not conflict with or interfere with [such] THE other proceeding. [, and] THE COURT SHALL NOT PROCEED ON ANY APPLICATION WHICH DOES NOT CONTAIN SUCH A DECLARATION. THE APPLICATION shall be signed by one or more of the parties to the agreement, who may waive notice of any hearing [thereon] ON IT. For the purposes of this declaration, visitation rights granted by any court shall not be considered as affecting the custody of [such] THE child. [The court shall not proceed on any

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Minor language changes for clarification and simplification.

application which does not contain such declaration.]

(4) [No] AN application for the adoption of a minor child not related to the adopting parents shall NOT be accepted by the court of probate unless the child sought to be adopted has been placed for adoption by the commissioner of [the department of] children and youth services or a child-placing agency, except as provided by section 45-69d, ~~AS AMENDED BY SECTION 172 OF THIS ACT,~~ and [such] THE placement for adoption has been approved by [said] THE commissioner or a child-placing agency. [The provisions of section 17-51 shall apply to adoption placements.]

(5) The application and the agreement of adoption shall be filed in the court of probate for the district where the adopting parent resides or in the district where the main office or any local office of the statutory parent is located.

(6) THE PROVISIONS OF SECTION 17-51, REGARDING PLACEMENT OF A CHILD FROM ANOTHER STATE, SHALL APPLY TO ADOPTION PLACEMENTS. [One of such duplicates shall be sent forthwith to the commissioner of the department of children and youth services.]

(b) INVESTIGATION AND REPORT BEFORE ADOPTION. (1) The court of probate shall request said commissioner or a child-placing agency to make an investigation and written

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report to it, in duplicate, within ninety days from the receipt of such request [, the]. A duplicate of [which] THE report shall be sent forthwith to the commissioner of [the department of] children and youth services.

(2) [Such] THE report shall be filed with the court of probate within [said time] THE NINETY DAY PERIOD [and]. THE REPORT shall indicate the physical and mental status of the child and shall contain such facts as may be relevant to determine whether the proposed adoption will be for the welfare of the child, including the physical, mental, social and financial condition of the parties to the agreement and the natural parents of the child, if known [, and]. THE REPORT may set forth conclusions as to whether or not the proposed adoption will be for the welfare of the child.

(3) [Any such] THE report shall be admissible in evidence subject to the right of any interested party to require that the person making it appear as a witness, if available, and subject himself to examination.

(4) FOR ANY REPORT UNDER THIS SECTION THE COURT OF PROBATE MAY ASSESS AGAINST THE ADOPTING PARENT OR PARENTS A REASONABLE FEE COVERING THE COST AND EXPENSES OF MAKING THE INVESTIGATION. THE FEE SHALL BE PAID TO THE STATE OR TO THE CHILD-PLACING AGENCY MAKING THE INVESTIGATION AND REPORT, AS THE CASE MAY BE, PROVIDED THE REPORT SHALL BE MADE WITHIN

THE NINETY-DAY PERIOD OR OTHER TIME SET BY THE COURT.

(c) HEARING AND DECREE OF ADOPTION. (1)

Upon the expiration of [said] THE ninety-day period or upon the receipt of such report, whichever is first, the court of probate shall set a day for a hearing upon the agreement and shall give reasonable notice [thereof] OF THE HEARING to the parties to the agreement, the commissioner of [the department of] children and youth services and to the child, if over fourteen years of age.

(2) At [such] THE hearing [said] THE court may deny the application, enter a final decree approving the adoption if it is satisfied that [such] THE adoption is for the best [interest] INTERESTS of the child or order a further investigation and written report to be filed, in duplicate, within [such specified] WHATEVER PERIOD OF time [as] it directs [, a]. A duplicate of [which] SUCH REPORT shall be sent to [said] THE commissioner [, and]. THE COURT may adjourn the hearing to a day [subsequent to] AFTER that fixed for filing the report. If such report has not been filed with [said] THE court within [such] THE specified time, the court may thereupon deny the application or enter a final decree in the manner [herein] provided IN THIS SECTION.

(3) The court of probate shall not disapprove any adoption under this section

solely because of an adopting parent's marital status or because of a difference in race, color or religion between a prospective adopting parent and the child to be adopted or because the adoption may be subsidized in accordance with the provisions of section 17-44b, ~~AS AMENDED BY SECTIONS 66 AND 111 OF PUBLIC ACT 79-631.~~ [For any report under this section the court of probate may assess against the adopting parent or parents a reasonable fee covering the cost and expenses of making such investigation, which fee shall be paid to the state or to the child-placing agency making the investigation and report, as the case may be, provided such report shall be made within such ninety-day period or other time set by said court.]

(4) The court of probate shall ascertain as far as possible the date and the place of birth of the child and shall incorporate such facts in the final decree, a copy of which shall be sent to the commissioner of [the department of] children and youth services.

Sec. 45a-163. [Sec. 45-64a.] Effects of final decree of adoption. Surviving rights.

A final decree of adoption, whether issued by a court of this state or a court of any other jurisdiction, shall have the following effect in this state: (1) To create the relationship of parent and child between an adopting parent and the adopted person, as if the adopted person were the natural child of [such] THE adopting parent, for all purposes including inheritance and applicability of statutes, documents and instruments, whether executed before or after the adoption decree is issued, which do not expressly exclude an adopted person in their operation or effect;

(2) To relieve the natural parent or parents of the adopted person of all parental rights and responsibilities;

(3) To terminate all legal relationships between the adopted person and his natural parent or parents and the relatives of [such] THE natural parent or parents for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship, except as provided in subdivision (5) of this section;

Reviser's comments:

Minor language changes for clarification and simplification.

(4) The words "child," "children," "issue," "descendant," "descendants," "heir," "heirs," "lawful heirs," "grandchild" and "grandchildren," when used [in the singular or plural] in any will or trust instrument executed [subsequent to] AFTER October 1, 1959, shall, unless [such] THE document clearly indicates a contrary intention, include legally adopted persons. Nothing [herein] IN THIS SECTION shall be construed to alter or modify the provisions of section 45-162, ~~AS AMENDED BY SECTION 2 OF PUBLIC ACT 79-469 AND SECTION 233 OF THIS ACT,~~ AND SECTION 236 OF THIS ACT, REGARDING CHILDREN BORN THROUGH A.I.D.;

(5) Notwithstanding the provisions of subdivisions (1) and (3), when one of the natural parents of a minor child has died and the surviving parent has remarried [subsequent to such] AFTER SUCH parent's death, adoption of [such] THE child by the person with whom [such] THE remarriage is contracted shall not affect the rights of [such] THE child to inherit from or through the deceased parent;

(6) The adopting parent or parents or their relatives shall inherit the estate of an adopted child if he dies intestate as if they had been his natural parents and the natural parents or their relatives shall not inherit from him;

(7) Nothing herein contained shall, because of his adoption, deprive the natural

child of a veteran who served in time of war as defined in section 27-103 of aid under the provisions of section 27-140 or deprive a child receiving benefits under the Social Security Act, 42 U.S.C. Sec. 301 et seq., as amended from time to time, from continued receipt of [such] benefits [as] authorized under said act.

Sec. 45a-164. [Sec. 45-62.] Husband and wife to join in adoption.

[No] A married person shall NOT adopt a child unless both husband and wife join in the adoption agreement, except that the court of probate may approve an adoption agreement by either of them upon finding that there is sufficient reason why the other should not join [therein] IN THE AGREEMENT.

For clarification and simplification of language.

Sec. 45a-165. [Sec. 45-63a.] Procedure on application for adoption by stepparent.

(a) Notwithstanding the provisions of section 45-63, ~~AS AMENDED BY SECTION 150 OF THIS ACT,~~ in the case of a child sought to be adopted by a stepparent, the court of probate may waive all requirements of notice to [said] THE commissioner of children and youth services and waive all requirements for investigation and report by [said] THE commissioner of children and youth services or by a child-placing agency. [and, upon] UPON receipt of the application and agreement, the court of probate may set a day for a hearing upon the agreement and shall give [a] reasonable notice [thereof] OF THE HEARING to the parties to the agreement and to the child, if over fourteen years of age.

(b) At the hearing [said] THE court may deny the application, enter a final decree approving the adoption if it is satisfied that [such] THE adoption is for the best [interest] INTERESTS of the child, or order an investigation by the commissioner of children and youth services or A child-placing agency.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

This section was amended by sections 82 and 111 of Public Act 79-631.

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Sec. 45a-166. [Sec. 45-67.] Adoption of adults. Inheritance.

(a) Any person eighteen years of age or older may, by written agreement with another person at least eighteen years of age but younger than himself, unless [such] THE other person is his or her wife, husband, brother, sister, uncle or aunt of the whole or half-blood, adopt [such] THE other person as his child, provided [such] THE written agreement shall be approved by the court of probate for the district in which the adopting parent resides or, if [such] THE adopting parent is not an inhabitant of this state, for the district in which [such] THE adopted person resides.

(b) [Such] THE court of probate may, upon presentation of [such] THE agreement of adoption for approval, cause public notice to be given of the time and place of hearing [thereon, and, if on such] ON THE AGREEMENT. IF AT THE hearing the court finds that it will be for the welfare of [such] THE adopted person and for the public interest that [such] THE agreement be approved, it may pass an order of approval [thereof] OF IT and cause [such] THE agreement and [such] THE order to be recorded, [, and thereupon such] THEREUPON THE adopted person shall become the legal child of the adopting person, and [such] THE adopting person shall become the legal parent of [such] THE adopted person, and the provisions of sections 45-64a, ~~AS~~

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Reference to section 45-69b omitted because section has been repealed.

~~AMENDED BY SECTION 151 OF THIS ACT, [and 45-69b] shall apply.~~

(c) [No] A married person shall NOT adopt a person under the provisions of this section unless both husband and wife join in the adoption agreement, except that the court of probate may approve an adoption agreement by either of them upon finding that there is sufficient reason why the other should not join [therein] IN THE AGREEMENT.

(d) When one of the natural parents of an adult has died and the surviving parent remarries, the person with whom the remarriage is solemnized may become an adopting parent without the natural [parent] PARENT'S joining in [such] THE adoption except to consent in writing. [, and, upon] UPON the approval of [such] THE court, [such] THE adopted person shall be in law the child of both.

Sec. 45a-167. [Sec. 45-68.] Husband or wife of adopted adult to consent.

[No] AN agreement of adoption between persons of [full] THE age OF MAJORITY shall NOT be approved without the written consent of the husband or wife, if any, of the adopted person.

For clarification and simplification of language.

Sec. 45a-168. [Sec. 45-66a] Change of name of adopted person.

Any court of probate, as part of its approval of any agreement of adoption or declaration of an intention to adopt, may change the name of the person adopted, as requested by the adopting parent or parents.

No change.

Sec. 45a-169. [Sec. 45-66b.] Obliteration of original name on institutional records, new name substituted.

Upon the request of an adopting parent of a child adopted under the provisions of section 45-63, any public or quasi-public institution including but not limited to schools and hospitals shall obliterate the original family name of an adopted child and substitute the new name of [such] THE child on its records [; provided, the] EXCEPT THAT THE person in charge of [such] THE records may apply to the court of probate having jurisdiction over [such] THE adoption and show cause why [such] THE name shall not be substituted. [Such] THE court may grant or deny the order for the substitution of names as it deems to be in the best [interest] INTERESTS of the child.

Reviser's comments:

Minor language changes for clarification and simplification.

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PART IV

AVAILABILITY AND CONFIDENTIALITY OF
ADOPTION RECORDS

2017

Sec. 45a-170. [Sec. 45-68c.] Definitions.

For clarification and simplification
of language.

For the purposes of this part and sections 7-53, 17-47a, 17-57a and subsection (c) of section 17-431, the following terms [shall] have the following meanings:

(1) "Adopted person" means a person who was adopted under the laws of this state and [shall also include] INCLUDES a person who has not been adopted but whose genetic parents have had their parental rights terminated or whose genetic parents were removed as guardians or whose genetic parents have had their rights to custody removed in this state.

(2) "Adult adopted person" means an adopted person who has reached the age of majority.

(3) "Department" means the department of children and youth services.

(4) "Agency" means a child-placing agency or a child-care agency as defined in section 45-61b

(5) "Information" includes information in the records of the courts of probate, [juvenile court,] superior court, the department or agency, the registrars of vital statistics and the department of health services.

(6) "Genetic parent" means the mother who bore the adopted person and the father who conceived the adopted person.

Sec. 45a-171. [Sec. 45-68b.] Legislative intent.

It is the intent of this part and sections 7-53, 17-47a, ~~AS AMENDED BY SECTIONS 79 AND 111 OF PUBLIC ACT 79-631,~~ 17-57a and subsection (c) of section 17-431 [(a)] (1) to make available to adult adopted persons, adult persons whose genetic parents have had their rights terminated, adult persons whose genetic parents were removed as guardians and adult persons whose genetic parents' rights to custody were removed, information concerning their background and status and to give the same information to their adoptive parent or parents [and]; [(b)] (2) to provide for consensual release of additional information which may identify the genetic parents of such adult persons when release of such information is in the best interests of such persons; and [(c)] (3) to protect the right to privacy of all parties to removal of custody, removal of guardianship, termination of parental rights, statutory parent and adoption proceedings.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-172. [Sec. 45-68a.] (Formerly Sec. 45-64). Adoption record.

For clarification and simplification of language.

(a) For each final decree of adoption decreed by a court of probate, the clerk of the court shall prepare a record on a form prescribed by the department of health services. [Such] THE record shall include all facts necessary to locate and identify the original [certificate of] birth CERTIFICATE of the [person] adopted PERSON and TO establish the new [certificate of] birth CERTIFICATE of the [person] adopted PERSON, and shall include official notice from the court of the fact of adoption, including identification of the court action and proceedings.

(b) Each petitioner for adoption, the attorney for [such] THE petitioner and each social or welfare agency or other person concerned with the adoption shall supply the clerk with [such] information [as] WHICH is necessary to complete the adoption record. The supplying of [such] THE information shall be a prerequisite to the issuance of a final adoption decree by [such] THE court.

(c) Not later than the fifteenth day of each calendar month, the clerk of the court of probate shall forward to the department of health services the record provided for in subsection (a) of this section for all final adoption decrees issued during the preceding month.

(d) When the department of health services receives a record of adoption for a person born outside the state, [such] THE record shall be forwarded to the proper registration authority of the place of birth.

(e) The department of health services, upon receipt of a record of adoption for a person born in this state, shall establish a new certificate of birth in the manner prescribed in section 7-53, except that no new certificate of birth shall be established if the court decreeing the adoption, the adoptive parents or the adopted person, if over fourteen years of age, so requests.

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Sec. 45a-173. [Sec. 45-68d.] Adoption records review board established.

(a) [There is established an] AN adoption records review board IS ESTABLISHED, hereinafter referred to as "the board," which shall consist of the probate court administrator and five members appointed by the probate court administrator, one of whom shall be a representative of the department, one of whom shall be a representative of a child-placing agency, as defined in section 45-61b, ~~AS AMENDED BY SECTIONS 76 AND 111 OF PUBLIC ACT 79-631 AND SECTION 141 OF THIS ACT~~, one of whom shall be an adoptive parent, one of whom shall be an adult adopted person and one of whom shall be a representative from the department of health services. Each member shall be appointed for a term of two years. Members of the board shall serve without compensation, except that their expenses shall be paid from the fund established under section 45-4h, ~~AS AMENDED BY SECTION 34 OF THIS ACT~~. The chairman of the board shall be the probate court administrator, and the members of the board shall elect a secretary from among the membership who shall serve for a term of two years.

(b) The board shall hear all appeals from decisions regarding adoption records under the provisions of section 45-68g, ~~AS AMENDED BY SECTION 163 OF THIS ACT~~, subsection (d) of section 45-68h, ~~AS AMENDED BY SECTION 164 OF THIS ACT~~, and section 45-

Reviser's comments:

Minor language changes for clarification and simplification.

68i, ~~AS AMENDED BY SECTION 165 OF THIS ACT.~~
The provisions of chapter 54 shall not apply
to the board.

(c) In any appeal before the board, if
the department is a party to the appeal, the
member of the board who is a representative
of the department shall be disqualified from
acting on [such] THE appeal [and in]. IN any
such appeal, if a child-placing agency is a
party and the member of the board representing
child-placing agencies is employed by the
agency which is a party [such] THAT member
shall be disqualified from acting upon [such]
THAT appeal.

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Sec. 45a-174. [Sec. 45-68e.] Information available to adoptive parents and adult adopted person.

The following information, if known, concerning the genetic parents of any adopted person shall be given by the agency or department which has [such] THE information, in writing on a form provided by the department, to the adoptive parent or parents not later than the date of finalization of the adoption proceedings: (a) Age of genetic parent in years, not dates of birth, at THE birth of [such] THE adopted person; (b) heritage of THE genetic parent or parents, which shall include (1) nationality, (2) ethnic background and (3) race; (c) education, which shall be number of years of school completed by the genetic parent or parents at the time of birth of [such] THE adopted person; (d) general physical appearance of the genetic parent or parents at the time of THE birth of [such] THE adopted person in terms of height, weight, color of hair, eyes, skin and other information of A similar nature; (e) talents, hobbies and special interests of the genetic parent or parents; (f) existence of any other child or children born to either genetic parent [prior to] BEFORE THE birth of [such] THE adopted person; (g) reasons for PLACING THE child [being placed] for adoption or for genetic parental rights being terminated or for REMOVAL OF THE genetic parents [being removed] as guardians or for REMOVAL OF THE CUSTODY RIGHTS OF THE genetic PARENTS

Reviser's comments:

Minor language changes for clarification and simplification.

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[parental rights to custody being removed]; (h) religion of genetic parent or parents; (i) field of occupation of genetic parent or [parent] PARENTS in general terms; (j) health history of genetic parent or parents and blood relatives, on a standardized form provided by the department; (k) manner in which plans for [such] THE adopted person's future were made by genetic parent or parents [,]; and (l) relationship between the genetic parents. The information in this section, if known, shall, upon request of the adult adopted person made in accordance with section 45-68h, AS AMENDED BY SECTION 163 OF THIS ACT, be made available in writing to [such] THE person upon reaching THE age of majority. None of the information provided for in this section shall be made available if it is of such a nature that it would tend to identify a genetic parent or parents of [such] THE adopted person, except as provided in sections 45-68i, 45-68j and 45-68l, AS AMENDED BY SECTIONS 165, 166 AND 167 OF THIS ACT. The provisions of chapter 55 shall not apply to the provisions of this section.

Sec. 45a-175. [Sec. 45-68f.] Information [re] REGARDING adoption completed [prior to] BEFORE October 1, 1977.

For any adoption completed [prior to] BEFORE October 1, 1977, information in section 45-68e, if available, shall be given in writing to the adoptive parent or parents upon their WRITTEN request [made in writing] to the agency, department, court of probate or juvenile court which has [such] THE information.

For clarification and simplification of language.

Sec. 45a-176. [Sec. 45-68g.] Agency or department to make effort to obtain information.

Each agency or the department shall be required to make a reasonable effort to obtain the information provided for in section 45-68e, ~~AS AMENDED BY SECTION 161 OF THIS ACT~~, for each child being placed for adoption or for whom there is a probability of adoption, but the lack of such information shall not be a bar to the granting of a decree of adoption, provided [such] THE agency or department has made a reasonable effort to obtain [such] THE information. If the judge of probate decides that a reasonable effort has not been made to obtain [such] THE information or that [such] THE information is being unreasonably withheld, [such] THE judge may order [such] THE agency or department to make a reasonable effort to obtain [such] THE information or to release [such] THE information. Any agency or department aggrieved by [such] THE order may appeal to the adoption records review board established under section 45-68d, ~~AS AMENDED BY SECTION 160 OF THIS ACT~~, for final determination.

Reviser's comments:

Minor language changes for clarification and simplification.

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Sec. 45a-177. [Sec. 45-68h.] Application for information. Appeal if information withheld.

(a) Any adult adopted person who is a resident of this state may request the information provided in section 45-63e, ~~AS AMENDED BY SECTION 161 OF THIS ACT~~, by applying in person to the court in which the adoption, termination or removal proceeding was determined or by applying in person to the agency in this state or the department which has [such] THE information. If, in cases in which the application is made to the court of probate or [juvenile] SUPERIOR court, it appears that counselling is advisable with the release of [such] THE information, it shall refer [such] THE person to such agency or to the department, as the case may be. [No such] SUCH information shall NOT be released unless the court of probate, [juvenile] SUPERIOR court, agency or department, as the case may be, is satisfied as to the identity of [such] THE person.

(b) Any adult adopted person, who is not a resident of this state, may request the information provided in section 45-63e, ~~AS AMENDED BY SECTION 161 OF THIS ACT~~, by applying in person in accordance with the provisions of subsection (a) of this section or by applying in writing to the court in which the adoption, termination or removal proceeding was determined or to the agency in this state or the department which has [such] THE information. [No such] SUCH information shall NOT be released unless the court of

Reviser's comments:

Minor language changes for clarification and simplification.

probate, [juvenile] SUPERIOR court, agency or the department, as the case may be, is satisfied as to the identity of [such] THE person. If it appears to the court of probate or [juvenile] SUPERIOR court or agency or the Department, as the case may be, that counselling is advisable with the release of [such] THE information, [such] THE court, agency or department shall refer [such] THE person either to an agency in this state or the department or to an out-of-state agency or appropriate governmental agency or department, approved by the department or accredited by the Child Welfare League of America, the National Conference of Catholic Charities or by Family Services Association of America [, and, if such]. IF AN out-of-state referral is made, [such] THE information shall be released to [such] THE out-of-state agency or department for release to [such] THE applicant; provided [no] such information shall NOT be released unless [such] THE out-of-state agency or department is satisfied as to the identity of [such] THE person.

(c) If the adult adopted person is of the opinion that any item of information provided for in section 45-63e, ~~AS AMENDED BY SECTION 160 OF THIS ACT,~~ is being withheld by [such] THE agency or the department, he may petition the court of probate or the [juvenile] SUPERIOR court, as the case may be, for a hearing on the matter. [Such] THE court shall set a time and place for [such] THE hearing, which shall be held not more

than thirty days after receipt of [such] THE petition, and [such] THE court shall give notice [thereof] OF THE HEARING to the petitioner and agency or department, as the case may be, at least ten days [prior to such] BEFORE THE hearing. If [such] THE court finds [such] THE information is being withheld in violation of section 45-68e, ~~AS AMENDED BY SECTION 161 OF THIS ACT~~, [such] THE court shall order [such] THE agency or department to release [such] THE information.

(d) Any adult adopted person who is of the opinion that any item of information in section 45-68e, ~~AS AMENDED BY SECTION 161 OF THIS ACT~~, is being withheld by the court of probate, or any adult adopted person or the department or agency who is aggrieved by an order of the court of probate under subsection (c) of this section may appeal to the adoption records review board established in accordance with section 45-68d, ~~AS AMENDED BY SECTION 160 OF THIS ACT~~, or if any adult adopted person is aggrieved by an order of the [juvenile] SUPERIOR court, he may appeal in accordance with section 46b-142.

Sec. 45a-178. [Sec. 45-63i.] Petition for identifying information.

Any adult adopted person, whose adoption was finalized in this state or whose genetic parents had their rights terminated in this state or whose genetic parents were removed as guardians in this state or whose genetic parents' rights to custody were removed in this state, may petition, in writing, the court of probate in which the adoption decree was granted or termination took place or removal as guardians or of custody took place, for release of information concerning his background which shall be in addition to the information available in section 45-63e, ~~AS AMENDED BY SECTION 161 OF THIS ACT.~~ If there is only a termination or removal of custody and [such] THE termination or removal of custody took place in the juvenile OR SUPERIOR court, [such] THE person may petition the [juvenile] SUPERIOR court in writing for release of [such] THE information. The provisions of chapter 55 shall not apply to the provisions of this section. [No such] SUCH information shall NOT be released unless [such] THE court is satisfied as to the identity of [such] THE person.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-179. [Sec. 45-68j.] Release of identifying information. Investigation. Hearing. Conditions. Appeal.

(a) When a petition, filed under the provisions of section 45-68i, ~~AS AMENDED BY SECTION 165 OF THIS ACT~~, is received by either the court of probate or the [juvenile] SUPERIOR court, as the case may be, if such court is satisfied as to the identity of [such] THE person, the matter shall be referred within fifteen days after receipt of [such] THE petition to the agency or the department which has access to the information which the adult adopted person is requesting under section 45-68i, ~~AS AMENDED BY SECTION 165 OF THIS ACT~~, for an investigation and report. If [such] THE agency or department is out-of-state and unwilling to provide [such] THE investigation and report, the court of probate or the [juvenile] SUPERIOR court, as the case may be, shall refer the matter to an agency or the department in this state for an investigation and report. [Such] THE investigation and report shall be completed within sixty days after receipt of the request from [such] THE court [,]. THE REPORT AND INVESTIGATION shall include but not be limited to an interview with the adult adopted person for the purpose of ascertaining the reasons for his request for information and may include information concerning either genetic parent received by the agency or department since termination or removal of guardianship or removal of custody

Reviser's comments:

Minor language changes for clarification and simplification.

Reference to superior court substituted for reference to juvenile court to conform to court reorganization.

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took place. The adoptive parents, if living, shall be notified of [such] THE petition and shall have the opportunity to be interviewed [with respect to such] REGARDING THE petition. In making its report, [such] THE agency or department may, but shall not be required to, state a conclusion as to the merits of the request of the adult adopted person for [such] THE information. Upon receipt of [such] THE report, or upon expiration of sixty days, whichever is sooner, the court shall set a time and place for hearing not later than fifteen days thereafter and give notice [thereof] OF THE HEARING to [such] THE petitioning adult adopted person and to [such] THE agency or commissioner of the department. At [such] THE hearing, [such] THE petitioner may give evidence to support his petition as he deems appropriate. Within fifteen days after the conclusion of [such] THE hearing, the court shall issue a decree as to whether or not the information requested under the provisions of section 45-68i, ~~AS AMENDED BY SECTION 165 OF THIS ACT~~, should be given to [such] THE petitioner. The court shall grant [such] THE petition and [such] THE agency or department shall furnish [such] information [as] WHICH the court directs to the petitioner unless (1) [such] THE information would identify the genetic parents and written consent of each identified genetic parent, subject to the provisions of section 45-681, ~~AS AMENDED BY SECTION 169 OF THIS ACT~~, has not been given, (2) the adult adopted person has contact with a biological sibling who is a minor, and the

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adoptive parents or guardian, if any, of [such] THE sibling, have not consented to the release of [such] THE information or (3) the judge of probate or the [juvenile] SUPERIOR court judge, as the case may be, determines that release of [such] THE information to [such] THE adult adopted person would be seriously disruptive to or endanger the physical or emotional health of the adult adopted person or the genetic parents of [such] THE adopted person.

(b) Identifying information shall not be disclosed concerning any adult blood relative other than a genetic parent unless consent is obtained from the following persons in the following order: (1) Any living genetic parents of the adult adopted person, (2) any living adoptive parents or guardian of the blood relative to be identified, as the case may be, and (3) [such] THE adult blood relative.

(c) If the court of probate or the [juvenile] SUPERIOR court, as the case may be, denies [such] THE petition, [such] THE court may request [such] THE agency or department to notify the genetic parent or parents that the adult adopted person has petitioned [such] THE court for information identifying [such] THE genetic parent or parents, if [such] THE court determines that it would be in the best interests of [such] THE parent or parents to be so notified. [Such] THE notification shall be accomplished in [such] a manner [as to] WHICH WILL protect

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the confidentiality of the communication and shall be done without disclosing the identity of the adult adopted person.

(d) Any such adult adopted person aggrieved by the decision of [such] THE court of probate may appeal to the adoption records review board established by section 45-68d, ~~AS AMENDED BY SECTION 160 OF THIS ACT~~, or if aggrieved by a decision of the [juvenile] SUPERIOR court, may appeal in accordance with the provisions of section 46b-142.

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Sec. 45a-180. [Sec. 45-68k.] Appeal before board.

(a) Upon [a] receipt of an appeal, in writing, under [the provisions of] section 45-68g, ~~AS AMENDED BY SECTION 163 OF THIS ACT,~~ the board shall set a time and place for a hearing [thereon] ON THE APPEAL not later than thirty days after receiving [such] THE petition and shall give notice [thereof] OF THE HEARING to [such] THE agency or commissioner of the department and [such] THE judge of probate. At [such] THE hearing, [such] THE agency or department may give evidence to support its petition as it deems appropriate. Within fifteen days after the conclusion of [such] THE hearing, the board shall (1) issue an order that sufficient effort has been made or information released to satisfy the requirements of section 45-68g, ~~AS AMENDED BY SECTION 163 OF THIS ACT,~~ and the board shall send [such] THE order in writing to [such] THE judge of probate with a copy to [such] THE agency or department, or (2) issue an order that more effort is required to be made by the agency or department or THAT information be released to satisfy the requirements of the provisions of section 45-68g, ~~AS AMENDED BY SECTION 163 OF THIS ACT~~ [and the]. THE board shall send [such] THE order to [such] THE agency or department with a copy to [such] THE judge of probate.

(b) Upon [a] receipt of an appeal in writing under the provisions of subsection

Reviser's comments:

Minor language changes for clarification and simplification.

(d) of section 45-68h, ~~AS AMENDED BY SECTION 164 OF THIS ACT~~, or section 45-68j, ~~AS AMENDED BY SECTION 166 OF THIS ACT~~, the board shall set a time and place for a hearing [thereon] ON THE APPEAL not later than thirty days after receiving [such] THE petition [and]. THE BOARD shall give notice [thereof] OF THE HEARING to the adult adopted person and to the court of probate or the agency or commissioner of the department, as the case may be. At [such] THE hearing, [such] THE petitioner may give [such] evidence to support his petition [as] WHICH he deems appropriate. Within fifteen days after the conclusion of [such] THE hearing, the board shall issue a decree as to whether or not [such] THE information or any part [thereof] OF IT should be given to [such] THE petitioner, provided [such] THE hearing may be continued by [such] THE board at its discretion to obtain further evidence. If the board grants [such] THE petition for information, [such] THE court, agency or department shall release [such] information [as] WHICH the board directs to [such] THE petitioner. If the board grants a petition under section 45-68j, ~~AS AMENDED BY SECTION 166 OF THIS ACT~~, [such] THE court of probate shall, after receipt of a certified copy thereof, order the release by [such] THE agency or department of such information [as is directed]. Any [such] petitioner aggrieved by the decision of the board may appeal [therefrom] FROM THE DECISION to the superior court as provided in section 45-289, ~~AS AMENDED BY SECTION 93 OF THIS ACT~~. If the

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board denies [such] THE petition, it may request [such] THE agency or department to notify the genetic parent or parents that the adult adopted person has appealed to the board for information identifying [such] THE genetic parent or parents, if the board deems such notification to be in the best interests of [such] THE genetic parent or parents. Such notification shall be accomplished in [such] a manner [as to] WHICH WILL protect the confidentiality of the communication and shall not disclose the name of the adult adopted person.

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Sec. 45a-181. [Sec. 45-681.] Obtaining consent of genetic parents.

(a) If the court of probate or the [juvenile] SUPERIOR court, as the case may be, grants a petition under section 45-68j, ~~AS AMENDED BY SECTION 166 OF THIS ACT~~, the agency or department which furnished a report requested by [such] THE court, shall, with the assistance of [such] THE court, be required to expend not more than six hours time, and may charge the petitioning adult adopted person reasonable compensation and be reimbursed for expenses [,] in locating the genetic parents of [such] THE petitioner and in locating the adoptive parents or guardian of any biological siblings known to the petitioner in order to obtain [such] consent [as] WHICH is required by section 45-68j, ~~AS AMENDED BY SECTION 166 OF THIS ACT~~. The obtaining of such consent shall be accomplished in [such] a manner [as to] WHICH WILL protect the confidentiality of the communication and shall be done without disclosing the identity of the adult adopted person.

(b) If, after due diligence, [such] THE agency or department is unable to locate [such] THE parents in order to obtain [such] consent, then, the petitioner shall be notified by [such] THE court that for any further search by [such] THE agency or department on his behalf, [such] THE agency or department may charge [such] THE petitioner [such amounts as are] THE

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Reference to Superior Court substituted for former Juvenile Court to conform to court reorganization.

customary AMOUNTS, subject to the approval of [such] THE court.

(c) [No] THE agency or department shall NOT be required to expend more than six hours time in locating [such] parents hereunder.

(d) If [such] THE agency or department is out-of-state and unwilling to expend [such] time for such purpose, the court of probate or the [juvenile] SUPERIOR court, as the case may be, shall appoint an agency or the department in this state to complete the requirements of this section.

(e) If either genetic parent is deceased or cannot be located, the court of probate or the [juvenile] SUPERIOR court, as the case may be, shall appoint a guardian ad litem, at the expense of the petitioner, who shall decide whether or not to give [such] consent on behalf of [such] THE genetic parent.

Sec. 45a-182. [Sec. 45-68m.] Records to be maintained in locked files. Disclosure for health or medical reasons.

(a) The state shall furnish each court of probate with an index and a book in which shall be recorded only applications, agreements, orders, waivers, affidavits and returns of notice of hearing, appointments of guardians ad litem and decrees in termination of parental rights, removal of parent as guardian, appointment of statutory parent and adoption matters.

(b) [Such] THE PROBATE court shall also maintain locked files which shall be used for the filing of sealed envelopes, each of which shall contain all the papers filed in court [in respect to] REGARDING the removal of a parent as guardian, petitions for termination of parental rights, appointment of statutory parent and adoption.

(c) In the case of an application for the removal of a parent as guardian, a petition for termination of parental rights, an application for a statutory parent or an application for adoption, [such] THE envelopes shall be marked only with the words "Adoption Matter" and the names of the adopting parents and the name borne by the minor before the adoption [and in]. IN the case of a removal of parent as guardian or in the case of a termination of parental rights matter which does not result in an adoption matter, [such] THE envelopes shall be marked

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

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only with the words "Removal Of Parent As Guardian" or "Termination Of Parental Rights Matter" and the name of the minor.

(d) The adopting parents or the adopted person, or the person whose parent was removed as guardian or the person who had the rights of his parents terminated, if over eighteen years of age, shall have access to information under the provisions of section 45-68e, ~~AS AMENDED BY SECTION 161 OF THIS ACT,~~ or may petition [such] THE court for information under section 45-68i, ~~AS AMENDED BY SECTION 165 OF THIS ACT.~~ [Such] THE records may also be disclosed upon order of the judge of probate to a petitioner who requires such information for the health or medical treatment of any adopted person. If such information is so required and is not within [such] THE records, the genetic parent or parents or blood relatives may be contacted in accordance with the procedures in section 45-68l, ~~AS AMENDED BY SECTION 168 OF THIS ACT.~~

(e) Any other person who discloses any information contained in [such] THE indexes, record books and papers, except as [herein] provided IN THIS SECTION, shall be fined not more than five hundred dollars or imprisoned not more than six months or both.

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Sec. 45a-183. [Sec. 45-68n.] Records TO BE maintained on a permanent basis.

Records kept or information received by courts of probate, [juvenile court,] superior court, the department, the department of health services, agencies and the registrars of vital statistics, which contain or may contain information necessary to comply with the provisions of this part, shall be maintained on a permanent basis.

For clarification and simplification of language.

Reference to Juvenile Court deleted to conform to court reorganization.

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CHAPTER V

PART V

ADOPTION REVIEW BOARD

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Sec. 45a-184. [Sec. 45-69c.] Adoption review board established.

(a) [There is established an] AN adoption review board [which shall] IS ESTABLISHED, TO consist of the commissioner of [the department of] children and youth services or his designee [and] , the probate court administrator or his designee, and an officer of a child placing agency [,] WHICH IS located in the state and licensed by the commissioner of [the department of] children and youth services, AND who shall be appointed by the governor to serve for a term of four years from the date of his appointment.

(b) EACH DESIGNEE OR OFFICER SHALL BE A PERSON WHO IS FAMILIAR WITH AND EXPERIENCED IN ADOPTION PROCEDURES, POLICIES AND PRACTICES.

(c) The members of [said] THE board shall select a chairman from among their membership who shall serve for a term of two years from his election or until his successor is elected.

(d) The members of the board shall receive no compensation for their services as such. [Any designee or officer hereinbefore referred to shall be a person familiar with and experienced in adoption procedures, policies and practices.]

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

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Sec. 45a-185. [Sec. 45-69d.] Powers of adoption review board. NOTICE AND HEARING.

(a) Notwithstanding the provisions of section 45-63, ~~AS AMENDED BY SECTION 150 OF THIS ACT~~, the adoption review board may, upon application, notice and hearing as hereinafter provided, for cause shown that it is in the best [interest] INTERESTS of the minor child, waive the requirement that [such] THE minor child be placed by the commissioner of [the department of] children and youth services or a child placing agency.

(b) Any judge of probate who has had presented to him an application for adoption which may not proceed because the child has not been so placed may apply in writing to the adoption review board for a waiver of such requirement.

(c) Upon receipt of [such] THE application, the chairman of the board shall set a time and place for a hearing and cause notice to be sent by registered or certified mail to [such] THE judge of probate and to all parties entitled to notice in [such] THE adoption proceeding.

(d) [Such] THE hearing shall be held not less than ten days nor more than thirty days after the receipt of [such] THE application [and the]. THE parties entitled to notice shall be given notice at least ten days prior to the hearing.

Reviser's comments:

Section subdivided to improve readability.

Minor language changes for clarification and simplification.

Catch-line changed to more accurately reflect content of section.

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(e) Any party to the adoption proceedings shall have the right to present [such] evidence as is deemed necessary and relevant to the board [and after]. AFTER hearing the evidence the board may deny the application or approve the application in which case the chairman shall notify the court of probate that the adoption may proceed and that the requirement of placement by the commissioner of [the department of] children and youth services or a child placing agency is waived.

(f) If the court of probate thereafter grants the adoption application, there shall be included in the decree a finding that the placement requirements of section 45-63, ~~AS AMENDED BY SECTION 150 OF THIS ACT,~~ have been waived by the adoption review board.

(g) No such waiver [shall] MAY be granted if [it is determined by] the board DETERMINES that the adoption proceeding would violate the public policy of the state against the obtaining of children by illegal means for adoption purposes.

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Sec. 45a-186. [Sec. 45-69e.] [Confidentiality of records] RECORDS TO BE CONFIDENTIAL.

All proceedings, documents, correspondence and findings by the board shall be returned to the probate court initiating the application and shall be confidential and placed in sealed envelopes as required by section [45-66] 45-68m, ~~AS AMENDED BY SECTION 169 OF THIS ACT.~~

Reviser's comments:

Catch-line changed to more accurately reflect content of section.

Reference to section 45-66 changed to reflect the transfer of that section to 45-68m.

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CHAPTER VI

CHILDREN CONCEIVED THROUGH ARTIFICIAL INSEMINATION

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Sec. 45a-187. [Sec. 45-69f.] Child born as a result of artificial insemination legitimate.

(a) It is declared that the public policy of this state has been an adherence to the doctrine that every child born to a married woman during wedlock is legitimate.

(b) This chapter shall be construed as a codification and clarification of such doctrine with respect to any child conceived as a result of heterologous artificial insemination.

Sec. 45a-188. [Sec. 45-69g.] A.I.D. who may perform. Consent required.

(a) The technique known as heterologous artificial insemination, or artificial insemination with the semen of a donor, [hereinafter] referred to IN THIS CHAPTER as A.I.D., may be performed in this state only by persons certified to practice medicine in this state pursuant to chapter 370.

(b) A.I.D. shall not be performed unless [such] THE physician receives in writing the [consent and] request AND CONSENT of the husband and wife desiring the utilization of A.I.D. for the purpose of conceiving a child or children.

Reviser's comments:

Section subdivided to improve readability.

Reviser's comments:

Minor language changes for clarification and simplification.

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Sec. 45a-189. [Sec. 45-69h.] Consent and request TO BE filed in probate court. Confidential.

(a) Whenever a child is born [,] who was conceived by the use of A.I.D., a copy of the consent and request required under subsection (b) of section 45-69g, ~~AS AMENDED BY SECTION 175 OF THIS ACT~~, together with a statement of the physician who performed the A.I.D., that to the best of his knowledge [such] THE child was conceived by the use of [such] A.I.D., shall be filed with the judge of probate in the district in which [such] THE child was born or in which [such] THE child resides [, and the].

(b) THE information contained [therein] IN SUCH STATEMENT may be disclosed only to the persons executing [such] THE consent [and no]. NO other person shall have access to [such] THE information except upon order of the probate court for cause shown.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

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Sec. 45a-190. [Sec. 45-69i.] Status of child born as a result of A.I.D.

For clarification and simplification of language.

Any child or children born as a result of A.I.D. shall be deemed to acquire, in all respects, the status of a naturally conceived legitimate child of the husband and wife who consented TO and requested the use of A.I.D.

Sec. 45a-191. [Sec. 45-69j.] No rights in donor of sperm.

Reviser's comments:

[No] A donor of sperm used in A.I.D., or any person claiming by or through him, shall NOT have any right or interest in any child born as a result of A.I.D.

Minor language changes for clarification and simplification.

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Sec. 45a-192. [Sec. 45-69k.] Status of child determined by jurisdiction of birth.

For clarification and simplification of language.

(a) Any child conceived as a result of A.I.D. performed in Connecticut and born in another [jurisdiction] JURISDICTION shall have his status determined by the law of [such] THE other jurisdiction unless the mother of [such] THE child is domiciled in Connecticut at the time of the birth of [such] THE child.

(b) If a child is conceived by A.I.D. in another jurisdiction but is born in Connecticut to a husband and wife who, at the time of conception, were not domiciliaries of Connecticut, but are domiciliaries at the time of the birth of [such] THE child, [such] THE child shall have the same status as is provided in section 45-69i [notwithstanding] EVEN IF the provisions of subsection (b) of section 45-69g, and section 45-69h, may not have been complied with.

Sec. 45a-193. [Sec. 45-691.] Inheritance [of
a] BY child conceived as a result of A.I.D.

(a) A child born as a result of A.I.D. may inherit the estate of his mother and her consenting spouse or their relatives as though he were the natural child of [such] THE mother and consenting spouse and he shall not inherit the estate from his natural father or his relatives.

(b) The mother and her consenting husband or their relatives may inherit the estate of [such] A child born as a result of A.I.D., if the child dies intestate, and the natural father or his relatives shall not inherit from him.

Reviser's comments:

Minor language changes for clarification and simplification.

Catch-line changed for simplification.

Section subdivided to improve readability.

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Sec. 45a-194. [Sec. 45-69m.] Words of inheritance to apply to child conceived through A.I.D.

(a) The words "child," "children," "issue," ["decendants," "decendant,"] "DESCENDANT," "DESCENDANTS," ["heirs,"] "heir," "HEIRS," ["unlawful heirs,"] "LAWFUL HEIR," "LAWFUL HEIRS," "grandchild" and "grandchildren," when used in [the singular or plural in] any will or trust instrument, shall, unless [such] THE document clearly indicates a contrary intention, include children born as a result of A.I.D.

(b) The provisions of this section shall apply to wills and trust instruments whether or not executed before, on or after October 1, 1975, unless the instrument indicates an intent to the contrary.

Reviser's comments:

Minor language changes for clarification and simplification.

Section subdivided to improve readability.

Misspelling corrected.

P. 745

Sec. 45a-195. [Sec. 45-69n.] Status of child
conceived through A.I.D. born [prior to]
BEFORE October 1, 1975.

For clarification and simplification of
language.

Nothing in this chapter shall be construed as
a change or modification of the rights or
status of children born [prior to] BEFORE
October 1, 1975, but shall be construed as a
clarification and codification of the rights
and status [such] WHICH THE children had on
said date.

CHAPTER VII

UNIFORM GIFTS TO MINORS ACT

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As used in this chapter, unless the context otherwise requires: (a) "Adult person" means a person who has attained the age of eighteen years;

(b) "Bank" means a state bank and trust company, national banking association, savings bank or industrial bank;

(c) "Broker" means a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions and also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;

(d) "Court" means the probate court;

(e) "The custodial property" includes (1) all securities, money, life insurance policies, annuity contracts, interests in limited partnerships and interests in real property located in this state under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter; (2) the income from the custodial property, and (3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts, interests in limited partnerships, income and interests in real property located in this state;

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(f) "Custodian" means a person so designated in a manner prescribed in this chapter;

(g) A "guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person;

(h) "Issuer" means a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;

(i) "Legal representative" of a person means his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate;

(j) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;

(k) A "minor" is a person who has not attained the age of eighteen years;

(l) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust

certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;

(m) "Transfer agent" means a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;

(n) "Trust company" means a bank authorized to exercise trust powers;

(o) "Savings and loan association" means savings and loan associations and federal savings and loan associations;

(p) "Life insurance policies and annuity contracts" means only life insurance policies and annuity contracts on the life of a minor or a member of the minor's family as defined in subsection (j) of this section;

(q) "Credit union" means a state or federally chartered credit union.

Sec. 45a-197. [Sec. 45-102.] Methods of making gift.

No change. (Uniform Act).

(a) An adult person may, during his lifetime, make a gift of a security, an interest in a limited partnership, money, a life insurance policy, an annuity contract or an interest in real property located in this state to a person who is a minor on the date of the gift: (1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "As custodian for(name of minor) under the Connecticut Uniform Gifts to Minors Act"; (2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or to a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE CONNECTICUT UNIFORM GIFTS TO MINORS ACT

I,(name of donor), hereby deliver to(name of custodian) as custodian for(name of minor) under the Connecticut Uniform Gifts to Minors Act, the following security (ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them) (signature of donor) (name of custodian) hereby acknowledges receipt of the above described security (ies) as custodian for the above minor under the Connecticut

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Uniform Gifts to Minors Act. Dated:
(signature of custodian.)" (3) If the subject
of the gift is money, by paying or delivering
it to a broker or a bank, or to a savings and
loan association, or a credit union for
credit to an account or for purchase of
shares in the name of the donor, another
adult person or a bank with trust powers,
followed, in substance, by the words: "As
custodian for(name of minor) under the
Connecticut Uniform Gifts to Minors Act." (4)
If the subject of the gift is a life
insurance policy or an annuity contract, the
ownership of the policy or contract shall be
registered by the donor of such policy or
contract in his own name, in the name of
another adult person or a trust company,
followed, in substance, by the words: "As
custodian for(name of minor) under the
Connecticut Uniform Gifts to Minors Act," and
such policy or contract shall be delivered to
the person in whose name it is thus
registered as custodian. If the policy or
contract is registered in the name of the
donor, as custodian, such registration shall
of itself constitute the delivery required by
this subsection. (5) If the subject of the
gift is an interest in real property, by
executing a conveyance of such interest to
the custodian as custodian for such minor
under the Connecticut Uniform Gifts to Minors
Act in the usual manner of executing
conveyances of interests in real property and
delivering such conveyance to the custodian.

(b) An adult person may, by will, make a
specific bequest of a interest in a limited
partnership or devise of an interest in real
property to a person who is a minor on the
date of the testator's death: (1) If the

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subject of the bequest is a security in registered form by directing his executor to register such security in the name of another adult person or a trust company, in the form provided in subsection (g) of section 45-104; (2) if the subject of the bequest is a security not in registered form, by directing his executor to deliver it to an adult person or to a trust company, accompanied by a statement in the following form, in substance, signed by the executor and the person designated as custodian:

"SPECIFIC BEQUEST UNDER THE CONNECTICUT UNIFORM GIFTS TO MINORS ACT

I,....(name of executor), hereby deliver to(name of custodian) as custodian for(name of minor) under the Connecticut Uniform Gifts to Minors Act, the following security (ies): (Insert an appropriate description of the security or securities delivered sufficient to identify it or them) on behalf of" (3) If the subject of the devise is an interest in real property, by directing his executor to execute a conveyance of such interest to an adult person named by the testator in the form provided in subdivision (5) of subsection (a) of this section, and deliver such conveyance to such person.

(c) Any gift made in a manner prescribed in subsection (a) or (b) of this section may be made to only one minor and only one person may be the custodian.

(d) A donor who makes a gift to a minor in a

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manner prescribed in subsection (a) or his executor, in the case of a gift under subsection (b), shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the failure of the donor or his executor to comply with this subsection, nor the designation by the donor of an ineligible person as custodian, nor renunciation by the person designated as custodian shall affect the consummation of the gift.

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Sec. 45a-198. [Sec. 45-103.] Gift, devise or bequest to be irrevocable. Rights and powers granted custodian, issuers, transfer agents, brokers.

(a) A gift, devise or bequest made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the custodial property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(b) By making a gift, devise or bequest in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, bank, savings and loan association, credit union, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter.

Reviser's comments:

No change. (Uniform Act).

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Sec. 45a-199. [Sec. 45-104.] Powers and duties of custodian.

No change. (Uniform Act).

(a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen years or, if the minor dies before attaining the age of eighteen years, he shall thereupon deliver or pay it over to the estate of the minor.

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(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property in any property described in subsections (a) and (b) of section 45-102 as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain any property given to the minor in a manner prescribed in this chapter.

(f) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer of a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Connecticut Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a

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broker or in a bank or savings and loan association or credit union in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Connecticut Uniform Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(i) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

(j). If the subject of the gift is a life insurance policy or annuity contract, the custodian (1) shall have all the incidents of ownership in such policy or contract which he may hold as custodian, to the same extent as if he were the owner thereof, except that the designated beneficiary of any such policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any such policy or contract on the life of a person other than the minor shall be the minor or the custodian, as custodian; and (2) may pay premiums on the policy or contract out of the custodial property.

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Sec. 45a-200. [Sec. 45-105.] Reimbursement of custodian.

No change. (Uniform Act).

(a) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(b) A custodian may act without compensation for his services.

(c) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services.

(d) Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his duties.

(e) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this chapter.

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Sec. 45a-201. [Sec. 45-106.] Responsibility of issuer, agent, bank, credit union or broker.

No change. (Uniform Act).

No issuer, transfer agent, bank, life insurance company, savings and loan association, credit union, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

No issuer, transfer agent, bank, life insurance company, savings and loan association, broker or other person acting on any instrument of designation of a successor custodian, executed as provided in section 45-107 by a minor to whom a gift has been made in a manner prescribed in this chapter and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this chapter of the instrument of designation.

184

Sec. 45a-202. [Sec. 45-107.] Successor custodian. Resignation of custodian.

No change. (Uniform Act).

(a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor. The instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed in this chapter.

(b) The designation of a successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative: (1) Causes the item, if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "As custodian for(name of minor) under the Connecticut Uniform Gifts to Minors Act"; or, (2) if the custodial property is an interest in real

property, executes a conveyance of such interest to the successor custodian in the form provided in subdivision (5) of subsection (a) of section 45-102; and (3) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(c) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (a) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has attained the age of fourteen years, or, if none, in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (a) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by an instrument dated on a later date.

(d) If a person designated as custodian or as successor custodian as provided in subsection

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(a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of eighteen years and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), the guardian of the minor, if the minor has a guardian, shall be successor custodian and, if the minor has no guardian, a donor, his legal representative, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian; provided, in the case of the death of the custodian, the court shall not appoint a successor custodian upon such petition until presentation has been made to it of a "consent to transfer" by the tax department and of a complete inventory of the custodial property held in the name of the custodian.

(e) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to such persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the

court finds to be in the best interests of
the minor.

766

324.

Sec. 45a-203. [Sec. 45-108.] Petition for
Accounting.

No change. (Uniform Act).

(a) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(b) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

767

Sec. 45a- 204. [Sec. 45-109.] Construction.
Not exclusive method of gift.

No change. (Uniform Act).

(a) This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(b) This chapter shall not be construed as providing an exclusive method for making gifts to minors nor as affecting gifts made in a manner prescribed in chapter 337a of the 1955 supplement to the general statutes prior to October 1, 1957, nor the powers, duties and immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. The provisions of this chapter shall apply to all gifts made in a manner and form prescribed in said chapter 337a except so far as such application impairs constitutionally vested rights.

768

Sec. 45a-205. [Sec. 45-109a.] Prior gifts in real property.

No change. (Uniform Act).

Any gift of an interest in real property located in this state, purporting to be made prior to May 7, 1971, under the provisions of chapter 781, is validated, notwithstanding that there was no specific authority in this chapter for such a gift at the time such gift was made.

Sec. 45a-206. [Sec. 45-109b.] Custodial property held prior to January 1, 1973.

No change. (Uniform Act).

The provisions of sections 45-101, 45-104 and 45-107, with respect to the age of a minor for whom custodial property, as defined in section 45-101, is held in accordance with the provisions of this chapter shall not apply to custodial property held prior to January 1, 1973, or to the income from such custodial property, or to the proceeds, immediate or remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such custodial property or such income, and in such cases the age of the minor shall be deemed to be under twenty-one years.

770

CHAPTER VIII

DURABLE POWER OF ATTORNEY

122

Sec. 45a-207. [Sec. 45-69o.] Power of attorney to survive disability or incompetence.

(a) The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of any person who acts under a power of attorney in a writing executed by [such] THE principal, [which] IF THE writing contains the words "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of [such] THE principal that the authority conferred shall be exercisable notwithstanding [such] THE principal's subsequent disability or incompetence; provided [such] THE power of attorney is executed and witnessed in the same manner as provided for deeds in section 47-5.

(b) If a conservator is [thereafter] appointed AFTER THE OCCURRENCE OF THE DISABILITY OR INCOMPETENCE REFERRED TO IN SUBSECTION (a) OF THIS SECTION, [such] THE power of attorney shall cease at the time of [such] THE appointment, and the person acting under [such] THE power of attorney shall account to the conservator rather than to the principal.

For clarification and simplification of language.

Cross Reference: Chapter 7.

CHAPTER IX

FIDUCIARIES

This chapter contains statutes concerning general rights and responsibilities of fiduciaries in general. The fiduciaries to whom these statutes may be applicable include trustees, guardians, conservators, executors and administrators.

773

PART I
FIDUCIARIES' RIGHTS AND RESPONSIBILITIES -
GENERAL

774

Sec. 45a- 208. (NEW.) Definitions.

As used in this chapter, unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

Reviser's comments:

Definitions added for clarity and economy of language.

775

Sec. 45a-209. [Sec. 45-21.] WHEN payments by [executors and others] FIDUCIARIES protected.

(a) [Whenever any] ANY person, acting as [executor, administrator, conservator, guardian or trustee] A FIDUCIARY AS DEFINED BY SECTION 184 OF THIS ACT or in any other fiduciary capacity, WHO IN GOOD FAITH makes payments or delivers property or estate [under or] pursuant to the order of [a] THE court of probate having jurisdiction BEFORE AN APPEAL HAS BEEN TAKEN FROM SUCH ORDER, [the person making such payment or delivery in good faith, and before an appeal has been taken from such order,] shall not be liable [, or in any way holden,] for the money so paid, or the property so delivered, [although] EVEN IF the order [,] under [or by] virtue of] which such payment or delivery has been made [,] is [afterwards] LATER reversed, vacated or set aside. [; but this provision]

(b) THIS SECTION shall not prevent a recovery of such money or property by the person entitled [thereto] TO IT from any person receiving it or in possession [thereof] OF IT.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

Section transferred to chapter concerning fiduciaries from chapter on organization, powers and duties of probate courts.

Title of section recommended to clarify effect of section.

922

Sec. 45a-210. [Sec. 45-88.] Investment of trust funds AND FUNDS HELD BY CERTAIN FIDUCIARIES. CUSTODY OF SECURITIES. TRANSFER OF TITLE.

(a) INVESTMENT OF TRUST FUNDS AND FUNDS HELD BY CERTAIN FIDUCIARIES. Trust funds, received or held by trustees, unless otherwise provided in the instrument creating the trust, and funds received or held by guardians or conservators, (1) may be invested in such real estate mortgages as the savings banks in this state may be authorized by law to invest in, or (2) may be deposited in savings banks incorporated by this state or in time or savings deposits in state banks and trust companies and national banking associations located in this state, or (3) may be paid into accounts of savings and loan associations located in this state insured by the Federal Savings and Loan Insurance Corporation, its successors or assigns, or (4) may be invested or reinvested in any bonds, stocks, specifically including but not by way of limitation, shares of any open-end or closed-end management-type investment company or investment trust registered under the Federal Investment Company Act of 1940, as amended, or other securities, selected by the trustee, guardian or conservator with the care of a prudent investor. Any bonds purchased by a trustee, guardian or conservator under authority of this section may, in the discretion of such fiduciary, be in coupon form.

Reviser's comments:

Title of section recommended to clarify purpose of section.

Section subdivided and internal catch-lines added to improve readability.

444

(b) CUSTODY OF SECURITIES OF ESTATE.

TRANSFER OF TITLE TO SECURITIES. In the absence of an express provision to the contrary in the instrument, judgment, decree or order creating a trust or other fiduciary relationship or appointing a fiduciary, [including a trustee, executor, administrator, guardian or conservator,] such fiduciary [or fiduciaries] may entrust the custody of any bonds, stocks or other securities of the fiduciary estate to any national banking association, state bank, trust company or state bank and trust company in the state of New York or in the [commonwealth] COMMONWEALTHS of Massachusetts or Pennsylvania, which is a member of the federal reserve system and whose capital, surplus and undivided profits in the aggregate are not less than fifty million dollars. Any such fiduciary may transfer title to any such bonds, stocks or other securities without any court order to do so.

822

Sec. 45a-211. [Sec. 45-89.] Investments as received BY CERTAIN FIDUCIARIES need not be changed.

Trust funds received by executors, trustees, guardians or conservators may be kept invested in the securities received by them, unless it is otherwise ordered by the court of probate or unless the instrument under which such trust was created directs that a change of investments shall be made, and the trustees thereof shall not be liable for any loss that may occur by depreciation of such securities.

Reviser's comments:

Title of section recommended to clarify purpose of statute.

522

Sec. 45a-212. [Sec. 45-259.] [Executor]
FIDUCIARY may subscribe for corporate stock.

Whenever any [executor, administrator, trustee, conservator or guardian] FIDUCIARY holds shares of the stock of any corporation as assets of the estate in his charge and there is an increase of the capital stock of any such corporation, such [executor, administrator, trustee, conservator or guardian] FIDUCIARY may, with the consent of the court of probate having jurisdiction of such estate, (1) subscribe for and take the shares of the increased capital stock to which such estate may be entitled or (2) [may] sell and transfer to others the right to subscribe for such shares.

Reviser's comments:

Minor language changes for clarification and simplification.

Statute subdivided for clarification and simplification.

Title of section recommended to clarify purpose of section.

Sec. 45a-213. [Sec. 45-191.] Right of foreign corporation to be executor or trustee.
PREREQUISITES. BOND.

(a) Any foreign corporation authorized by its charter to act as executor or trustee in the state where it is chartered, and named as executor or trustee by any resident of this state, or by any nonresident owning property within this state, or so named by any person or persons holding a power to appoint an executor or trustee, or so named by any corporation, may qualify and act as such executor or trustee in this state, if similar domestic corporations which have the power under the law of this state to act as executor or trustee, or both, in this state are permitted to act in like capacity in the state where such foreign corporation has its domicile.

(b) [No such] SUCH corporation shall NOT act in such capacity until it has appointed in writing the secretary of the state and his successors in office to be its attorney, upon whom all process in any action or proceeding against it may be served. [; and in] IN such writing such corporation shall agree that any process against it which is served on such secretary shall be of the same legal force and validity as if served on such corporation, and that such appointment shall continue so long as any liability remains outstanding against the corporation in this state.

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

(c) Where any court of probate has jurisdiction of the accounts of such executor or trustee, such court may in its discretion require such corporation to give bond for the performance of its duties, in like manner and to the same extent that it may require bond of a similar domestic corporation.

782

340.

Sec. 45a-214. [Sec. 45-193.] Investments held by foreign corporation as executor or trustee; use of nominee.

[(1)] (a) Except as otherwise provided by this section, all investments held, as executor or testamentary trustee of the estate of any resident of this state or of any nonresident leaving property within this state, by any foreign corporation which is qualified to act as executor or testamentary trustee in this state as provided by section 45-191, ~~AS AMENDED BY SECTION 189 OF THIS ACT,~~ shall be segregated and shall not be mingled with other assets of such foreign corporation or with the investments of any other trust, and shall, except as provided in subsection [(2)] (b) [hereof] OF THIS SECTION, be so held as clearly to set forth the fiduciary capacity in which such foreign corporation is acting.

[(2)] (b) A foreign corporation which is appointed to act in this state pursuant to the provisions of section 45-191, ~~AS AMENDED BY SECTION 188 OF THIS ACT,~~ owning stock as a trustee, may deposit or arrange for the deposit of such stock or other securities in a clearing corporation, as defined in section 42a-3-102(3), ~~AS AMENDED BY SECTION 1 OF PUBLIC ACT 79-435,~~ and may hold it in the name of a nominee, including the nominee of such clearing corporation, without mention of the trust in the stock certificate or stock registration book; provided [(a)] (1) the trust records and all reports or accounts

Reviser's comments:

Statute reorganized and renumbered for consistency with format generally used in the General Statutes and for clarification.

rendered by the trustee clearly show the ownership of the stock by the trustee and the facts regarding its holding; and [(b)] (2) except for stock and other securities deposited in a clearing corporation, the nominee shall deposit with the trustee a signed statement showing the trust ownership, shall either endorse the stock certificate in blank or execute a power of attorney for transfer in blank, and shall not have possession of the stock certificate or access thereto except under the immediate supervision of the trustee. The trustee shall be personally liable for any loss to the trust resulting from any act of such nominee in connection with stock so held. If such foreign corporation is acting as trustee with one or more co-trustees, it shall secure, in advance, the consent, in writing, of such co-trustee or co-trustees to the registration of stock in the name of a nominee, and such co-trustees are authorized to consent thereto. The word "trustee" as used in this section includes executors and testamentary trustees of the estates of any residents of this state or of any nonresidents leaving property within this state.

PART II
DEPOSIT OF SECURITIES IN
CLEARING CORPORATION

185

343.

Sec. 45a-215. [Sec. 45-100g.] Authorization to deposit securities in clearing corporation.

No change.

(a) Notwithstanding any other provision of law, any fiduciary, as defined in sections 45-100d and subsection (b) of section 36-83, holding securities in its fiduciary capacity, any state bank, trust company or national bank holding securities as a custodian, managing agent or custodian for a fiduciary, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation as defined in subsection (3) of section 42a-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, trust company or national bank acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A state bank, trust company or national bank so depositing securities pursuant to this section shall be subject to the rules and regulations as, in the case of state chartered institutions, the state banking commissioner within the department of

business regulation, and in the case of national banking associations, the comptroller of the currency, may from time to time issue. A state bank, trust company or national bank, acting as custodian for a fiduciary, shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such state bank, trust company or national bank in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary.

(b) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any state bank, trust company or national bank holding securities as a custodian, managing agent or custodian for a fiduciary, acting on October 1, 1972, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of such clearing corporation.

787

PART III
CLAIMS AGAINST CERTAIN FIDUCIARIES

887

Sec. 45a-216. [Formerly part of Sec. 45-213.]
Suit upon claims against [fiduciary] CERTAIN
FIDUCIARIES. LIMITATION OF TIME.

When any guardian, conservator or testamentary or other trustee required to account in a court of probate is unable to settle or adjust any claim against him as such, or when any such guardian, conservator or trustee and a claimant against him are unable to agree concerning the amount or validity of such claim, such guardian, conservator or trustee may give written notice to such claimant of the disallowance of his claim, wholly or in part. Unless such claimant commences a suit against such guardian, conservator or trustee within four months after such notice has been given, such claimant shall be barred of his claim against such guardian, conservator or trustee, except such part as has been allowed, and of any such claim against the estate or trust; but, if such creditor dies within such four months and before suit has been brought, a period of four months from his death shall be allowed to his executor or administrator within which to commence such suit.

Reviser's comments:

Original statute divided and the portion of statute dealing with guardians, conservators and trustees moved out of a chapter concerning decedent's estates and into a chapter concerning fiduciaries.

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

PART IV

REMOVAL, RESIGNATION OR DEATH OF FIDUCIARY.
APPOINTMENT OF SUCCESSOR FIDUCIARY

790

Sec. 45a-217. [Sec. 45-263.]
Removal, resignation or death of fiduciary
and appointment of successor.

(a) REMOVAL OF FIDUCIARY FOR CAUSE.

[When] IF any [executor or administrator or
any other person acting in a fiduciary
capacity] FIDUCIARY becomes incapable of
executing his trust, [or] neglects to perform
the duties [thereof] OF HIS TRUST, or wastes
the estate in his charge, the court of
probate having jurisdiction may, [remove him,
after notice and a hearing, on] UPON its own
motion, or upon the application and complaint
of any person interested or of the surety
upon [his] THE FIDUCIARY'S probate bond,
AFTER NOTICE AND A HEARING, REMOVE SUCH
FIDUCIARY. [and such]

(b) RESIGNATION OF FIDUCIARY. THE court
OF PROBATE, after notice and hearing, may
[act upon and] accept or reject the written
resignation of any [such person;] FIDUCIARY,
but [no] such resignation shall NOT be
accepted until such [person] FIDUCIARY has
fully and finally accounted for the
administration of his trust to the acceptance
of such court. [Upon the death, removal or
acceptance of the resignation of any such
person before the completion of his duties,
such court of probate may appoint a suitable
person to fill the vacancy caused thereby,
who shall give a probate bond, and all suits
in favor of or against any such person shall
survive to and may be prosecuted by or
against the person appointed to succeed him.]

Reviser's comments:

Section subdivided and internal
catch-lines added to improve readability.

Minor language changes for simplification
and clarification.

(c) RESIGNATION OR REMOVAL OF TESTAMENTARY TRUSTEE OR TESTAMENTARY GUARDIAN. Trustees appointed by a testator to execute a trust created by will and testamentary guardians may resign or be removed, and the vacancies filled [in like manner] by the court having jurisdiction IN THE MANNER PROVIDED UNDER THIS SECTION, unless otherwise provided by the will.

(d) APPOINTMENT OF SUCCESSOR FIDUCIARY. BOND. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (c) OF THIS SECTION, UPON THE DEATH, REMOVAL OR ACCEPTANCE OF THE RESIGNATION OF ANY FIDUCIARY BEFORE THE COMPLETION OF HIS DUTIES, THE COURT OF PROBATE MAY APPOINT A SUITABLE PERSON TO FILL THE RESULTANT VACANCY AND SUCH SUCCESSOR FIDUCIARY SHALL GIVE A PROBATE BOND.

(e) EFFECT ON LAWSUITS. ALL SUITS IN FAVOR OF OR AGAINST THE ORIGINAL FIDUCIARY SHALL SURVIVE TO AND MAY BE PROSECUTED BY OR AGAINST THE PERSON APPOINTED TO SUCCEED HIM.

Sec. 45a-218. [Sec. 45-264.] Appeal from removal of fiduciary. EFFECT ON SUCCESSOR FIDUCIARY.

(a) When [any executor or administrator or any other person acting in a fiduciary capacity] FIDUCIARY has been removed for cause by a court of probate, as provided in section 45-263, ~~AS AMENDED BY SECTION 192 OF THIS ACT,~~ [such] THE fiduciary may appeal from such order of removal in the manner provided in chapter 796. In the event of an appeal from the order of removal taken by the fiduciary who has been removed, [such] THE appointment of a successor shall not be stayed by the appeal but shall be a temporary appointment. [, and such] SUCH successor fiduciary shall act during the pendency of the appeal and until the appeal is withdrawn or final judgment entered thereon.

(b) If the order of removal is sustained upon appeal, such appointment shall become permanent.

(c) If the order of removal is vacated upon appeal, such appointment may be terminated, subject to the obligation of such successor fiduciary to render a final account, and the acts of the successor fiduciary for the period of the pendency of the appeal shall be of full effect.

Reviser's comments:

Language and punctuation changed and statute subdivided for simplification and clarification.

Title of section recommended to clarify purpose of section.

793

Sec. 45a-219.[Sec. 45-36.] Examination of principal on probate bond. WHEN COURT SHALL REMOVE AND REPLACE PRINCIPAL.

(a) The surety upon any bond taken by any court of probate, or any person interested IN THE BOND [therein], may at any time make written application to such court for an order requiring the principal to exhibit fully in writing before such court the condition of the estate held by him, so that it may be ascertained whether [such] THE estate is being properly managed [, and thereupon such] . THEREUPON THE court shall cause reasonable notice of such application to be given to [such] THE principal [, and if,] . IF, upon hearing, [thereon, such] THE court finds that such application was made in good faith, it shall make such order.

(b) If [such] THE principal refuses to obey such order or if, upon his obeying it, the court finds that [such] THE estate is not being properly managed by him, it shall remove him and appoint another in his place.

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

794

Sec. 45a- 220. [Sec. 45-265.] ENFORCEMENT OF
delivery of estate to successor [how
enforced].

Any court of probate, after the removal of
any fiduciary and the appointment of [his] A
successor FIDUCIARY, may enforce the delivery
TO THE SUCCESSOR FIDUCIARY of any estate held
by the former [,] FIDUCIARY by virtue of his
original appointment [, to his successor] in
the same manner as a court of equity might
do.

Language and punctuation changed
for simplification and clarification.

Title of section recommended to
clarify purpose of section.

795

CHAPTER X
PRINCIPAL AND INCOME ACT

This chapter contains Connecticut's version
of the Uniform Principal and Income Act of
1931.

966

Sec. 45a-221.[Sec. 45-110.] Definition of terms.

As used in this chapter, (1) "principal" means any realty or personalty which has been so set aside or limited by the owner thereof or a person thereto legally empowered that it and any substitutions for it are eventually to be conveyed, delivered or paid to a person, while the return therefrom or use thereof or any part of such return or use is in the meantime to be taken or received by or held for accumulation for the same or another person; (2) "income" means the return derived from principal; (3) "tenant" means the person to whom income is presently or concurrently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution; (4) "remainderman" means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law; (5) "trustee" includes the original trustee AND ANY SUCCESSOR OR ADDED TRUSTEE of any trust to which the principal may be subject [and also any succeeding or added trustee].

Language changed and statute subdivided for simplification and clarification.

797

Sec. 45a-222.[Sec. 45-111.] Application of chapter. Powers of settlor.

Language and punctuation changed for simplification and clarification.

This chapter shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen, in all cases with or, unless otherwise stated [hereinafter] IN THIS CHAPTER, without the interposition of a trust [; except that, in] . IN the establishment of the principal, provision may be made touching all matters covered by this chapter, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, when not otherwise contrary to law, shall control notwithstanding this chapter.

867

Sec. 45a-223.[Sec. 45-112.] Income and principal. Disposition.

Language and punctuation changed for simplification and clarification.

Subsections renumbered for consistency with the format generally used in the General Statutes.

[(1)] (a) All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income unless otherwise expressly provided in this chapter.

[(2)] (b) All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal unless otherwise expressly provided in this chapter. Any profit or loss resulting upon any change in form of principal shall enure to or fall upon principal.

[(3)] (c) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant or retained by him if already in his possession or held

664

for accumulation when legally so directed by
the terms of the transaction by which the
principal was established [; while the]
THE principal shall be held for ultimate
distribution as determined by the terms of
the transaction by which it was established
or by law.

008 800

Sec. 45a-224. [Sec. 45-113.] Corporate dividends and share rights.

(1) All dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed income, provided, when a dividend is payable in shares or other securities or obligations of corporations other than the declaring corporation and the trustee determines that either the tenants or the remaindermen would profit unreasonably or inequitably at the expense of the other from the application of this section, the trustee may apportion such dividend between income and principal or allocate the same in whole or part to income or principal in such manner and in such proportions as the trustee in its discretion shall deem reasonable and equitable in order to preserve the respective interests in the trust estate. Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust shall be deemed income. All other distributions made by the company or trust, including distributions from capital gains,

Reviser's comments:

No change.

Portion of subsection (1) declared unconstitutional in Manufacturers Hanover Trust Company v. Bartram, 158 Conn. 48 (1969), will be recommended for deletion in a separate proposed bill.

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depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, shall be deemed principal, except that capital gains dividends distributed after June 15, 1965, by any regulated investment company to the trustee of any principal which was set apart prior to January 1, 1961, and was wholly or partially invested in the stock of any regulated investment company on January 1, 1961, shall be allocated to income or principal in the same manner that capital gains dividends distributed prior to June 15, 1965, by regulated investment companies to the trustee of such principal were allocated. When the trustee has the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(3) When the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation occurred or as arrears of preferred or guaranteed dividends shall be deemed income. All other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

(4) When a corporation succeeds another by merger, consolidation or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to, or in substitution for, their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section; but two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) In applying this section, the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are

determined or, in default thereof, the date of declaration of the dividend.

(6) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this section concerning the source or character of dividends or distributions of corporate assets.

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Sec. 45a-225[Sec. 45-114.] Premium and discount bonds.

Language and punctuation changed for simplification and clarification.

When any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost when purchased later, regardless of their par or maturity value [; and, upon their] . UPON THE respective maturities or upon [their] THE sale OF SUCH BONDS OR OTHER OBLIGATIONS FOR THE PAYMENT OF MONEY, any loss or gain realized thereon shall fall upon or enure to the principal, except that the gain realized upon the redemption, maturity or sale of bonds or other obligations for the payment of money which bear no stated rate of interest shall be deemed income.

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Sec. 45a-226; Sec. 45-115.] Principal used in business.

[(1)] (a) Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

[(2)] (b) When such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of the property at the end of such period, the expenses during and the inventory value of the property at the beginning of such period.

[(3)] (c) When such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

[(4)] (d) Any increase in the value of the principal used in such business shall be deemed principal [, and all] . ALL losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon principal.

Language and punctuation changed for simplification and clarification.

Subsections renumbered for consistency with format generally used in the General Statutes.

Sec. 45a-227. [Sec. 45-116.] Principal comprising animals.

Language and punctuation changed for simplification and clarification.

When any part of the principal consists of animals employed in business, the provisions of section 45-115 shall apply [; and, in] . IN other cases when the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income [; and in] . IN all other cases such offspring or increase shall be deemed income.

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Sec. 45a-228.[Sec. 45-117.] Disposition of natural resources.

No change.

When any part of the principal consists of property in lands from which may be taken timber, minerals, oils, gas or other natural resources and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal was established to sell, lease or otherwise develop such natural resources, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, such proceeds, if received as rent on a lease, shall be deemed income, but, if received as consideration, whether as royalties or otherwise, for the permanent severance of such natural resources from the lands, shall be deemed principal to be invested to produce income. Nothing in this section shall be construed to abrogate or extend any right which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own benefit.

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Sec. 45a-229. [Sec. 45-118.] Principal subject to depletion.

Language and punctuation changed for simplification and clarification.

When any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties or return from property shall be income to the tenant [, but when] . WHEN the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five per cent per annum of its fair inventory value or, in default thereof, its market value at the time the principal was established, or at its cost when purchased later, shall be deemed income and the remainder principal.

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Sec. 45a-230. [Sec. 45-119.] Trust estate; expenses.

(a) [(1)] All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal and ordinary repairs shall be paid out of income. Court costs and attorneys' and other fees on regular accountings may be charged partly to income and partly to principal, unless the instrument creating the trust otherwise specifies, provided the charges to principal shall not exceed fifty per cent of the total charge for such costs and fees and further provided, if the trustee is required to render any accounting to any court, the allocation of such charges to principal or to income shall be subject to the approval of such court.

(b) [(2)] The cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal under the terms of subsection [(2)] (b) of section 45-112 shall be paid out of principal, notwithstanding such tax may be denominated a tax upon income by the taxing

Language changed for simplification and clarification.

Statute renumbered for consistency with format generally used in general statutes.

authority.

(c) [(3)] Trustees' fees may be charged partly to income and partly to principal, provided the instrument creating the trust [shall] DOES not otherwise specify, and the charges to principal shall not exceed fifty per cent of the total charge for trustees' fees, and further provided, if the trustee is required to render accounting to any court, the allocation of such charges to principal or to income shall be subject to the approval of such court.

(d) [(4)] Expenses paid out of income according to subsection [(1)] (a) of this section which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. When the expenses to be paid out of income are of unusual amount, the trustee, subject to approval of the court having jurisdiction of such trust estate, may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, when the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

CHAPTER XI

FIDUCIARY POWERS ACT

This chapter contains the Fiduciary Powers Act.

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Sec. 45a-231. [Sec. 45-100d.] DEFINITIONS.
Incorporation of certain powers by reference
in will or trust instrument.

(a) DEFINITIONS. AS USED IN THIS
CHAPTER, (1) THE TERM "FIDUCIARY" MEANS THE
ONE OR MORE EXECUTORS OR ADMINISTRATORS
C.T.A. OR ADMINISTRATORS C.T.A., D.B.N. OF
THE ESTATE OF A DECEDENT, OR THE ONE OR MORE
TRUSTEES OF A TESTAMENTARY OR INTER VIVOS
TRUST ESTATE, OR ANY SUCCESSOR OR SUCCESSORS
TO THE ORIGINAL FIDUCIARY, OR ANY SUBSTITUTE,
OR ANY ANCILLARY FIDUCIARY, WHETHER CORPORATE
OR INDIVIDUAL AND WHETHER OR NOT SPECIFICALLY
NAMED IN THE WILL OR TRUST INSTRUMENT, AND
INCLUDES THE TERMS "CO-FIDUCIARY," "CO-
EXECUTOR" AND "CO-TRUSTEE." (2) THE TERM
"SETTLOR" MEANS THE CREATOR OF AN INTER VIVOS
TRUST, WHETHER CALLED "SETTLOR," "GRANTOR,"
"DONOR," OR "TRUSTOR" IN THE INSTRUMENT. (3)
"WILL" AND "TRUST INSTRUMENT" INCLUDE
CODICILS OR AMENDMENTS AS THE CONTEXT MAY
REQUIRE.

(b) USE OF TERMINOLOGY. IN ALL CASES,
THE SINGULAR INCLUDES THE PLURAL OF SAID
TERMS AND REFERENCE TO ANY PERSON BY USE OF
THE NEUTER TERM "IT" INCLUDES MASCULINE AND
FEMININE AND VICE VERSA.

(c) INCORPORATION OF CERTAIN POWERS BY
REFERENCE IN WILL OR TRUST INSTRUMENT. By an
expressed intention of the testator or
settlor so to do contained in a will [,] or
in an instrument in writing whereby a trust
estate is created inter vivos, any one or

Reviser's comments:

Statute subdivided and internal
catch-lines added for simplification
and clarification.

Title of section recommended to clarify
purpose of section.

more or all of the powers or any portion thereof enumerated in section 45-100e, ~~AS AMENDED BY SECTION 205 OF THIS ACT,~~ as they exist at the time of the signing of a will by the testator or at the time of the signing by the first settlor who signs a trust instrument, may be, by appropriate reference made thereto, incorporated in such will or other instrument, with the same effect as though such language were set forth verbatim in such will or other instrument. If a codicil or amendment to a trust instrument has been executed, the incorporated powers contained in such will or other instrument shall remain unchanged unless modified or otherwise altered by such codicil or amendment. Incorporation of one or more or all of the powers contained in said section by reference to said section shall be in addition to and not in limitation of other powers in the will or other instrument and of the common law powers or other statutory powers of the fiduciary. Any one or more or all of the additional powers or any portions thereof enumerated in section 45-100f, ~~AS AMENDED BY SECTION 206 OF THIS ACT,~~ also may be incorporated by reference as therein provided but only to the extent they are individually referred to in such will or other instrument. In the event of a conflict between one or more of the powers contained in said sections and the expressed terms of the will or other instrument, the terms of such will or other instrument shall govern.

[(b) As used in this chapter, the term "fiduciary" means the one or more executors or administrators c.t.a. or administrators c.t.a., d.b.n. of the estate of a decedent, or the one or more trustees of a testamentary or inter vivos trust estate, or any successor or successors to the original fiduciary, or any substitute, or any ancillary fiduciary, whether corporate or individual and whether or not specifically named in the will or trust instrument, and includes the terms "co-fiduciary," "co-executor" and "co-trustee." The term "settlor" means the creator of an inter vivos trust, whether called "settlor," "grantor," "donor," or "trustor" in the instrument.

In all cases, the singular includes the plural of said terms and reference to any person by use of the neuter term "it" includes masculine and feminine and vice versa.

(c)] (d) LIMITATION OF POWER. No discretionary power or authority conferred upon a fiduciary as provided in this chapter may be exercised by such fiduciary in such a manner as, in the aggregate, to deprive the trust or the estate involved of an otherwise available tax exemption, deduction or credit, expressly including the marital deduction and the deduction for transfers for public, charitable and religious uses, except as otherwise prescribed by the testator or settlor, or operate to impose a tax upon a settlor or estate of a testator or upon any

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other person as owner of any portion of the trust or estate involved. The exercise of a power in violation of the restriction contained in this subsection shall render the fiduciary's action with regard to that violation void. "Tax" includes, but is not limited to, any federal, state, local or foreign income, gift, estate, inheritance, succession or other death tax or duty. "Marital deduction" and "deduction for transfers for public charitable and religious uses," shall have the same meaning and application as shall exist under the federal internal revenue code in effect at the death of the testator or at the time a trust becomes irrevocable, as the case may be. ["Will" and "trust instrument" include codicils or amendments as the context may require.]

(d)] (e) CONSTRUCTION OF OTHER KINDS OF INSTRUMENTS. Nothing herein shall be construed to prevent the incorporation of the powers enumerated in section 45-100e, ~~AS AMENDED BY SECTION 205 OF THIS ACT,~~ or 45-100f, ~~AS AMENDED BY SECTION 206 OF THIS ACT,~~ in any other kind of instrument or agreement.

Powers. --The following powers may be incorporated by reference as provided in sections 45-100d and 45-100g:

See subsection (27).

(1) Retain Original Property. --To retain for such time as the fiduciary shall deem advisable any property, real, personal or mixed, which the fiduciary may receive, even though the retention of such property by reason of its character, amount, proportion to the total estate or otherwise would not be appropriate for the fiduciary apart from this provision. The fiduciary shall not retain non-income producing property, in a trust intended to qualify for the marital deduction without the consent of the life beneficiary of said trust or his legal representative, including his guardian or conservator.

(2) Sell, Mortgage or Exchange Property. --To sell, exchange, alter, assign, transfer, grant options to buy; to convey, pledge, hypothecate; and to mortgage, lease and sublease, even beyond the period of the estate or any trust; to partition or otherwise dispose of any property or interest therein; to do any of such acts without an order of any court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the fiduciary shall deem advisable; to transfer and convey the property or any interest therein, in fee simple absolute or otherwise free of all trusts. The receipts of the fiduciary for monies or things paid or delivered shall be effective discharges therefrom to the persons paying or delivering the same and no one either dealing with the fiduciary or from whom the fiduciary shall receive any money, property or other credit shall be required to see to the application thereof or shall be under any duty to follow the proceeds or other consideration received by the fiduciary from such sale or exchange. No one dealing with the fiduciary, or with any real, personal

or mixed property which is or was estate or trust property, shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale is herein authorized or directed or otherwise as to the purpose or regularity of any acts of the fiduciary purporting to be done in pursuance of any other provisions or powers herein incorporated or granted.

(3) Invest and Reinvest. --To invest and reinvest, as the fiduciary shall deem advisable, in stocks of any class, bonds, debentures, notes, mortgages or other securities in investment trusts, mutual funds and common trust funds, and to acquire by lease or purchase any interest in real property or real estate investment trusts whether such investment is in or outside the state of Connecticut or the United States and even though such investment shall not be of the character approved by applicable law but for this provision. Notwithstanding any other provisions to the contrary, a trustee of an irrevocable trust, intended to qualify for the federal gift tax exclusion as a gift of a present interest under Section 2503(b) or 2503(c) of the Federal Internal Revenue Code of 1954, as amended, or any corresponding provisions of applicable revenue laws, may not under any circumstances invest or reinvest in non-income-producing property, life insurance or annuities.

(4) Invest Without Diversification. --To make investments which cause a greater proportion of the total property held by the fiduciary to be invested in investments of one kind than would be considered appropriate for the fiduciary apart from this provision.

(5) Exercise Stock Options. --To exercise any stock options owned by the testator or settlor at his death or acquired by or held in any trust, to borrow money and pledge any assets, including stock acquired by the

exercise thereof, to obtain funds for the exercise thereof, to retain any stock purchased by the exercise of such options for such time as the fiduciary deems advisable, and to exercise all other powers in respect of such stock as though such stock formed a part of the estate at the time of death or a part of any trust.

(6) Pay Taxes and Expenses. --To pay taxes; to pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, debentures or other corporate securities in the hands of a fiduciary, whenever such payment may be legally enforceable against the fiduciary or any property of the estate or trust, or if the fiduciary deems payment expedient and for the best interests of the estate or trust; to pay for repairs and other expenses incurred in the management, collection, care, administration and protection of the trust or estate including fiduciary compensation and attorneys' fees.

(7) Receive Additional Property. --To receive additional property from any source and administer such additional property as a portion of the appropriate trust or estate under the management of the fiduciary, provided the fiduciary shall not be required to receive such property without the fiduciary's consent unless such property is devised or bequeathed to the fiduciary in its fiduciary capacity in which case the fiduciary must receive such property or resign.

(8) Borrow Money. --To borrow money and to assume indebtedness for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable, including the powers of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes, administration expenses, or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber such portion of the estate or any trust as may be

required to secure such loan or loans, and to renew existing loans either as maker or endorser.

(9) Vote Shares. --To vote shares of stock owned by the estate or owned by any trust at stockholders' meetings in person or by special, limited, or general proxy, with or without power of substitution.

(10) Register in Name of Nominee. --To hold any investment in the name of a nominee or in any form in which title will pass by delivery, but the fiduciary shall be liable for any act of the nominee in connection with the investment so held. Any corporation or its transfer agent may presume conclusively that the nominee is the actual owner of securities submitted for transfer.

(11) Use of Private Nominees. --To form a general or limited partnership or partnerships under any name or names of the fiduciary's selection for the purpose of taking and holding title to all or any of the assets comprising the estate or trust property and for becoming the named beneficiary of any or all of the insurance policies therein; said partnership or partnerships shall have the power to deposit, withdraw, sell, loan, mortgage, lease, assign, convey, exchange, transfer or deal with said estate or trust property in all ways permitted to the fiduciary and to take any such action over the signature of only one partner or of the partnership itself; and any broker, bank, savings bank, savings and loan association, and any corporation or its transfer agent or registrar may presume conclusively that said partnership or partnerships are the actual owners of the bank deposits, savings and loan shares and securities registered in their names and submitted for transfer or re-registration.

(12) Take and Exercise Options, Rights and Privileges. --To take options for acquisition of property, to

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exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold such stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the estate or trust so long as the fiduciary shall deem advisable.

(13) Participate in Reorganizations. --To unite with other owners of property similar to any which may be held at any time in the decedent's estate or in any trusts in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease or sale of the property; incorporation or reincorporation, acquisition, recapitalization, reorganization or readjustment of the capital or financial structure of any corporation, company or association

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the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders' or bondholders' protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to any such plan; and to receive as investments of any estate or any trust any securities issued as a result of the execution of such plan.

(14) Renew and Extend Obligations. --To continue any obligation, whether secured or unsecured, upon and after maturity with a renewal or extension upon such terms as the fiduciary shall deem advisable, without regard to the value of the security, if any, at the time of such continuance, even though such continuance may extend beyond the period of the estate or of any trust.

(15) Foreclose and Bid in. --To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(16) Insure. --To carry such insurance coverage, including but not limited to public liability, fire, rent, title or casualty insurance for such hazards and in such amounts, either in stock companies or in mutual companies, as the fiduciary shall deem advisable. A fiduciary or a fiduciary's employee who is a director of any corporation, more than nineteen per cent of whose stock is held by the estate or any trust, may use estate or trust assets to purchase and pay premiums on

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insurance to indemnify himself from liability resulting from acting with conflicting interests and from other acts in his capacity as a director.

(17) Collect. --To collect, receive and give receipts for rents, issues, profits, and income of an estate or trust.

(18) Litigate, Compromise or Abandon. --To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary shall deem advisable, and the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries of the estate or trust in the absence of fraud, bad faith or gross negligence of the fiduciary. No beneficiary serving as a co-fiduciary and no settlor serving as a fiduciary or co-fiduciary may participate in any decision as to claims between him and the estate or trust. Any claim by a settlor or beneficiary serving as a co-fiduciary shall be determined only by the other co-fiduciary.

(19) Employ and Compensate Agents, etc. --To employ and compensate persons deemed by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of any trust including, but not limited to: Servants, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, real estate managers, rental agents, realtors, appraisers, and investment counsel, custodians and other professional advisors as reasonably may be required or desired in managing, protecting and investing the estate or any trusts without liability for any neglect, omission, misconduct, or default of such person provided such person was selected and retained with due care on the part of the fiduciary. If investment counsel is selected, which at the time of selection has a reputation in its community for competence and fair dealing, its selection and retention shall be

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considered as having been made with due care, provided the fiduciary continues to retain such counsel only so long as such counsel maintains said reputation. Under said circumstances, the fiduciary shall have no investment responsibility whatever and may act without independent investigation upon the recommendations of any such person, without liability for any neglect, omission, misconduct, or default of such person.

(20) Acquire and Hold Property of Two or More Trusts Undivided. --To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division shall become necessary in order to make a distribution; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, that the provisions of this subdivision shall not defer the vesting in possession of any share or part of share of the estate or trust.

(21) Distribute in Cash or Kind. --To make distribution of assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, provided shares may be composed differently and specific assets may be allocated to particular distributions; to make such distribution either upon final distribution or during one or more preliminary distributions, at the then current values, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to make reasonable determinations of said values for the purpose of making distribution if there is more than one distributee thereof, which determination shall be binding upon the distributees, provided no settlor serving as a fiduciary of an irrevocable trust and no beneficiary serving as a fiduciary of any trust shall have such power.

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(22) Pay to or for Minors or Incompetents. --To make payments in money or in property, to or for a minor or incompetent in any one or more of the following ways: (A) To such minor or incompetent directly, if the fiduciary in its sole and absolute discretion deems such payment advisable; (B) to apply directly in payment for the support, maintenance, education, and medical, surgical, hospital, or other institutional care of such minor or incompetent; (C) to the legal or natural guardian of such minor or conservator of such incompetent; (D) to any other person, whether or not appointed guardian of the person or conservator by any court, who shall, in fact have the care and custody of the person of such minor or incompetent. The fiduciary shall not be under any duty to see to the application of the payments so made and the receipt by such person shall be full acquittance to the fiduciary.

(23) Determine Income and Principal Questions. --To determine in accordance with applicable law, where not otherwise provided by Connecticut's Principal and Income Act, all questions with respect to the manner in which expenses and charges, including the fiduciary's compensation as such, are to be borne and receipts are to be credited as between principal and income.

(24) Capital Gain from Mutual Funds. --The fiduciary is directed to allocate to principal all distributions representing capital gains received from the sale of securities held by regulated investment companies, real estate investment trusts or mutual funds owned by the trust.

(25) Manage Real Property. --(A) To improve, manage, protect, develop, acquire and make additions to, exchange, and abandon any real property or any interest therein; (B) to dedicate to public use or, where legally permissible, to withdraw from such dedication, parks, streets, highways, or alleys; (C) to subdivide

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or resubdivide any real property; (D) to borrow money for the purposes authorized by this subdivision for such periods of time and upon such terms and conditions as to rates, maturities and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber any such property or part thereof, whether in possession or reversion; (E) to lease or sublease any such property or part thereof to commence at the present or in the future, upon such terms and conditions, including options to renew or purchase, and for such period or periods of time as the fiduciary deems advisable, although such period or periods may extend beyond the duration of the trust or the administration of the estate involved; (F) to make gravel, sand, oil, gas and other mineral leases, subleases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which such property lies or to employ an ancillary fiduciary or fiduciaries so to act; (G) to manage and improve timber and forests on such property, to sell the

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timber and forest products; and to make grants, leases, and contracts with respect thereto; (H) to make, modify, renew or extend leases and subleases as lessor or lessee; (I) to employ agents to rent and collect rents; (J) to grant and create easements and release, convey, or assign any right, title, or interest with respect to any easement on real property or part thereof and enter into party wall agreements; (K) to erect, make repairs, replacements or improvements, structural or otherwise, or to renovate any building or other improvement on real property, and to alter, raze, remove or demolish any building or other improvement in whole or part; (L) to survey, partition, and adjust boundaries; and to make plats of any real property; and (M) to deal with any such property and every part thereof in all other ways and for such other purposes or considerations as would be lawful for any person owning the same.

(26) Deal with Other Trusts. --In dealing with one or more other trusts, the fiduciary may sell property, real, personal or mixed to, or exchange property with, the trustee of any trust which the testator or the settlor or his spouse or any child of his has created, for such estates and upon such terms and conditions as to sale price, terms of payment, and security as the fiduciary shall deem advisable, and no fiduciary shall have any duty to follow the proceeds of any such sale, provided a fiduciary who is the settlor of an irrevocable trust or a fiduciary who is a spouse or child of the settlor or testator, whether or not the trust is irrevocable, shall not have such power, nor shall a fiduciary who is also a beneficiary of another trust have any such power to deal with the trust of which he is beneficiary.

(27) Make Advances. --In its sole and absolute discretion [and] AND without in any way being required so to do, to advance money for the protection of the trust or estate, and for all expenses, losses and

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liabilities sustained in the administration of the trust or estate or because of the holding or ownerships of any trust or estate assets, for which advances and any interest thereon the fiduciary shall have a lien on the assets of the trust or estate as against a beneficiary, and in its sole and absolute discretion and without in any way being required so to do, to advance, without provision for reimbursement, cash to the executor of the will or administrator of the estate of the testator or settlor or of his spouse if there are insufficient liquid assets to pay debts, taxes or administration expenses of the decedent, or of his deceased spouse.

(28) Maintain Reserves. --To maintain reasonable reserves for depreciation, depletion, other than percentage depletion, and for amortization, and obsolescence.

(29) Make Contracts and Execute Instruments; No Duty of Inquiry. --To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers herein granted. No party dealing with a fiduciary need inquire as to the existence or proper exercise of any power of said fiduciary, whether said power is granted directly or incorporated by reference.

(30) Perform Decedent's Executory Contracts. --The fiduciary may in its discretion, complete performance of the decedent's valid executory contracts which, at the time of his death, had not been fully performed.

(31) Use of Property by Distributee. --During the administration of the testator's estate, the fiduciary shall have the discretion to permit any beneficiary to have the use, possession, and enjoyment, without charge, of any real estate or tangible personal property devised, bequeathed or ultimately distributable to said person, so long as he lives, and

if he dies before his right to said property becomes absolute or before said property is distributed to him, neither he nor his estate shall be held liable for any loss, destruction, damage, depreciation or waste of said property except through his fault or neglect. Neither the existence nor exercise of this power shall be deemed a constructive or actual distribution of the property to which it relates.

(32) Continue Business. --To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form or organization, including but not limited to the power: (A) To effect incorporation, dissolution, merger, consolidation or sale of all or substantially all of the assets, either for cash or in exchange for stock or other securities, or to make other changes in the form of the organization of the business or enterprise, and to diminish, enlarge or change the scope of nature or nature of any business; (B) to dispose of any interest therein or acquire the interest of others therein; (C) to contribute thereto or invest therein additional capital or to lend money thereto, in any such case upon such terms and conditions as the fiduciary shall approve from time to time except that a settlor of an irrevocable trust who is serving as a fiduciary thereof shall not have this power; (D) to determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole, but such allocation must be done in accordance with applicable law; (E) to control, direct and manage the business, delegate all or any part of the fiduciary's power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the business; (F) to hire and discharge officers and employees, to fix their compensation and define their

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duties; and to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives as the fiduciary may deem appropriate, including the right to employ any beneficiary, or individual fiduciary, in any of the foregoing capacities; (G) to pledge other assets of the estate or trust as security for loans made to such business; (H) to retain in the business such amount of the net earnings for working capital and other purposes of the business as the fiduciary may deem advisable in conformity with sound business practice, provided such retention does not impair any right of a beneficiary to receive all income from his share of any trust; (I) to purchase, process and sell merchandise of every kind and description; (J) to purchase and sell machinery and equipment, furniture and fixtures and supplies of all kinds; (K) to sell or liquidate all or any part of any business at such time and price and upon such terms and conditions, including credit, as the fiduciary may determine, including a sale to any partner, officer or employee of the business or to any individual fiduciary as beneficiary hereunder, provided any such sale shall be for adequate and full consideration and no such sale shall be made to an individual fiduciary who is also a beneficiary thereunder; (L) to invest other estate or trust funds in such business; and to loan funds from the trust to such business; and (M) in all cases in which the fiduciary is required to furnish statements to beneficiaries or to file accounts in any court or in any other public office, it shall not be necessary to itemize business receipts and disbursements and distributions of property but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

(33) Appoint Ancillary Fiduciaries. --The fiduciary may itself act or it may select one or more persons or

corporations to act as an ancillary fiduciary or fiduciaries and, to the extent permitted by applicable law, all of the powers held by the domiciliary fiduciary are hereby granted to the ancillary fiduciary or fiduciaries and all costs of ancillary administration may be paid from either the domiciliary estate or trust or the ancillary estate or trust, as the fiduciary may decide in its sole discretion.

(34) Postpone Distribution and Accounting. --To postpone distribution and accounting with respect to any trust for a year from the date of the termination of the trust, if in the judgment of the fiduciary such postponement shall be necessary or advisable.

(35) Tax Elections. --(A) Alternate Valuation Date. --The fiduciary may elect to value the estate for tax purposes at the values of its assets on the date of decedent's death or at those values on an estate tax valuation date other than the date of the decedent's death, whether or not such election increases or decreases the federal estate tax. No adjustments shall be required to be made between income and principal or between the property interests passing to any beneficiaries which may be affected as a result of such election. (B) Administration and Other Expenses. --To the extent permitted by law, the fiduciary may elect to

claim certain administration expenses, casualty losses, medical and other expenses as deductions either on the income tax returns of the estate or of the decedent or on the federal estate tax return or partly on each. The fiduciary shall elect to claim from time to time such expenses as deductions on the particular tax returns which in the fiduciary's opinion should result in the lowest total taxes being paid by the estate and its beneficiaries, regardless of whether such expenses may be payable from the income or principal of such estate, and the fiduciary is not required to make adjustments between income or principal or between the property interests passing to any beneficiaries which may be affected on account of such election, except that (i) where one or more residuary legatees of a will containing a so-called preriduary marital deduction formula provision is a charitable organization, as defined in Section 501(c) of the Federal Internal Revenue Code of 1954, as amended, or any corresponding provision of applicable revenue laws, in effect at the date of the death of the testator of a will incorporating this chapter, and (ii) the fiduciary elects to treat such expenses in whole or in part as income tax deductions with the result that federal estate taxes paid from and chargeable to such principal are greater than if the contrary election had been made, an amount equal to the difference in such estate taxes shall be reimbursed to such principal from the income. (C) Joint Returns. --The fiduciary is specifically authorized but not required to execute and file a joint income tax return with the surviving spouse or his executor or administrator for the year of the decedent's death and for any prior years. The fiduciary is also authorized but not required to execute and file a gift tax return with the decedent's spouse or his executor or administrator, if any gift tax return is required of either the decedent or his spouse for any quarter in the year in which death occurs or for any quarter or year prior thereto. The fiduciary is authorized but not required to consent to treat any gifts made by such

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decedent's spouse as being made one-half by the decedent. The fiduciary may pay such income and gift taxes as are chargeable to the decedent and, in its discretion, may pay the entire amount of such taxes. The fiduciary shall incur no personal liability for any action taken by it in good faith in accordance with any of the foregoing authorizations. (D) Instalment Payment of Estate Taxes. --The fiduciary is authorized in its discretion to elect to pay all or any part of the federal estate tax on the estate in instalments under the provisions of Section 6166 of the Federal Internal Revenue Code of 1954, as amended, or any corresponding provision of applicable revenue laws, taking all action it deems necessary to implement said election without incurring personal liability for any action taken or omitted by it in good faith under said authorization. (E) Request for Extension of Time for Paying Estate Tax. --The fiduciary is authorized in its discretion to request an extension of time for paying the federal estate tax, or any instalment thereof on the estate or any amounts determined as a deficiency thereon under the provisions of Section 6161 or 6163 of the Federal Internal Revenue Code of 1954, as amended, or any corresponding provision of applicable revenue laws, taking all action it deems necessary to implement said election without incurring personal liability for any action taken or omitted by it in good faith under said authorization.

(36) Surrender of Stock for Redemption. --The fiduciary is authorized in its discretion to surrender shares of stock in any corporation to the corporation issuing such stock for redemption, accepting in payment for the redeemed shares cash, notes or other property; and to vote the shares of stock of any corporation in favor of the redemption of shares of its stock included in determining the gross estate of a decedent, either for cash, notes or other property, including a redemption of such shares designed to provide funds for the payment of the decedent's death taxes, funeral expenses

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and administration expenses under the provisions of Section 303 of the Federal Internal Revenue Code of 1954, as amended, or any corresponding provision of applicable revenue laws and the fiduciary shall incur no personal liability for any action taken or omitted by it in good faith in accordance with any of the foregoing authorizations.

(37) Pooling Agreements and Voting Trusts. --To enter into any kind of pooling agreements and voting trusts, even though such action may involve delegation of authority.

(38) Exculpation: --The fiduciary is hereby exonerated from any liability resulting from its retention, sale or operation, whether due to losses, depreciation in value or actions taken or omitted to be taken with respect to any business, farm or real estate interests held in an estate or trust, nor shall the fiduciary be liable for any loss to or depreciation of any other estate or trust property, so long as it is acting in good faith in the management thereof and exercising reasonable care and diligence, but the fiduciary is not exonerated from his own bad faith, wilful misconduct or gross negligence.

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Sec. 45a-233. [Sec. 45-100f.] Additional powers.

Additional Powers. --Any one or more or all of the following additional powers or any portion thereof may be incorporated by reference, as provided in SUBSECTION (c) OF SECTION 45-100d [(a)], ~~AS AMENDED BY SECTION 204 OF THIS ACT~~, but only to the extent they are individually referred to in such will or other instrument.

(1) Stock of Fiduciary. --To retain and invest and reinvest in and purchase any stock or other securities issued by the fiduciary in its individual capacity, or by any parent holding company of the fiduciary, including any stock dividends thereon and any securities issued in lieu thereof as the result of any recapitalization, reorganization, consolidation or merger. Furthermore the fiduciary may exercise or sell any rights, or exercise part and sell part thereof, including rights to buy fractional shares, issued to it by reason of its ownership of any such security; and may retain and hold any security so acquired and vote and issue general or limited proxies to vote said stock.

(2) Buy Insurance and Annuities. --To retain and to purchase insurance contracts, on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest, or annuity contracts for any beneficiary and to pay the premiums thereon out of such beneficiary's portion of principal or income as the fiduciary, in its discretion, shall determine.

Reviser's comments:

Minor language changes for simplification and clarification.

Typographical errors corrected.

Subsections (4), (12) and (26).

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(3) Invest in Partnerships, etc. --To retain, invest and reinvest in partnerships, joint ventures, leases, real estate syndicates, small business investment companies and hedge funds.

(4) Speculative Assets. --To retain, trade and speculate in any real, personal or mixed property as the fiduciary shall deem advisable, wherever situated, including but not limited to: (A) Any one or more or all commodities regularly traded on exchanges in or outside the United States, in either spot or futures contracts, claims, straddles, spreads or any other type of commodity contract, whether long or short; (B) puts, calls and straddles in any domestic or foreign securities and short sales of such contracts and of securities; (C) interests in oil, gas, coal, gravel, sand, sulphur, precious stones, metals and their ores, including but not limited to iron, aluminum, copper, silver, rhodium, palladium, platinum, uranium and gold, if not prohibited by law, and any other mineral and timber rights, royalties, leases and payments; (D) any interests in breeding or dairy cattle, hogs, sheep or other animals; (E) postage stamps, coins, jewelry, rare books, paintings, statues, sculptures, antiques, curios, and other art objects; (F) aircraft, ships, railroad locomotives and cars, [busses] BUSES, antique automobiles and other vehicles; (G) foreign currencies, including futures contracts, whether long or short.

(5) Oil and Gas Interests. --To have power with respect to oil, natural gas, minerals, and all other natural resources and rights to any interests therein, together with all equipment

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rights pertaining thereto, including oil and gas royalties, leases, payments, or other oil and gas interests of any character, whether owned in fee, as lessee, lessor, licensee, concessionaire or otherwise, either alone or jointly with others as partner, joint tenant, or joint venturer or in any other noncorporate manner, to: (A) Make oil, gas and mineral leases or subleases; (B) pay delayed rents, lease bonuses, royalties, overriding royalties, taxes, assessments, and all other charges; (C) sell, lease, exchange, mortgage, pledge or otherwise hypothecate any or all of such rights and interests; (D) surrender or abandon, with or without consideration, any or all of such rights and interests; (E) make farm-out, pooling, repressuration and unitization agreements; (F) make reservations or impose conditions on the transfer of any such rights or interests; (G) employ the most advantageous business form in which properly to exploit such rights and interests, whether as corporations, general or limited partnerships, mining partnerships, joint ventures, co-tenancies, or otherwise; (H) drill, test, explore, mine, develop and otherwise exploit any and all such rights and interests; (I) produce, process, sell or exchange all products recovered through the exploitation of such rights and interests, and to enter into contracts and agreements for or in respect of the installation or operation of absorption, reprocessing or other processing plants; (J) carry any or all such interests in the name or names of a nominee or nominees; (K) delegate, to the extent permitted by law, any or all of the powers set forth herein to the operator of such property; and (L) employ personnel, rent office space, buy or lease office

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equipment, contract and pay for geological surveys and studies, procure appraisals, and generally to conduct and engage in any and all activities incident to the foregoing powers, with full power to borrow and pledge in order to finance such activities. The fiduciary shall have the right to rely on the judgment and recommendations of the operators of such property and need not make an independent investigation before acting on their reasonable recommendations.

(6) Form Corporation or Other Entity. --To form a corporation or other entity under the laws of any jurisdiction and to transfer, assign, and convey to such corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of any such corporation or entity, and to continue to hold such stock, securities and obligations.

(7) Fiduciary May Become Director or Officer. --To vote for any individual fiduciary or any employee, officer or director of any corporate fiduciary, to be a director, officer, or both, of any corporation or small business investment company in which the estate or trust may be interested and to belong to any committee relating in any way to such corporation or company; and to serve as such director, officer, committee member, or any or all of them, and receive proper remuneration for such services, and to exercise its discretion with respect to all matters concerning the affairs of such corporation or company, and to consent to corporate or partnership sales, exchanges, leases, mortgages and encumbrances, without in any way being

accountable for any such acts to any beneficiaries.

(8) Operate Farm. --To continue any agricultural operation received by the fiduciary pursuant to the will or other instrument and to do any and all things deemed advisable by the fiduciary in the management and maintenance of any farm, which term includes, but is not limited to, a farm, garden, orchard, ranch, timber tract or dairy; and to do any and all things concerning the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including but not limited to the following powers: (A) To operate the farm with hired labor, tenants or sharecroppers; (B) to lease or rent the farm for cash or for a share of the crops; (C) to purchase or otherwise acquire farm machinery and equipment and livestock; (D) to undertake the construction, repairs and improvements to farm buildings of all kinds needed in the fiduciary's judgment, for the operation of the farm; (E) to make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm building, or for the purchase of farm machinery or equipment or livestock; (F) to employ approved soil conservation practices in order to conserve, improve, and maintain the fertility and productivity of the soil; (G) to protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is for the best interest of the estate, or any trust; (H) to ditch, dam and drain damp or wet fields and areas of the farm when and where needed; (I) to

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engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such operations; (J) to market the products of the farm; (K) in general, to employ good husbandry in the operation of the farm.

(9) Residential Realty. --To retain any residential real property or apartment received by it hereunder, to purchase, to rent and to maintain residential real property including an ordinary, cooperative or condominium apartment for occupancy, rent free, by any of the beneficiaries hereunder, so long as one or more of them wish to use and occupy it as a home, and to sell it when it is no longer so used and occupied, to pay all rent, taxes, assessments, repairs and other charges for maintaining such real property or apartment, including title, public liability, fire and extended coverage insurance, and to make such purchases or payments out of such beneficiary's portion of the principal or income, in accordance with applicable law, as the fiduciary in its sole discretion shall determine.

(10) Deal with Estate. --To deal in every way with the estate of the settlor or testator, including but not limited to the purchase from, the sale to, the exchange of assets with such estate, or the making of loans thereto, either secured or unsecured at such rates of interest as the fiduciary shall determine. The powers described herein may be exercised by the fiduciary even though it is the legal representative of the estate, and the fiduciary shall not incur any

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liability for any loss resulting from the exercise of any such power.

(11) Suits on Insurance Policies. --To institute any proceeding at law or in equity to enforce the payment of any life insurance policy payable to the fiduciary and to do any and all things which it in its sole discretion deems advisable for the purpose of collecting any sums which may be due or payable under any such policy, provided, that the fiduciary shall be under no obligation to institute or enter into any such litigation to enforce the payment of any such policy until it shall have been indemnified to its satisfaction against all expenses and liabilities to which it may, in its judgment, be subjected by any such action on its part.

(12) Advancement of Income. --The fiduciary, other than a beneficiary serving as a fiduciary, shall have the discretion to advance income to or for the use of any beneficiary and the [fiduciary] FIDUCIARY shall have a lien therefor on that beneficiary's future benefits.

(13) Majority Action Permissible. --Where there are three or more fiduciaries, the decision of a majority of the fiduciaries shall bind all of the fiduciaries, but an absent or dissenting fiduciary who joins in carrying out the decision of the majority shall not be liable for the consequences of any majority decision if said absent or dissenting fiduciary promptly files a written notice, by certified mail, of his dissent with its co-fiduciaries and with (A) the probate court having jurisdiction over any estate or trust

or (B) the income beneficiaries of any inter vivos trust, provided that liability for failure to join in administering the estate or trust or in preventing a breach of the trust may not thus be avoided.

(14) Reduce Interest Rates. --To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.

(15) Establish and Maintain Reserves. --In lieu of the basic power specified in subdivision (23) of section 45-100e, ~~AS AMENDED BY SECTION 205 OF THIS ACT~~, the fiduciary shall have the power to set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation-
obsolescence, amortization, depletion, other than percentage depletion, of mineral, timber or other wasting assets, and for repairs, improvements, and general maintenance of buildings, or other property out of rents, profits, or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries; provided that the provisions of this subdivision shall not affect the ultimate interests of beneficiaries in such reserves, although no beneficiary may compel distribution of amounts held in such reserves.

(16) Investment Philosophy. --To invest with emphasis on growth and capital appreciation, and to apply the same criteria to both new assets and those already in the estate or trust. The fiduciary shall not be liable for any good faith action taken by it but only for negligence, since

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some assets in which it is authorized to invest are not ordinarily deemed suitable for fiduciary investment.

(17) Investment during Estate Administration. --To invest and reinvest the assets of the estate actively and aggressively during the period of administration thereof.

(18) Premium and Discount. --To determine whether or not to amortize from income as a sinking fund any premium paid to acquire property and to accrue any discount received at the time of acquisition thereof.

(19) Remortgage and Refinance Real Estate. --To remortgage and refinance real estate for any one or more of the following purposes: (A) business reasons; (B) to obtain funds to pay (i) estate, inheritance, transfer, succession or other death taxes or duties; (ii) income, property, excise or other similar taxes; (iii) interest and penalties on any tax, and (iv) debts and funeral and administration expenses of the settlor or testator; or (C) to invest or reinvest or speculate in real, personal or mixed property of any description and wherever situated.

(20) Terminate Small Trusts. --To terminate any trust by distributing to the then income beneficiary of such trust the entire principal thereof, or an annuity purchased therewith, absolutely and free of trust, if the fiduciary, other than a beneficiary or the settlor serving as such, in its sole discretion, deems continuation

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of such trust unwarranted in view of the size of the trust.

(21) Distribute Directly to Remaindermen. -- To distribute property directly from the estate to the remaindermen of any trust, without the interposition of such trust, if the facts at the time for such distribution are such that no trust of such property would be operative under the terms of the will.

(22) Disclaimer of Power. --To disclaim part or all of any one or more of the incorporated or specifically granted powers of the fiduciary by instrument in writing filed with [this document] THE WILL, TRUST OR OTHER INSTRUMENT INCORPORATING THIS POWER.

(23) Comply with Stock Restrictions. --To observe and comply with any limitations on the disposition of any stock existing in the articles of incorporation, bylaws or other contract affecting such shares.

(24) Continue Subchapter S Election. --To file appropriate consent to the continuation of any subchapter S election in existence at the time of the testator's death, within the period required by the applicable provision of the federal internal revenue code then in effect.

(25) Acquire Interest in Trust Asset. --To acquire an undivided or an individual interest in a trust or estate asset in which the fiduciary, in any fiduciary capacity, holds an undivided interest.

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(26) Income to Custodian for Minor. --Any and all income or principal that is distributed, paid to or applied for the benefit of a minor may, in the discretion of the fiduciary, be paid to any person or corporation who is serving as a custodian for the benefit of said minor under the Uniform Gifts to Minors Act. If there is no such custodian, the [fudiciary] FIDUCIARY may appoint an adult member of the minor's family, a guardian of the minor, a bank with trust powers, or himself, herself, or itself to serve as such custodian and receive such payments.

(27) General Powers. --To exercise every power and discretion in the management of the estate and the trusts created hereunder as the fiduciary would have if it were the absolute owner thereof. This general power shall not be limited in any way by the powers incorporated or granted herein, but no beneficiary serving as a co-fiduciary may participate in any decision, under this or any other power, that affects or could affect the share of such beneficiary relative to that of any other beneficiary in income, principal or in a trust remainder.

Sec. 45a- 234. [Sec. 45-100g.] Short title.

No change.

This chapter shall be known as the Fiduciary Powers Act. Any unqualified reference thereto by name or words of similar import shall be deemed to include all the powers listed in section 45-100e, at the time of signing the will or trust instrument, but none of the additional powers listed in section 45-100f.

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CHAPTER XII

POWERS IN TRUST INSTRUMENTS ACT

This chapter contains the Powers in Trust Instruments Act which is limited in applicability to instruments executed prior to January 1, 1970, which incorporate the sections in this chapter.

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Sec. 45a-235. [Sec. 45-100a.] Incorporation of certain powers by reference in will or trust instrument.

Typographical error corrected.

Section 45-100a is repealed, except said section shall continue in effect [in so far] INSOFAR as any instrument executed prior to January 1, 1970, incorporated said section.

Sec. 45a-236. [Sec. 45-100b.] Powers.

Typographical error corrected.

Section 45-100b is repealed except said section shall continue in effect [in so far] INSOFAR as any instrument executed prior to January 1, 1970, incorporated said section.

Sec. 45a-237. [Sec. 45-100c.] Short title.

Typographical error corrected.

Section 45-100c is repealed except said section shall continue in effect [in so far] INSOFAR as any instrument executed prior to January 1, 1970, incorporated said section.

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CHAPTER XIII
UNIFORM MANAGEMENT OF INSTITUTIONAL
FUNDS ACT

This chapter contains statutes concerning the management of institutional funds.

This chapter is retained in Title 45 because of its connection to fiduciaries' rights and responsibilities.

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Sec. 45a-238. [Sec. 45-100h.] Short title.

No change.

This chapter may be cited as the "Uniform
Management of Institutional Funds Act."

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Sec. 45a-239. [Sec. 45-100i.] Definitions.

No change.

As used in this chapter: (1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, a governmental organization to the extent that it holds funds exclusively for any of these purposes, or a charitable community trust as described in section 45-81;

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (A) a fund held for an institution by a trustee that is not an institution, other than a fund which is held for a charitable community trust or (B) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund;

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund;

(5) "Historic dollar value" means the aggregate fair value in dollars of (A) an endowment fund at the time it became an endowment fund, (B) each subsequent donation to the fund at the time it is made, and (C) each accumulation made pursuant to a

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direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive;

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

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Sec. 45a-240. [Sec. 45-100j.] Expenditure of net appreciation, standards.

No change.

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 45-100n. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

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Sec. 45a-241. [Sec. 45-100k.] Exception and restriction on expenditure of net appreciation. Construction.

No change.

Section 45-100j does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends" or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after October 1, 1973.

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Sec.45a- 242. [Sec. 45-1001.] Investment of institutional funds.

Typographical error corrected.

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may: (1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof; (2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable; (3) include all or any part of an institutional fund in any pooled or common fund maintained by the [institution] INSTITUTION ; and (4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

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Sec. 45a- 243.[Sec. 45-100m.] Delegation of powers of investment.

No change.

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel or managers, banks or trust companies so to act, and (3) authorize the payment of compensation for investment advisory or management services.

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Sec. 45a-244. [Sec. 45-100n.] Standards applicable to actions of governing board.

No change.

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

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Sec. 45a-245. [Sec. 45-100o.] Release of restriction in gift instrument: Written consent, court order. Limitations. Doctrine of cy pres applicable.

No change.

(a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply, in the name of the institution, to the superior court for a judicial district in which the institution conducts its affairs for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres or approximation.

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Sec. 45a-246.[Sec. 45-100p.] Construction.

No change.

This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

859

CHAPTER XIV
TRUSTS AND TRUSTEES -
IN GENERAL

This chapter contains statutes concerning trusts and trustees in general including some provisions concerning testamentary trusts and trustees.

860

Sec. 45a-247. [Sec. 45-213c.] Trustee to receive proceeds of pension, retirement, death benefit and profit sharing plans.

No change.

(a) As used in this section, "proceeds" means the proceeds paid upon the death of any insured, employee or participant under any thrift plan or trust, savings plan or trust, pension plan or trust, death benefit plan or trust, stock bonus plan or trust including any employee's stock ownership plan or trust; any retirement plan or trust, which includes self-employed retirement plans and individual retirement accounts, annuities and bonds; and the proceeds of any individual, group or industrial life insurance policy, or accident and health insurance policy and any annuity contract, endowment insurance contract or supplemental insurance contract.

(b) (1) Proceeds may be made payable to a trustee under a trust agreement or declaration of trust in existence on the date of such designation, and identified in such designation. Such proceeds shall be paid to such trustee and held and disposed of in accordance with the terms of such trust agreement or declaration of trust, including any written amendments thereto in existence on the date of the death of the insured, employee or participant. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee as beneficiary to receive such proceeds.

(2) Proceeds may be made payable to a trustee of a trust to be established by will. Upon

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issuance of a decree qualifying a trustee so named, such proceeds shall be payable to the trustee to be held and disposed of in accordance with the terms of such will as a testamentary trust. A designation which in substance names as such beneficiary the trustee under the will of the insured, employee or participant, shall be taken to refer to the will of such person actually admitted to probate, whether executed before or after the making of such designation.

(c) Such proceeds may be payable in more than one instalment. If no qualified trustee claims such proceeds from the insurer or other payor within eighteen months after the death of the insured, employee or participant, or if satisfactory evidence is furnished to the insurer or other payor within such period showing that there is or will be no trustee to receive such proceeds, such proceeds shall be paid by the insurer or other payor to the personal representative or assigns of the insured, employee or participant, unless otherwise provided by agreement with the insurer or other payor during the lifetime of the insured, employee or participant.

(d) Except to the extent otherwise provided by the trust agreement, declaration of trust or will, proceeds received by the trustee shall not be subject to the debts of the insured, employee or participant, to any greater extent than if such proceeds were payable to the beneficiaries named in the trust; and for all purposes, including the succession and transfer tax, they shall not be deemed payable to or for the benefit of the estate of the insured, employee or

862

participant.

(e) Proceeds so held in trust may be commingled with any other assets which may properly become part of such trust.

(f) Nothing in this section shall affect the validity of any designation made prior to October 1, 1978, of the trustee of any trust established under a trust agreement or declaration of trust or by will.

863

Sec. 45a-248. [Sec. 45-33.] Bonds of testamentary trustees.

When a testator has appointed a trustee to execute a trust created by his will, the court of probate having jurisdiction of the settlement of his estate shall, unless otherwise provided in [such] THE will, require of such trustee a probate bond [, and, if]. IF any trustee refuses to give such bond, [such] THE refusal shall be deemed a refusal to accept or perform the duties of such trust; but the bond without surety of any public or charitable corporation or cemetery association to which any bequest or devise is made in trust shall be deemed sufficient. Whenever by any will it is provided that the trustee or trustees thereunder shall not be required to give a probate bond, or shall be required to give a bond which in the judgment of the court of probate [in which such will is offered] HAVING JURISDICTION is insecure or inadequate, [such] THE court may, upon the application of any person interested, require such trustee or trustees at any time to furnish such bond as the judge of such court deems sufficient.

Reviser's comments:

Minor language changes for clarification and simplification.

864

Sec. 45a-249. [Sec. 45-34.] [Vacancies in office of] WHEN COURT MAY APPOINT SUCCESSOR trustee, TESTAMENTARY TRUSTEE, OR SUCCESSOR TESTAMENTARY TRUSTEE. BOND.

When any person has been appointed trustee of any estate, or holds as trustee the [avails] PROCEEDS of any estate sold, and no provision is made by law or by the instrument under which his appointment is derived for the contingency of his death or incapacity or FOR HIS refusal to accept SUCH TRUST or FOR HIS resignation of such trust, [and] OR when a trust has been created by will and no trustee HAS BEEN appointed [therein for the execution of such trust] IN THE WILL or when more than one trustee has been appointed [therein] and thereafter a trustee so appointed dies, becomes incapable, refuses to accept or resigns such trust, the court of probate of the district within which [such] THE estate is SITUATED, or, when the trust has been created by will, in the district [in which] HAVING JURISDICTION OF such will [was proved], may, on the happening of any such contingency, appoint some suitable person to fill such vacancy, taking from him a probate bond, unless in the case of a will it is otherwise provided therein, in which case the provisions of section 45-33, ~~AS AMENDED BY SECTION 213 OF THIS ACT,~~ shall apply.

Reviser's comments:

Minor language changes for clarification and simplification.

Title of section recommended to clarify purpose of section.

805

Sec. 45a-250. [Sec. 45-85.] Filling of
vacancy in town or county trusteeship.
DUTIES OF SUCCESSOR TRUSTEE FOR TOWN.
APPLICATION OF SECTION 45-84.

(a) Whenever the trustee of any trust for the use or benefit of any town or county or for the citizens of any town or county, as such, dies or becomes incapacitated or resigns or refuses to act, and no provision is made for such contingency by the instrument creating such trust, the treasurer of such town on behalf of the town or the state treasurer on behalf of the county shall thereupon become such trustee, and such treasurer and his successors in office shall act as such trustee, provided the town treasurer shall secure such bond as the selectmen from time to time prescribe.

(b) (1) When any [such] town treasurer acts as such trustee, he shall include in his annual statement a report in detail of his account as such trustee, including a list of the securities on hand, the price and date of purchase of all securities purchased since his last statement, the amount, date and source of each item of income received and the names of all banks and depositaries where such trust money is deposited with the amount on deposit in each [such] bank or depositary. (2) Such trust funds held by a town treasurer shall be invested only in the manner prescribed by section 45-83, ~~AS AMENDED BY SECTION 135 OF THIS ACT~~, unless otherwise directed by vote of a town meeting. (3) All

Reviser's comments:

Statute subdivided for simplification and clarification.

Title of section recommended to clarify purpose of section.

866

property so held in trust by a town treasurer shall at all times be open to the inspection of the selectmen and to the inspection of the person or persons appointed under the provisions of section 7-392 to audit the accounts of [such] THE town.

(c) The provisions of section 45-84, ~~AS AMENDED BY SECTION 214 OF THIS ACT,~~ shall not apply to the trusts specified in this section.

867

Sec. 45a-251. [Sec. 45-36.] Legal title vests in trustee appointed to fill vacancy.

When the legal title to any [estate] PROPERTY has vested in a trustee and the trusteeship has become vacant, such legal title shall vest in his successor immediately upon his appointment and qualification [, and a] . A certificate of [his] THE SUCCESSOR'S appointment, duly made and recorded in the land records of the town in which the [estate] PROPERTY is situated, shall be evidence that such legal title is vested in [him] THE SUCCESSOR TRUSTEE.

Reviser's comments:

Minor language changes for clarification and simplification.

898

Sec. 45a-252. [Sec. 45-90.] Foreign trustee may obtain custody of trust estate.
PROCEDURE. CONDITIONS.

When any person not a resident of this state is the owner of a life estate or income during life in any personal property or real property IN THIS STATE that may thereafter be converted into money [in this state], and the child or children of such life tenant or person entitled to such life use or income, residing in the same state as such life tenant or person entitled to such life use or income, are entitled to the remainder upon the termination of such life estate, life use or income, such life tenant having procured the appointment of a trustee or other legal custodian of the property in which he has such interest under the laws of the place of his residence, such custodian may apply in writing to the court of probate in this state which has jurisdiction of the administration of such trust estate for the possession and removal of such property [, alleging] . IN SUCH APPLICATION SUCH TRUSTEE OR CUSTODIAN SHALL ALLEGE that he has been legally appointed such custodian in the jurisdiction in which such life tenant resides, and that he has given bond and security thereon in an amount double the value of all the estate of which such person is entitled to the life use or income. Such bond and the decree of the court appointing such custodian shall provide that if the child or children of such life tenant are for any reason unable to take or receive the property upon the termination of the life estate or estate aforesaid, it is to be held and paid over by such custodian to such persons as the court of probate in this state ordering such removal directs. Upon

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

869

such custodian filing for record in the court of probate an exemplified copy of the record of the court by which he was appointed, it shall, after a hearing upon such notice as the court orders to the person having such estate in custody and after proof that all known debts against it in this state have been paid or satisfied, appoint such applicant to be guardian, conservator or trustee without further bonds, and authorize the person having such estate in his custody to deliver it to [such] THE applicant, who may demand, sue for and recover it and remove it from this state.

870

Sec. 45a-253. [Sec. 45-37.] Appointment of trustee when person has disappeared. DILIGENT SEARCH EXCUSED IN CERTAIN CASES. RIGHTS AND DUTIES OF TRUSTEE. PROCEDURES DURING TURSTEESHIP. PROCEDURE IF PERSON REAPPEARS.

(a) When any person having property has disappeared so that after diligent search his [abode] WHEREABOUTS cannot be ascertained, the court of probate in the district in which he resided or had his domicile at the time of his disappearance or, if such person resided [without] OUTSIDE OF this state, then in the district in which any of his [estate] PROPERTY is situated [within this state], upon the application of the [husband or wife] SPOUSE, or a relative [or], creditor or other person interested in the [estate] PROPERTY of such person, or the selectmen of the town where such person last resided, or in which such [estate] PROPERTY is situated, shall, after public notice and a hearing thereon, appoint a trustee of the [estate] PROPERTY of such person [, who] .

(b) DILIGENT SEARCH SHALL BE DEEMED TO HAVE BEEN MADE FOR ANY PERSON WHO HAS DISAPPEARED WHILE SERVING WITH THE ARMED FORCES WHEN SUCH PERSON HAS BEEN REPORTED OR LISTED AS MISSING, MISSING IN ACTION, INTERNED IN A NEUTRAL COUNTRY OR BELEAGUERED, BESIEGED OR CAPTURED BY AN ENEMY.

(c) SUCH TRUSTEE, upon giving a probate bond, shall have [the] charge of such

Reviser's comments:

Statute reorganized and subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

871

[estate] PROPERTY, and [such trustee] HE shall have the same powers [and be subject to the same], duties and obligations as [conservators appointed over the estates of incapable persons] A CONSERVATOR OF THE ESTATE OF AN INCAPABLE PERSON. WITH THE APPROVAL OF THE COURT OF PROBATE, SUCH TRUSTEE MAY USE ANY PORTION OF THE INCOME OR PRINCIPAL OF SUCH PROPERTY FOR THE SUPPORT OF THE SPOUSE AND MINOR CHILDREN OF SUCH PERSON.

(d) UPON ITS OWN MOTION OR UPON THE APPLICATION OF ANY INTERESTED PERSON, THE COURT OF PROBATE MAY, AFTER PUBLIC NOTICE AND A HEARING THEREON, REMOVE, DISCHARGE, REQUIRE AN ACCOUNTING FROM, OR APPOINT A SUCCESSOR TO, SUCH TRUSTEE.

(e) The court of probate may continue such trustee in office [for a period of seven years from the time of the disappearance of such person if he remains unheard of or] until satisfactory proof of the death of such person is furnished, [or] until proceedings are taken to settle his estate on the presumption of his death under the provisions of section 45-199, ~~AS AMENDED BY SECTION 306 OF THIS ACT,~~ OR FOR A PERIOD OF SEVEN YEARS FROM THE TIME OF THE DISAPPEARANCE OF SUCH PERSON IF HE REMAINS UNHEARD OF. [Such court of probate may remove, discharge, require an accounting from, and appoint a successor to, such trustee, upon its own motion or upon the application of any person interested after hearing and public notice thereof; and, in]

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(f) IN case of the reappearance of such person, THE COURT OF PROBATE shall, on his application, after [like] hearing and PUBLIC notice THEREOF, [and acceptance of the trustee's account, discharge such trustee and] order the restoration of such [estate] PROPERTY to the person entitled thereto AND THE DISCHARGE OF SUCH TRUSTEE, AFTER ACCEPTANCE OF THE TRUSTEE'S ACCOUNT. [With the consent of the court of probate, such trustee may use any portion of the income or principal of such property for the support of the wife and minor children of such person. Diligent search shall be deemed to have been made for any person who was serving with the armed forces and who has disappeared when such person has been reported or listed as missing, missing in action, interned in a neutral country or beleaguered, besieged or captured by an enemy.]

873

Sec. 45a-254. [Sec. 45-92.] Suspension of fiduciary powers during armed forces service.

(a) When any fiduciary of any trust other than a testamentary trust is engaged in [any] service in [connection with] the armed forces, as defined [by] IN section 27-103, which prevents his giving the necessary attention to his duties as [such] THE fiduciary, the superior court, upon petition of [such] THE fiduciary or any person interested in such estate, may, upon such notice as said court deems suitable and after hearing, order the suspension of the powers and duties of [such] THE fiduciary for the period of such service and until the further order of said court.

(b) [Said] THE SUPERIOR court may appoint a substitute fiduciary to serve for the period of suspension whether or not there remains any fiduciary to exercise the powers and duties of the fiduciary who is in such service [, and] . SAID COURT may decree that the ownership and title to the trust res shall vest in the substitute fiduciary or co-fiduciary or both and that the duties and such of the powers and discretions as are not personal to the fiduciary may be exercised by the co-fiduciary or substitute fiduciary and may make such further orders [in the premises] as said court deems advisable for the proper protection of such fund or estate.

(c) The rules of court with respect to judgments under the Selective Service Act

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

shall not apply to actions under this section.

(d) Upon a petition therefor, the court may order the reinstatement of the fiduciary when his service in [connection with] the armed forces has terminated.

875

Sec. 45a-255. [Sec. 45-91.] Income from property acquired by a trustee by CONVEYANCE OR foreclosure WHEN MORTGAGE FORMERLY HELD BY TRUSTEE.

In any case in which a trustee holds a mortgage upon property for the benefit of one or more tenants for life or limited term, with remainder over to another or others, and such trustee acquires title to such property by conveyance or foreclosure, such acquired property shall be [and become] a principal asset in lieu of such mortgage, and such tenant or tenants for life or limited term shall be entitled to the net income from such acquired property from the date of its acquisition.

Redundant language deleted.

Title of section recommended to clarify purpose of section.

876

Sec. 45a-256.[Sec. 45-93.] Distribution by testamentary trustee upon completion of trust.

No change.

The trustee of any testamentary trust which has terminated may, unless the will creating the trust otherwise directs, after settling his final account, deliver the property remaining in his hands to the remainderman upon the order of the probate court, without returning the same to the estate of the decedent.

877

Sec. 45a-257. [Sec. 45-93a.] Distribution of assets of inoperative trust.

Language changed for simplification and clarification.

[Where] WHEN the facts at the time of distribution from an estate to a trust or from a testamentary trust to a successive trust are such that no trust would be operative under the terms of the instrument creating such trust or successive trust because of the [prior] death of the life tenant, or [prior attainment of] BECAUSE THE BENEFICIARY HAS REACHED a stipulated age [by the beneficiary]; or for any other reason, the fiduciary of such estate or prior trust may distribute, with THE approval of the court of probate having jurisdiction, directly from the estate or prior trust to the remaindermen of such trust, the corpus of such trust and any income earned during the period of estate administration or administration of the prior trust and distributable to such remaindermen, without the interposition of the establishment of such trust or successive trust.

878

Sec. 45a-258. [Sec. 45-94.] Settlement of trust estate when beneficiary has been absent seven years. BOND REQUIRED.

The trustee of any trust for the benefit of any person who has been absent from his home and unheard of for seven years or more may settle his account as such trustee in the court of probate having jurisdiction thereof [, and, upon]. UPON the order of [such] THE court, THE TRUSTEE SHALL [pay over and transfer] DISTRIBUTE such trust estate to the persons entitled to the remainder thereof as determined by [such] THE court, and THE TRUSTEE shall not thereafter be liable to any such [cestui que trust] ABSENT BENEFICIARY, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof [; provided no]. A person shall NOT be entitled to receive any portion of such estate from [such] THE trustee until [he] SUCH PERSON has filed in the court of probate a bond with surety to the acceptance of [such] THE court, payable to the state, conditioned to return such trust estate to [such] THE trustee or his successor on the reappearance of the person presumed to be dead within thirteen years from the date of such order [for such payment over and transfer, and such person so entitled to such remainder shall not, after] AUTHORIZING DISTRIBUTION. AFTER the expiration of such THIRTEEN YEAR period, SUCH PERSON ENTITLED TO THE REMAINDER SHALL NOT be liable to any such [cestui que trust] ABSENT BENEFICIARY, his heirs, executors,

Reviser's comments:

Minor language changes for clarification and simplification.

Title of section recommended to clarify purpose of section.

879

administrators or assigns in any action for
such trust estate or any interest therein or
income thereof.

880

CHAPTER XV

CONSTRUCTION OF TRUSTS.
LIMITATIONS OF RULE AGAINST PERPETUITIES.

This chapter contains provisions applicable to the construction of trusts and which limit the rule against perpetuities.

Sec. 45a-259. [Sec. 45-96a.] "Majority"
defined for trusts executed prior to October
1, 1972.

No change.

When the word "majority" is used in a will or
trust instrument executed prior to October 1,
1972, it shall be construed to mean a person
who has attained the age of twenty-one.

882

Sec. 45a-260. [Sec. 45-95.] LIMITATION OF rule against perpetuities. "Second look" doctrine.

In applying the rule against perpetuities to an interest in real or personal property limited to take effect at or after the termination of one or more life estates in, or lives of, persons in being when the period of said rule commences to run, the validity of the interest shall be determined on the basis of facts existing at the termination of such one or more life estates or lives. For the purpose of this section, an interest which must terminate not later than the death of one or more persons is a life estate although it may terminate at an earlier time.

No change in statute.

Title of section recommended to clarify purpose of statute.

Sec. 45a-261. [Sec. 45-96.] Reduction of age contingency to preserve interest.

If an interest in real or personal property would violate the rule against perpetuities as modified by section 45-95 because such interest is contingent upon any person attaining or failing to attain an age in excess of twenty-one, the age contingency shall be reduced to twenty-one as to all persons subject to the same age contingency.

No change.

883

Sec. 45a-262. [Sec. 45-97.] WHEN fee simple determinable or subject to right of entry to become absolute [, when] AND EXCEPTIONS.

A fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken shall become a fee simple absolute if the specified contingency does not occur within thirty years from the date when such fee simple determinable or such fee simple subject to a right of entry becomes possessory. If such contingency occurs within such thirty years, the succeeding interest, which may be an interest in a person other than the person creating the interest or his heirs, shall become possessory or the right of entry exercisable notwithstanding the rule against perpetuities. If a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, said interests shall take effect as limited. This section shall not apply where both such fee simple determinable and such succeeding interest, or both such fee simple and such right of entry, are for public, charitable or religious purposes; nor shall it apply to a deed, gift or grant of the state or any political subdivision thereof.

No change in statute.

Title of section recommended to clarify purpose of section.

884

Sec. 45a-263. [Sec. 45-98.] WHEN STATUTORY limitations not invalidated [, when] .

Except as provided in the first sentence of section 45-97, sections 45-95 to 45-99, inclusive, shall not be construed to invalidate or modify the terms of any limitation which would have been valid prior to October 1, 1955.

Sec. 45a-264. [Sec. 45-99.] Application of [rule] STATUTORY LIMITATIONS. APPLICATION OF RULE.

Sections 45-95 to 45-98, inclusive, shall apply only to inter vivos instruments and wills taking effect after October 1, 1955, and to appointments made after said date, including appointments by inter vivos instrument or will under powers created before said date. Said sections shall apply to both legal and equitable interests.

No change in statute.

Title of section recommended to clarify purpose of section.

No change.

Title of section recommended to clarify purpose of section.

885

Sec. 45a-265. [Sec. 45-100.] Exemption of certain employees' trust funds from the rule against perpetuities. ACCUMULATION OF TRUST INCOME.

A trust created by an employer as part of a stock bonus, pension, disability, death benefit or profit-sharing plan for the benefit of some or all employees, to which contributions are made by the employer or employees or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in trust, shall not be deemed to be invalid as violating any existing law or rule of law against perpetuities or suspension of the power of alienation of the title to property [; but such a] . A trust CREATED FOR SUCH PURPOSE may continue for such time as may be necessary to accomplish the purposes for which it has been created. The income arising from any property held in any such trust may be permitted to accumulate in accordance with the terms of such trust and the plan of which such trust forms a part for such time as may be necessary to accomplish the purposes for which such trust has been created. [No] ANY rule of law against perpetuities or suspension of the power of alienation of the title to property shall NOT invalidate any such trust [unless the trust is terminated by a court of competent jurisdiction in a suit instituted within three years after May 21, 1947].

Language and punctuation changed for simplification and clarification.

Language "unless the trust is terminated by a court of competent jurisdiction in a suit instituted within three years after May 21, 1947" deleted as obsolete.

Title of section recommended to clarify purpose of section.

886

CHAPTER XVI
CHARITABLE TRUSTS

This chapter contains statutes which specifically concern charitable trusts.

887

Sec. 45a-266.[Sec. 45-79.] Charitable trusts.

No change.

Any charitable trust or use created in writing or by deed by any resident of the state, or any public and charitable trust or use for aiding and assisting any person or persons to be selected by the trustees of such trust or use to acquire education, shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use.

888

Sec. 45a-267. [Sec. 45-80.] Charitable uses determined by trustee, when.

Any person may, by will, deed or other instrument, give, devise or bequeath property, real or personal or both, to any trustee or trustees, and may provide in such instrument that [such] THE property so given, devised or bequeathed shall be held in trust and the income or principal applied in whole or in part for any charitable purpose. [No] A donor or testator shall NOT be required to designate in such will, deed or other instrument the particular charitable purpose or class of purposes for which [such] THE property shall be used or [such] THE income applied. Any such gift, devise or bequest shall be valid and operative, provided the donor or testator shall give to the trustee or trustees thereof or to any other person or persons, the power to select, from time to time and in such manner as such donor or testator may direct, the charitable purpose or purposes to which such property or the income thereof shall be applied; and [no] such gift, devise or bequest, accompanied by such power of selection, shall NOT be void by reason of uncertainty.

Reviser's comments:

Minor language changes for clarification and simplification.

889

Sec. 45a-268. [Sec. 45-81.] Gifts to charitable community trust.

Language changed for simplification and clarification.

Any person may incorporate by reference in any will, deed or other instrument, the terms, conditions, trusts, uses or purposes of any existing written or printed resolution, declaration or deed of trust passed by any corporation or executed by any person whereby there is established or is attempted to be established any charitable community trust. Any gift, devise or bequest so given to any person or corporation, in trust for any use or purpose of such charitable community trust, shall be valid and effectual notwithstanding that the terms, conditions, uses and purposes thereof are not otherwise recited in such deed, will or other instrument than by such reference; and the property so given to such person or corporation shall be used for the purposes and upon the terms, conditions and trusts contained in such resolution, declaration or deed of trust establishing such community trust, so far as the same do not conflict with the intent of the donor or testator as expressed in such will, deed or other instrument. [No such] ANY gift, devise or bequest so made shall NOT be void for uncertainty or invalid because such resolution, declaration or deed of trust establishing such community trust was not executed by the testator or donor in accordance with statutory provisions, provided such will, deed or other instrument [shall be] IS executed in accordance with such provisions.

890

Sec. 45a-269. [Sec. 45-82.] Community trustees to render annual accounts. HEARING ON ALLOWANCE AND ADJUSTMENT.

(a) The trustee or trustees of any [such] charitable community trust shall annually render an account under oath to the court of probate for the district in which [such] THE trust is being administered, which account shall include an inventory of the estate held by such trustee or trustees, and shall state the manner in which the principal of such fund is invested and the items of income and expenditure.

(b) [Such] THE court of probate shall direct the notice, if any, which shall be given of the hearing upon the adjustment and allowance of any such account [, and]. THE COURT may adjust and allow the [same] ACCOUNT and make any order necessary to secure the execution of the duties of such trustee or trustees, subject to appeal as provided for appeals from orders of the probate court.

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

891

Sec. 45a-270.[Sec. 45-79a.] Superior court jurisdiction to conform CERTAIN instruments to federal tax requirements.

No change in statute.

Title of section recommended to clarify purpose of section.

(a) In the case of a will executed before December 31, 1977, of a decedent whose death occurs after December 31, 1969, or a trust created before December 31, 1977, if a deduction under Section 2055 of the Internal Revenue Code of 1954 is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in Section 2055(a) of the Internal Revenue Code of 1954 to meet the requirements of Section 2055(e)(2)(A) of the Internal Revenue Code of 1954, the superior court shall have jurisdiction over any action brought on or before December 31, 1977, to conform such will, trust instrument or other governing instrument to meet the requirements of Section 2055(e)(2)(A) of the Internal Revenue Code of 1954 so that said deduction may be allowed under said code.

(b) Said court shall be empowered to conform such will, trust instrument or other governing instrument only to the extent necessary in order to ensure that a charitable remainder interest provided for in such instrument is in a charitable remainder annuity trust or a charitable remainder unitrust or a pooled income fund such as would qualify such charitable remainder interest for a deduction under the provisions of Section 2055 of the Internal Revenue Code of 1954.

(c) The court shall conform such will, trust instrument or other governing instrument only

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to the extent it finds that such conformation is consistent with the original intent of the testator or settlor.

(d) For purposes of this section, (1) a charitable remainder annuity trust is defined as defined in Section 664(d)(1) of the Internal Revenue Code of 1954; (2) a charitable remainder unitrust is defined as defined in Section 664(d)(2) of the Internal Revenue Code of 1954; and (3) a pooled income fund is defined as defined in Section 642(c)(5) of the Internal Revenue Code of 1954.

(e) This section shall not be construed to effect a change in any dispositive provisions of the governing instrument as provided in section 45-79.

(f) Any instrument conformed pursuant to the provisions of this section shall be effective notwithstanding a disclaimer has not been filed within the period of time specified in chapter 798.

893

SETTLEMENT OF CERTAIN SMALL ESTATES
WITHOUT LETTERS OF ADMINISTRATION
OR PROBATE OF WILL

Inasmuch as a significant proportion of decedents' estates are settled without letters of administration or probate of a will, the statutes which provide for this simplified procedure have been placed in a separate chapter.

In order to make these provisions accessible to persons interested in small estates, this chapter is located first among the several chapters dealing with decedents' estates.

The statutes are revised to clarify their meaning.

Sec. 45a-271. [Sec. 45-266.] Settlement of CERTAIN small estates without LETTERS OF administration OR PROBATE OF WILL.

(a) SURVIVING SPOUSE OR NEXT OF KIN MAY FILE AFFIDAVIT IN LIEU OF ADMINISTRATION FOR CERTAIN SMALL ESTATES. THE SURVIVING SPOUSE OF ANY PERSON WHO DIES, OR IF THERE IS NO SURVIVING SPOUSE, ANY OF THE NEXT OF KIN OF SUCH DECEDENT, MAY, IN LIEU OF FILING AN APPLICATION FOR ADMISSION OF A WILL TO PROBATE OR LETTERS OF ADMINISTRATION, FILE AN AFFIDAVIT IN THE COURT OF PROBATE IN THE DISTRICT WHEREIN THE DECEDENT RESIDED, STATING, IF SUCH IS THE CASE, THAT ALL DEBTS OF THE DECEDENT HAVE BEEN PAID IN THE MANNER PRESCRIBED BY SECTION 45-229, ~~AS AMENDED BY SECTION 265 OF THIS ACT,~~ AT LEAST TO THE EXTENT OF THE FAIR VALUE OF ALL OF THE DECEDENT'S ASSETS, WHEN (1) SUCH DECEDENT LEAVES PROPERTY OF THE TYPE DESCRIBED IN SUBSECTION (b) OF THIS SECTION AND (2) THE AGGREGATE VALUE OF ANY SUCH PROPERTY AS DESCRIBED IN SUBSECTION (b) OF THIS SECTION DOES NOT EXCEED THE SUM OF FIVE THOUSAND DOLLARS. [When any person dies, leaving (a)]

(b) PROPERTY OF ESTATE. SUCH PROPERTY INCLUDES: (1) a deposit in any bank [or (b)] ; (2) equity in shares in any savings and loan association, federal savings and loan association or credit union, doing business in this state [, or (c)] ; (3) corporate stock or bonds [, or (d)] ; (4) any unpaid wages due from any corporation, firm, individual, association or partnership

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Language changes for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

This section was amended by section 1 of Public Act 79-193.

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located in this state [, or (e)] ; (5) a death benefit payable from any fraternal order or shop society or payable under any insurance policy for which [he] THE DECEDENT failed to name a beneficiary entitled under the bylaws and regulations of such order or society or under the terms of such insurance policy to receive such death benefit [, or (f)] ; (6) other personal property, tangible or intangible, including a motor vehicle or motor vehicles and a motor boat or motor boats registered in his name [, or (g)]; OR (7) an unreleased interest in a mortgage with or without value [, and the aggregate value of any such bank deposit, equity in such shares, corporate stock or bonds, unpaid wages, death benefit, other personal property, tangible or intangible, and unreleased interest in a mortgage, does not exceed the sum of five thousand dollars, the surviving spouse or, if none, any of the next of kin of such decedent, may, in lieu of filing an application for admission of a will to probate or for letters of administration, file an affidavit in the court of probate in the district wherein the decedent resided, stating, if such is the case, that all debts of the decedent have been paid in the manner prescribed by section 45-229 at least to the extent of the fair value of all of his assets].

(c) COURT ORDER AND AUTHORIZATION RE PAYMENT OR TRANSFER TO SPOUSE OR KIN.
Thereafter the judge of probate for such district shall issue a decree finding that no

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probate proceedings have been instituted in connection with the estate of such decedent and authorizing either the holder of such property or the registrant thereof, including the authority issuing the registration, to transfer the same or pay the amount thereof to such surviving spouse or next of kin. Such decree may also authorize the surviving spouse or next of kin to release an interest in any mortgage reported under the provisions of this section.

(d) WHEN FUNERAL DIRECTOR OR PHYSICIAN MAY FILE AFFIDAVIT. If there is no surviving spouse or next of kin OF A PERSON WHO DIES LEAVING PROPERTY AS DESCRIBED IN THIS SECTION, the funeral director who buried such decedent or the physician who attended him in his last sickness, may file in such court of probate [a like] AN affidavit AS DESCRIBED IN THIS SECTION that such funeral director or physician has a lawful preferred claim for funeral expenses or medical attendance during [such] THE DECEDENT'S last sickness [, and thereupon].

(e) COURT ORDER AND AUTHORIZATION RE PAYMENT OR TRANSFERS TO FUNERAL DIRECTOR OR PHYSICIAN. THEREUPON such court may, in its discretion, authorize either the holder of such property or the registrant thereof, as aforesaid, to transfer the same or pay the amount of such claim, to such funeral director or physician, in satisfaction of the amount of the claim of each, except that such court shall have no right to authorize any

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such transfer or payment if the fair value of the property of such decedent exceeds the total amount of such claim or claims [, but, if]. IF such claims exceed the value of the property of such decedent, each claimant shall receive a pro rata share thereof. [The authority issuing the transfer of registration shall charge a fee of three dollars for the transfer of each motor vehicle and a fee of one dollar for the transfer of each motor boat under this section. Any transfer or payment under the provisions of this section shall be exempt from taxation under the provisions of chapter 219.]

(f) TRANSFER OR PAYMENT DISCHARGES LIABILITY. Any such transfer or payment shall, to the extent of the amount so transferred or paid, discharge the registrant or holder of such property from liability to any person on account thereof. [Any person to whom such transfer or payment has been made shall be liable for the value thereof to the commissioner of revenue services for any succession or transfer tax on the property transferred or payment made and to the executor or administrator of the estate of the decedent thereafter appointed. The commissioner of revenue services shall be given notice by the court of probate of the issuance of any such decree upon such form as may be provided by said commissioner unless such surviving spouse or next of kin shall also file with the court of probate a sworn return provided for by chapter 216, in which

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event the judge of probate may incorporate in the decree a statement that the commissioner of revenue services has issued a finding that no succession or transfer tax is due, or that any such tax computed by him as due has been paid, which statement shall be conclusive evidence of the consent by the commissioner of revenue services to the transfer or payment of such property as aforesaid free from any claim for such tax, notwithstanding any provision in said chapter 216 to the contrary.]

(g) RECEIPT, BOND FOR INDEMNITY OR WAIVER MAY BE CONDITION FOR PAYMENT OR TRANSFER. As a condition of such transfer or payment, the registrant or holder may require the filing of appropriate waivers, the execution of a bond of indemnity and a receipt for such transfer or payment.

(h) TRANSFER FEES FOR MOTOR VEHICLES AND MOTOR BOATS. THE AUTHORITY ISSUING THE TRANSFER OF REGISTRATION SHALL CHARGE A FEE OF THREE DOLLARS FOR THE TRANSFER OF EACH MOTOR VEHICLE AND A FEE OF ONE DOLLAR FOR THE TRANSFER OF EACH MOTOR BOAT UNDER THIS SECTION.

(i) TRANSFER OR PAYMENT EXEMPT FROM SALES OR USE TAX. ANY TRANSFER OR PAYMENT UNDER THE PROVISIONS OF THIS SECTION SHALL BE EXEMPT FROM TAXATION UNDER THE PROVISIONS OF CHAPTER 219.

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(j) LIABILITY FOR PAYMENT OR TRANSFER TO COMMISSIONER OF REVENUE SERVICES AND TO FIDUCIARY. (1) ANY PERSON TO WHOM SUCH TRANSFER OR PAYMENT HAS BEEN MADE SHALL BE LIABLE FOR THE VALUE THEREOF TO THE COMMISSIONER OF REVENUE SERVICES FOR ANY SUCCESSION OR TRANSFER TAX ON THE PROPERTY TRANSFERRED OR PAYMENT MADE AND TO THE EXECUTOR OR ADMINISTRATOR OF THE ESTATE OF THE DECEDENT THEREAFTER APPOINTED.

(2) THE COMMISSIONER OF REVENUE SERVICES SHALL BE GIVEN NOTICE BY THE COURT OF PROBATE OF THE ISSUANCE OF ANY SUCH DECREE UPON SUCH FORM AS MAY BE PROVIDED BY SAID COMMISSIONER UNLESS SUCH SURVIVING SPOUSE OR NEXT OF KIN FILES WITH THE COURT OF PROBATE A SWORN RETURN PROVIDED FOR BY CHAPTER 216, IN WHICH EVENT THE JUDGE OF PROBATE MAY INCORPORATE IN THE DECREE A STATEMENT THAT THE COMMISSIONER OF REVENUE SERVICES HAS ISSUED A FINDING THAT NO SUCCESSION OR TRANSFER TAX IS DUE, OR THAT ANY SUCH TAX COMPUTED BY HIM AS DUE HAS BEEN PAID. SUCH STATEMENT SHALL BE CONCLUSIVE EVIDENCE OF THE CONSENT BY THE COMMISSIONER OF REVENUE SERVICES TO THE TRANSFER OR PAYMENT OF SUCH PROPERTY AS PROVIDED IN THIS SECTION FREE FROM ANY CLAIM FOR SUCH TAX, NOTWITHSTANDING ANY PROVISION IN CHAPTER 216 TO THE CONTRARY.

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Sec. 45a-272. [Sec. 45-266a.] Payment of medical or health benefits.

[Where] WHEN any decedent shall be entitled to payment of medical benefits, federal or state, or insurance or health benefits or proceeds, or other intangible personal property owned by or payable to him or to his estate in a sum not exceeding one thousand dollars, the judge of probate for the district within which such decedent resided may name an administrator, ex parte, for the purpose of enabling distribution to the surviving spouse or, if there [be none] IS NO SURVIVING SPOUSE, to the next of kin of such decedent or to the funeral director or physician, as the case may be, upon evidence satisfactory to him that all debts have been paid or provided for as prescribed by section 45-229.

Sec. 45a-273[Sec. 45-266b.] Applicability of statutes.

Sections 45-266, and 45-266a, shall apply only to estates of decedents for whom no will is presented for probate or NO application for administration IS filed within thirty days after death.

Language changed for simplification and clarification.

Language changed for simplification and clarification.

901

Sec. 45 a- 274.[Sec. 45-266c.] Comity
recognition of foreign decrees.

Statute subdivided for simplification
and clarification.

(a) The holder or registrant of any property, listed in section 45-266, in this state of a nondomiciliary decedent, as a matter of comity, may recognize a like decree or other form of certification of a judge or clerk of a probate court made under a statute of another state, providing for the settlement of small estates without administration, for the purpose of payment or transfer of any such property of such decedent in this state, provided a holder or registrant of such property in such other state shall, whether pursuant to statute or otherwise, recognize and pay or transfer such property pursuant to a decree entered under this section. (b) Any such transfer or payment shall, to the extent of the amount so transferred or paid, discharge the registrant or holder of such property from liability to any person on account thereof. (c) As used in this section, the word "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

902

CHAPTER XVIII

WILLS

This chapter contains statutes concerning wills.

903

PART I
VALIDITY OF WILLS

904

Sec. 45a-275. [Formerly part of Sec. 45-160.]
Who may make a will [; effect of devise of
all real estate].

Any person of the age of eighteen years, and
of sound mind, may dispose of his estate by
will [; and every devise purporting to convey
all the real estate of the testator shall be
construed to convey all the real estate
belonging to him at the time of his decease,
unless it clearly appears by his will that he
intended otherwise].

Sec. 45a-276. [Sec. 45-161.] Making and
execution of wills. VALIDITY OF WILLS
EXECUTED OUTSIDE OF THIS STATE.

[No] A will or codicil shall NOT be valid to
pass any [estate] PROPERTY unless it is in
writing, subscribed by the testator and
attested by two witnesses, each of them
subscribing in [his] THE TESTATOR'S presence;
but any will executed according to the laws
of the state or country where it was executed
may be admitted to probate in this state and
shall be effectual to pass any [estate]
PROPERTY of the testator situated in this
state.

Original statute divided into two
separate statutes because it deals
with two different subjects.

Remainder of this statute now found
at 45a-281.

Language changed for simplification
and clarification.

Title of section recommended to
clarify purpose of section.

905

Sec. 45a-277. [Formerly part of Sec. 45-162.]
[Words of inheritance to apply to child born
through A.I.D.] Implied and express
revocation of will.

[(a) The words "child," "children,"
"issue," "descendants," "descendant,"
"heirs," "heir," "unlawful heirs,"
"grandchild" and "grandchildren," when used
in the singular or plural in any will or
trust instrument; shall, unless such document
clearly indicates a contrary intention, be
deemed to include children born as a result
of A.I.D. The provisions of this section
shall apply to wills and trust instruments
whether or not executed before, on or after
October 1, 1975, unless the instrument
indicates an intent to the contrary.

(b)] (a) If, after the making of a will,
the testator marries or is divorced or his
marriage is annulled or dissolved or a child
is born to the testator or a minor child is
legally adopted by him, or a child is born as
a result of A.I.D. as defined in section 45-
69f, ~~AS AMENDED BY SECTION 174 OF THIS ACT,~~
to which the testator has consented in
accordance with subsection (a) of section 45-
69g, ~~AS AMENDED BY SECTION 175 OF THIS ACT,~~
and no provision has been made in such will
for such contingency, such marriage, divorce,
annulment, dissolution, birth or adoption of
a minor child shall operate as a revocation
of such will, provided such divorce,
annulment or dissolution shall not operate as
a revocation of such will if the spouse of

Reviser's comments:

Original statute divided into two
separate statutes because it deals with
two different subjects.

Statute subdivided and reorganized
for simplification and clarification.

Subsection (a) now appears as section
45a-282.

This section was amended by section 1 of
Public Act 79-569.

906

the testator was not a beneficiary under such will. THE REVOCATION OF SUCH WILL BY DIVORCE, ANNULMENT OR DISSOLUTION OF MARRIAGE SHALL BE EFFECTIVE ONLY AS TO WILLS EXECUTED ON AND AFTER OCTOBER 1, 1967.

(b) [No] A will or codicil shall NOT be revoked in any other manner except by burning, canceling, tearing or obliterating it by the testator or by some person in his presence by his direction, or by a later will or codicil. [The revocation of such will by divorce, annulment or dissolution of marriage shall be effective only as to wills executed on and after October 1, 1967.]

907

Sec. 45a-278. [Sec. 45-172.] Devise or bequest to subscribing witness.

Every devise or bequest given in any will or codicil to a subscribing witness, or to the husband or wife of such subscribing witness, shall be void unless such will or codicil is legally attested without the signature of such witness, or unless such devisee or legatee is an heir to the testator [; but the] . THE competency of such witness shall not be affected by any such devise or bequest. The interest of any witness in any community, church, society, association or corporation, beneficially interested in any devise or bequest, shall not affect such devise or bequest or the competency of such witness.

Reviser's comments:

Punctuation changed for simplification and clarification.

808

PART II
DEVISE OR BEQUEST TO TRUST

909

Sec. 45a-279.[Sec. 45-173.] Reference to document creating trust.

No change.

The reference in a will or codicil to a trust document by which a devise or bequest is made to such trust shall not thereby cause such trust or such part of the assets thereof distributed to it by such devise or bequest to be subject to the jurisdiction of the probate court in which such will or codicil is admitted to probate.

910

Sec. 45a-280.[Sec. 45-173a.] Uniform
testamentary additions to trusts act.

No change.

(a) A devise or bequest, 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, even though the trustor has reserved any or all rights of ownership of the insurance contracts, provided the separate trust instrument is identified in the testator's will and its terms are set forth: (1) In a written instrument, not a will, executed before or the same day as the execution of the testator's will; or (2) in the valid last will, including any codicil thereto, of a person who has predeceased the testator regardless of the date such person's will or any codicil thereto was executed; and in either case regardless of the existence, size or character of the corpus of the trust. The devise or bequest 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 or bequeathed (1) 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 (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of trust, including any amendments thereto made before the death of the testator, regardless of whether made

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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 or bequest to lapse.

(b) This section shall be effective as to (1) any devise or bequest made by a will executed on or after October 1, 1961, and (2) any devise or bequest made by a will executed prior to October 1, 1961, provided the testator was living on said date.

(c) This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(d) This section may be cited as the Uniform Testamentary Additions to Trusts Act.

PART III
CONSTRUCTION OF WILLS

913

Sec. 45a-281. [Formerly part of Sec. 45-160.]
[Who may make a will; effect] EFFECT of
devise of all real [estate] PROPERTY.

Every devise purporting to convey all the
real property of the testator shall be
construed to convey all the real property
belonging to him at the time of his decease,
unless it clearly appears by his will that he
intended otherwise.

Sec. 45a-282. [Formerly part of Sec. 45-162.]
Words of inheritance to apply to child born
through A.I.D.

The words "child," "children," "issue,"
"descendants," "descendant," "heirs," "heir,"
"lawful heirs," "grandchild" and
"grandchildren," when used in the singular or
plural in any will or trust instrument,
shall, unless such document clearly indicates
a contrary intention, be deemed to include
children born as a result of A.I.D. The
provisions of this section shall apply to
wills and trust instruments whether or not
executed before, on or after October 1, 1975,
unless the instrument indicates an intent to
the contrary.

Reviser's comments:

Minor language changes for clarification
and simplification.

Language taken from section 45-160.
Remainder of section 45-160 is found
at section 45a-275.

Reviser's comments:

Original statute divided into two
statutes because it deals with two
separate subjects.

Error corrected, i.e., "unlawful heirs"
changed to "lawful heirs."

914

Sec. 45a-283. [Sec. 45-162a.] "Majority" defined for wills executed prior to October 1, 1972.

When the word "majority" is used in a will executed prior to October 1, 1972, it shall be construed to mean a person who has attained the age of twenty-one.

Reviser's comments:

No change.

Sec. 45a-284. [Sec. 45-174a.] Reference to internal revenue code.

[No] A devise or bequest, outright or in trust, given in any will or codicil or republication thereof in any codicil shall NOT be deemed invalid by reason of any reference therein to the United States Internal Revenue Code or any treasury regulation issued thereunder.

Reviser's comments:

Language changed for simplification and clarification.

915

Sec. 45a-285. [Sec. 45-174.] Gift to spouse; reference to federal provisions RE ESTATE TAX, MARITAL DEDUCTION.

When any will, offered for probate in this state, makes provision for a gift, whether outright or in trust, to or for the benefit of the spouse of the testator or testatrix, [no] such gift shall NOT be held to be invalid on any of the following grounds: [(a)] (1) That the amount of any such gift is required to be computed or ascertained by reference to the federal statutes, or any treasury regulation issued thereunder, authorizing the allowance of a marital deduction in the computation of the federal estate tax or by reference to determinations or settlements of any kind whatsoever, whether by agreement, litigation or otherwise, in the proceedings for the assessment of said federal estate tax in the estate of such testator or testatrix; [(b)] (2) that any such gift is required to be satisfied only by property which qualifies under said federal statutes, or such regulation, for such marital deduction; or [(c)] (3) that any property allotted to the satisfaction of any such gift is required to be allotted at the values determined for such property, whether by agreement, litigation or otherwise, in such proceedings for the assessment of said federal estate tax or at values to be determined in any other reasonable manner.

Reviser's comments:

Minor language changes for clarification and simplification.

Title of section recommended to clarify purpose of section.

Sec. 45 a-286.[Sec. 45-175a.] Beneficiary of devise not entitled to exoneration of mortgage.

Language changed for simplification and clarification.

Unless a contrary intent is clearly indicated in the will or codicil, a beneficiary of a devise of real [estate] PROPERTY which is subject to a mortgage existing at the date of the testator's death shall not be entitled to exoneration of the mortgage from the estate. A general directive in the will or codicil to pay the debts of the testator shall not be a clear indication of a contrary intent.

Sec. 45a- 287.[Sec. 45-184.] Bequest of perishable property for life or years.

No change.

When a testator, by his will, bequeaths the use, for life or for a term of years, of any livestock, provisions, wearing apparel or other personal property which will necessarily be consumed by using, such bequest shall give to the legatee an absolute estate in the property so bequeathed.

917

CHAPTER XIX

PROBATE OF WILL

This chapter contains certain provisions which are applicable to the settlement of decedents' estates with a will.

918

Sec. 45a-288. [Sec. 45-164.] Custodian of will to deliver it after testator's death. PENALTY FOR FAILURE TO DELIVER.

(a) Any person having in his possession any will or codicil shall, forthwith, after he has knowledge of the death of the testator, deliver such will either to the PERSON DESIGNATED TO BE THE executor or one of the [executors] PERSONS DESIGNATED TO BE AN EXECUTOR thereof, or to the judge, clerk or assistant clerk of the court of probate which by law has jurisdiction of the estate of such deceased person [, and, on his] .

(b) ON THE neglect OF SUCH PERSON to do so [for] WITHIN the period of thirty days AFTER HE HAS KNOWLEDGE OF THE DEATH OF THE TESTATOR, he shall be fined not more than one thousand dollars or imprisoned not more than one year or both.

Reviser's comments:

Language and punctuation changed and statute subdivided for simplification and clarification.

Title of section recommended to clarify purpose of statute.

Sec. 45a-289.[Sec. 45-163.] Executor to exhibit will for probate. PENALTY FOR FAILURE.

(a) Every [executor] PERSON having knowledge of his [appointment] DESIGNATION IN A WILL TO BE AN EXECUTOR OF A TESTATOR'S ESTATE shall, within thirty days next after the death of the testator, [exhibit] APPLY FOR PROBATE OF the will [for probate] to the court of probate of the district where the testator last dwelt [; and every executor] .

(b) EVERY SUCH PERSON neglecting to do so shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both.

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

920

Sec. 45a-290. [Sec. 45-164a.] Opening of safe deposit boxes to search for a will.

Whenever the [single] SOLE owner of a safe deposit box dies, his next of kin, spouse, or any person showing a sufficient interest in the presence of a will may apply to the court of probate for an order to open the decedent's safe deposit box to obtain any will or cemetery deed that may be contained therein. The court of probate may issue such order ex parte. [Such] THE safe deposit box shall be opened in the presence of an officer of the bank who shall make return of such order to the court stating: (1) [that] THAT only the will or cemetery deed was removed from [such] THE safe deposit box [;] or (2) that there was no such will or cemetery deed in the safe deposit box and nothing was removed.

Reviser's comments:

Minor language changes for clarification and simplification.

921

Sec. 45 a-291.[Sec. 45-166.] Proof of will
out of court.

Language and punctuation changed for
simplification and clarification.

Any or all of the attesting witnesses to any
will may, at the request of the testator or,
after his decease, at the request of the
executor or any person interested under it,
make and sign an affidavit before any officer
authorized to administer oaths in or out of
this state, stating such facts as they would
be required to testify to in court to prove
such will [, which] . THE affidavit shall be
written on such will or, if that is
impracticable, on some paper attached thereto
[, and the] . THE sworn statement of any such
witness so taken shall be accepted by the
court of probate as if it had been taken
before such court.

922

Sec. 45a-292. [Sec. 45-167.] Hearing required before providing or rejecting a will. Notice.

Any court of probate shall, before proving or disapproving any last will and testament, or codicil thereto, hold a hearing thereon, of which notice, either public or personal or both, as the court may deem best, has been given to all parties known to be interested in the estate, unless all parties so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice [; and the] . THE finding by any such court that [such] THE estate is not more than sufficient to pay the expenses of administration and of the funeral and last sickness shall be [such] sufficient cause TO DISPENSE WITH SUCH NOTICE.

Reviser's comments:

Minor language changes for clarification and simplification.

Sec. 45a-293. [Sec. 45-170.] [Where will of
nonresident testator may be proved]
JURISDICTION OF WILL OF NONRESIDENT TESTATOR.

If the testator, at his decease, lived
out of this state, the will may be proved in
any district in which [the estate conveyed or
any part of it is; but, if] ANY PROPERTY OF
THE TESTATOR IS LOCATED. IF there is such
[estate] PROPERTY in more than one district,
the court which first takes [cognizance]
JURISDICTION thereof by the commencement of
proceedings shall retain [the same]
JURISDICTION, and the administration first
granted shall extend to all the property of
the deceased in this state.

Reviser's comments:

Language and punctuation changed for
simplification and clarification.

Title of section recommended to clarify
purpose of section.

924

Sec. 45a-294. [Sec. 45-171.] [Recording of a will proved without this state] ANCILLARY PROBATE. PROCEDURE. NOTICE. HEARING. EFFECT.

(a) When a will conveying property situated in this state has been proved and established out of this state by a court of competent jurisdiction, the executor of such will or any person interested in such property may present to the court of probate in the district in which any of such property is situated an authenticated and exemplified copy of such will and of the record of the proceedings proving and establishing the [same] WILL and request that such copies be filed and recorded. [Such] THE request shall be accompanied by a complete statement in writing of the property and estate of the decedent in this state [; and if]. IF, upon a hearing, after such notice to the commissioner of revenue services and other parties in interest as the court orders, no sufficient objection is shown, such court shall order such copies to be filed and recorded, and they shall thereupon become a part of the files and records of such court, and shall have the same effect upon the property so conveyed as if such will had been originally proved and established in such court of probate [; but nothing] .

(b) NOTHING in this section shall give effect to a will made in this state by an inhabitant thereof which has not been executed according to the laws of this state.

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

925

(c) All property so passing shall be subject to the provisions of all laws of this state relating to inheritances and successions and taxation thereof.

926

Sec. 45a-295. [Sec. 45-169.] WHEN bond required of executor [, when]. AMOUNT OF BOND. REDUCTION OF BOND.

(a) [No executor] A PERSON shall NOT be approved TO BE AN EXECUTOR by the court of probate until he has given a probate bond, unless such bond is excused as [hereinafter] provided BY LAW.

(b) If the will [names] DESIGNATES A PERSON TO BE AN EXECUTOR AND directs that no bond or that a bond of a certain amount only shall be required of such executor, the probate court shall excuse the posting of any bond OR SHALL REQUIRE A BOND OF ONLY SUCH AMOUNT AS IS DIRECTED IN THE WILL if no objection to the will has been filed, provided, if an objection has been filed or the court of probate determines that for cause shown the filing of a bond is necessary for the protection of creditors or to assure the payment of succession taxes, or both, a bond shall be required in an amount which shall not be less than an amount equal to twice the amount of the debts of the deceased as estimated by the court or to the amount of the tax on any untaxed property plus the succession tax as estimated by the court or to the amount named in the will, whichever of such amounts is the greatest.

(c) After any interim account has been allowed, the court of probate may reduce the amount of any bond required to an amount it deems suitable, due consideration being given to the estate then on hand.

Reviser's comments:

Statute subdivided and language changed for simplification and clarification.

Language, "or shall require a bond of only such amount as is directed in the will," added to eliminate inconsistency in statute.

Language, "provided by law," substituted for "hereinafter provided" because there are other sections in the general statutes dealing with excuse of bond.

Title of section recommended to clarify purpose of section.

Cross Reference: Section 45a-93 (45-240).

927

Sec. 45a-296. [Sec. 45-168.] Administration with the will annexed and de bonis non.

(a) If no [executor] PERSON has been [named] DESIGNATED in [such] A will TO BE EXECUTOR, or if the [executor named] PERSON DESIGNATED IN THE WILL TO BE EXECUTOR has died or refuses to accept or is incapable of accepting such trust, the court shall commit the administration of the estate, with the will annexed, to the [husband or wife] SPOUSE or to the next of kin of the deceased if they are interested under such will, but, if they are not so interested or on the objection of any one interested under such will or of any creditor, which objection is found reasonable by the court, the court may commit the administration of [such] THE estate, with the will annexed, to any person whom the court deems proper, taking a probate bond [; and if,]_.

(b) IF during the settlement of an estate, the executor or the administrator with the will annexed [theretofore] appointed by the court [has died] DIES or resigns or is removed from such trust, the court shall appoint an administrator of the estate with the will annexed, de bonis non, subject to the same provisions as to hearing, notice, waiver of or order dispensing with notice, selection of the administrator and bond, as are stated in this section and section 45-167, ~~AS AMENDED BY SECTION 244 OF THIS ACT.~~

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

928

Sec. 45 a-297.[Sec. 45-189.] Executor to administer intestate part of an estate.

No change.

When a will which disposes of only a part of the estate of the testator is admitted to probate, the executor of such will, or the administrator with the will annexed, shall, unless otherwise specified in such will, be, ex officio, the administrator of the intestate estate and shall proceed to settle the entire estate according to the will and according to law.

Sec. 45 a-298.[Sec. 45-190.] Executor of an executor.

No change.

The executor of an executor shall not as such administer the estate of the first testator.

Sec. 45a-299. [Sec. 45-179.] Notice of devise or bequest to corporation.

Language changed for simplification and clarification.

Within thirty days after the admission to probate of any will containing a devise or bequest to any corporation or voluntary association, the judge, clerk or assistant clerk of the court of probate before which it has been proved shall [deposit in the post office] MAIL, postage paid, a written notice thereof, directed to the devisee or legatee at the place where it is located.

930

Sec. 45a-300. [Sec. 45-185.] Expenses of executor or administrator in will contest.

(a) The court of probate having jurisdiction of the testate estate of any person shall allow to the executor his just and reasonable expenses in defending the will of such person in the probate court, whether or not the will is admitted to probate [; and, if]_.

(b) IF there is an appeal from the order or decree of such court, admitting or refusing to admit to probate the will of such person, THE COURT OF PROBATE shall allow to the executor or administrator his just and reasonable expenses in supporting and maintaining or defending against such will, on such appeal [, and such]_.

(c) SUCH expenses shall be charged by such court pro rata against the respective rights or shares of the devisees and legatees under such will and the distributees of such estate.

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

931

Sec. 45a-301. [Sec. 45-186.] Court may annul orders passed under a revoked will.
SUBSEQUENT SETTLEMENT PROCEDURE.

(a) When it appears to any court of probate, pending proceedings before it for the settlement of the estate of a deceased person as a testate estate, that the will under which such proceedings were commenced and have been continued had been revoked in accordance with the provisions of subsection (b) of section 45-162, ~~AS AMENDED BY SECTION 233 OF THIS ACT,~~ [such] THE court shall have power to revoke, annul and set aside any order or decree proving or approving the will so revoked and any other order or decree made and passed by such court in the settlement of [such] THE estate under such will.

(b) [Such] THE court may thereafter proceed with the settlement of [such] THE estate under a subsequent will if there is one or, if there is no subsequent will, may grant administration on the estate of such deceased person and proceed with the settlement of [such] THE estate as an intestate estate upon such notice to all parties in interest as [such] THE court orders.

Reviser's comments:

Statute subdivided for simplification and clarification.

Title of section recommended to clarify purpose of section.

This section was amended by section 2 of Public Act 79-569.

932

Sec. 45a-302. [Sec. 45-187.] Procedure if, ON APPEAL, will is set aside after partial settlement. EFFECT ON FIDUCIARY.

When a will is admitted to probate by a court of probate, and an appeal is taken from the probate of such will, the acts done in good faith by the executor of such will or by an administrator with the will annexed in settling the estate of the testator shall be deemed valid to the same extent as if no appeal had been taken. When an inventory and appraisal have been returned to court by such executor or administrator with the will annexed, and when an order limiting the time for the presentation of claims against the estate of such testator has been passed and published, [no] A further inventory and appraisal shall NOT be required except of property not embraced in the inventory returned to court, and [no] further time need NOT be given for presentation of claims against such estate, if upon such appeal such will [should be] IS set aside by the appellate court. Nothing [herein] IN THIS SECTION shall authorize the executor or administrator with the will annexed to pay any legacies named in the will so appealed from while such appeal is pending.

Reviser's comments:

Minor language changes for clarification and simplification.

Title of section recommended to clarify purpose of section.

933

Sec. 45a-303. [Sec. 45-188.] Procedure if will is found after partial settlement.

When it appears to any court of probate, during proceedings before it for the settlement of the estate of a deceased person as an intestate estate, that such deceased person left a will, [such] THE court shall have power to revoke any order or decree granting letters of administration upon such estate and any other order or decree made by [such] THE court in the settlement of such estate as an intestate estate [, and such]. THE court may thereafter proceed with the settlement of such estate under such will, upon notice to all parties in interest as required in the settlement of testate estates [; but the]. THE acts already done in good faith BEFORE THE COURT REVOKES THE ORDER OR DECREE GRANTING ADMINISTRATION by the administrator of such estate in the settlement thereof shall be deemed valid to the same extent as if such letters had not been revoked. If an inventory and appraisal have been returned to the court by such administrator, [no] A further inventory or appraisal shall NOT be required, except of property not embraced in such inventory [, and, if]. IF an order limiting the time for the presentation of claims against such estate has been passed and published, [no] further time shall NOT be required to be given for presentation of such claims.

Reviser's comments:

Minor language changes for clarification and simplification.

934

CHAPTER XX

GRANT OF ADMINISTRATION ON
INTESTATE ESTATES

This chapter contains statutes concerning the grant of administration on intestate decedents' estates.

Sec. 45a-304. [Sec. 45-195.] JURISDICTION TO GRANT ADMINISTRATION. To whom granted. Hearing and notice required. BOND.

(a) JURISDICTION OF INTESTATE ESTATES.

(1) When any person dies intestate, the court of probate in the district in which the deceased last dwelt shall HAVE JURISDICTION TO GRANT LETTERS OF ADMINISTRATION [, before granting letters of administration, hold a hearing, of which notice, either public or personal or both as the court deems best, has been given to all persons interested in such estate unless all persons so interested sign and file in court a written waiver of such notice, or unless such court, for cause shown, dispenses with such notice; and the finding by such court that such estate is not more than sufficient to pay the expenses of administration and of the funeral and last sickness shall be such sufficient cause. Such court shall grant administration of the estate to the husband or wife or to the next of kin or to both or, on their refusal, incapacity or failure to give bond or upon the objection of any heir or creditor to such appointment, found reasonable by such court, to any other person whom the court deems proper].

(2) When a person living out of the state dies intestate, leaving property within the state, A COURT OF PROBATE IN ANY DISTRICT IN WHICH THE DECEDENT'S PROPERTY OR SOME PART THEREOF IS LOCATED MAY GRANT LETTERS OF ADMINISTRATION. [administration may be

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Minor language and punctuation changes for clarification and simplification.

Title of section recommended to clarify purpose of section.

granted, in any district where the estate or some part thereof is, to such person as the court thinks fit.]

(b) APPLICATION, NOTICE AND HEARING RE LETTERS OF ADMINISTRATION. UPON APPLICATION FOR LETTERS OF ADMINISTRATION TO THE COURT OF PROBATE HAVING JURISDICTION OF THE ESTATE OF AN INTESTATE DECEDENT, THE COURT SHALL, BEFORE GRANTING LETTERS OF ADMINISTRATION, AFTER NOTICE REQUIRED BY THIS SECTION, HOLD A HEARING. NOTICE OF SUCH HEARING, EITHER PUBLIC NOTICE, PERSONAL NOTICE OR BOTH AS THE COURT DEEMS BEST, SHALL BE GIVEN TO ALL PERSONS INTERESTED IN SUCH ESTATE UNLESS ALL PERSONS SO INTERESTED SIGN AND FILE IN COURT A WRITTEN WAIVER OF SUCH NOTICE, OR UNLESS THE COURT, FOR CAUSE SHOWN, DISPENSES WITH SUCH NOTICE. THE FINDING BY THE COURT THAT SUCH ESTATE IS NOT MORE THAN SUFFICIENT TO PAY THE EXPENSES OF ADMINISTRATION, THE FUNERAL AND LAST SICKNESS SHALL BE SUFFICIENT CAUSE TO DISPENSE WITH SUCH NOTICE.

(c) TO WHOM LETTERS OF ADMINISTRATION GRANTED. (1) UPON HEARING AS REQUIRED BY THIS SECTION, THE COURT OF PROBATE HAVING JURISDICTION SHALL GRANT ADMINISTRATION OF THE INTESTATE DECEDENT'S ESTATE TO THE DECEDENT'S SPOUSE OR NEXT OF KIN OR BOTH OR, ON THEIR REFUSAL, INCAPACITY OR FAILURE TO GIVE BOND OR UPON THE OBJECTION OF ANY HEIR OR CREDITOR TO SUCH APPOINTMENT, FOUND REASONABLE BY THE COURT, TO ANY OTHER PERSON WHOM THE COURT DEEMS PROPER.

937

(2) IF THE INTESTATE DECEDENT LIVED OUT OF THE STATE LEAVING PROPERTY WITHIN THE STATE, THE COURT OF PROBATE HAVING JURISDICTION SHALL, UPON NOTICE AND HEARING AS REQUIRED BY THIS SECTION, GRANT ADMINISTRATION TO SUCH PERSON AS THE COURT DEEMS PROPER.

(d) BOND REQUIRED OF ADMINISTRATOR. The court, upon granting any administration, shall take a probate bond from the administrator.

CHAPTER XXI

INVENTORY OF DECEDENTS' ESTATES

This chapter contains statutes pertaining to the inventory and appraisal required for decedents' estates.

The statutes are applicable to settlement of both testate and intestate decedents' estates.

Sec. 45a- 305. (NEW)

As used in this chapter "fiduciary" includes the executor or administrator of a decedent's estate.

Definition added for simplification and economy of language.

940

Sec. 45a-306. [Sec. 45-202 and Sec. 45-204.]
Inventory to be filed. [Notice to
commissioner of revenue services. Making and
determination of objections.] PROPERTY
INCLUDED IN INVENTORY. APPRAISAL. TIME
LIMITS.

(a) PROPERTY INCLUDED IN INVENTORY.
APPRAISAL. (1) An inventory of all the
property of every deceased person and
insolvent debtor, except real [estate]
PROPERTY situated outside the state, duly
appraised, shall be made and sworn to by the
[executor or administrator] FIDUCIARY or
trustee [and by him filed in the court of
probate having jurisdiction of the estate of
such deceased person or insolvent debtor
within two months after the acceptance of the
bond or other qualification of such
fiduciary; but the].

(2) WHEN ANY PERSONAL PROPERTY OF A
DECEASED PERSON OR INSOLVENT DEBTOR IS
OUTSIDE OF THIS STATE THE COURT MAY RECEIVE
AN INVENTORY OF SUCH PROPERTY, ACCOMPANIED BY
SUCH EVIDENCE OF ITS VALUE AS IT DEEMS
SUFFICIENT AND SWORN TO BY THE FIDUCIARY.

(3) THE inventory and appraisal of the
estate of any deceased nonresident shall
include only such interest as [such] THE
decedent had at the time of his death in the
real [estate] PROPERTY, tangible personal
property situated in this state and
intangible personal property. [Such court
may, for cause shown, extend the time for the

Reviser's comments:

Original section 45-204 merged with
section 45-202 because it deals
with the same subject. (It is subdivision
(a)(2) here.)

Language and punctuation changed and
statute subdivided for simplification
and clarification.

Title of statute recommended to clarify
purpose of statute.

Internal catch-lines added to improve
readability.

941

filing of such inventory to not more than four months from the qualification of the fiduciary.]

(4) The fiduciary shall appraise or cause to be appraised such inventoried property at its fair market value. [Within sixty days after the receipt of such inventory and appraisal by the court any interested party may file in such court a statement in writing setting forth in detail such objections as he may have to the acceptance of such inventory or appraisal. Upon the filing of such objection, such court shall order a hearing on the acceptance of such inventory and appraisal to be had within sixty days and not less than fifteen days thereafter, and cause notice of the time and place of such hearing to be forthwith given to the executor or administrator of the estate and to each party in interest. Such court, upon such hearing, shall hear such objections and may order such executor or administrator to amend such inventory or appraisal in any way that it finds proper, and may accept the same as amended. If no objection to such inventory or appraisal is filed as aforesaid, such inventory and appraisal may thereupon be accepted by such court. If, in the opinion of the judge of such court, any estate is not subject to succession or inheritance tax, he shall send to the commissioner of revenue services, with the copy of the tax return provided for in section 12-359, a certificate to that effect, setting forth his reasons therefor, and,

unless the commissioner of revenue services, within sixty days after the filing of such certificate as hereinbefore provided, files an objection to such certificate, no tax shall be due from the estate unless the appraised value or the extent of taxability of any item is increased or property valued at more than five hundred dollars is thereafter discovered. The court of probate may, at any time, correct an error or mistake in such certificate.]

(b) TIME LIMITS FOR FILING INVENTORY.

(1) THE FIDUCIARY SHALL FILE THE INVENTORY IN THE COURT OF PROBATE HAVING JURISDICTION OF THE ESTATE OF THE DECEASED PERSON OR INSOLVENT DEBTOR WITHIN TWO MONTHS AFTER THE ACCEPTANCE OF THE BOND OR OTHER QUALIFICATION OF THE FIDUCIARY.

(2) THE COURT MAY, FOR CAUSE SHOWN, EXTEND THE TIME FOR THE FILING OF SUCH INVENTORY TO NOT MORE THAN FOUR MONTHS FROM THE QUALIFICATION OF THE FIDUCIARY.

943

Sec. 45a-307. [Sec. 45-203.] Penalty for not [returning] FILING inventory.

If any fiduciary fails to file in [such] THE court OF PROBATE HAVING JURISDICTION OF THE ESTATE OF A DECEASED PERSON an inventory and appraisal as required, within the time limited, [such] THE court may cite such fiduciary to appear at a time and place therein stated and show cause why he should not be removed [, and, unless]. UNLESS sufficient cause is shown and an inventory and appraisal is forthwith filed, [such] THE court shall remove such fiduciary and appoint a successor to complete the administration of such estate.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

Sec. 45a-308. [Formerly part of Sec. 45-202.]
OBJECTIONS TO INVENTORY OR APPRAISAL. NOTICE
AND HEARING. ACCEPTANCE OF INVENTORY IF NO
OBJECTION.

(a) Within sixty days after the receipt of such inventory and appraisal by the court any interested party may file in the court a statement in writing setting forth in detail such objections as he may have to the acceptance of the inventory or appraisal.

(b) Upon the filing of the objections, the court shall order a hearing on the acceptance of the inventory and appraisal to be had within sixty days and not less than fifteen days after the filing of the objection. The court shall cause notice of the time and place of the hearing to be forthwith given to the fiduciary of the estate and to each party in interest.

(c) The court, upon such hearing, shall hear the objections and may order the fiduciary to amend the inventory or appraisal in any way that it finds proper, and may accept the same as amended.

(d) If no objection to the inventory or appraisal is filed, the inventory and appraisal may thereupon be accepted by the court.

Reviser's comments:

Changes made to language taken from section 45-202 for clarification and simplification.

Title of section recommended to clarify purpose of section.

945

Sec. 45a-309. [Formerly part of Sec. 45-202.]
NOTICE TO COMMISSIONER OF REVENUE SERVICES IF
ESTATE NOT SUBJECT TO SUCCESSION OR
INHERITANCE TAX.

If, in the opinion of the judge of the court of probate having jurisdiction of the estate of a deceased person, the estate is not subject to succession or inheritance tax, he shall send to the commissioner of revenue services, with the copy of the tax return provided for in section 12-359 of the general statutes, a certificate to that effect, setting forth his reasons therefor. Unless the commissioner of revenue services, within sixty days after the filing of the certificate as provided in this section, files an objection to the certificate, no tax shall be due from the estate unless the appraised value or the extent of taxability of any item is increased or property valued at more than five hundred dollars is thereafter discovered. The court of probate may, at any time, correct an error or mistake in the certificate.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

Sec. 45a-310. [Sec. 45-202b. Waiving] WAIVER of inventory filing requirement and filing with the commissioner of revenue services.

Any judge of probate is authorized to waive the requirements of section 45-202 for estates coming within the provisions of sections 4-68c [, 4-68g] and [17-83b] 4-68h.

Sec. 45a-311. [Sec. 45-202a.] Appointment of [estate] COURT-APPOINTED appraisers [limited] PROHIBITED.

There shall be no court-appointed appraisers of any decedent's [estate] PROPERTY [except as provided in section 45-202].

Section 4-68g is deleted because it is repealed.

Section 17-83b was transferred to section 4-68h and this change is reflected here.

Title of section recommended to clarify purpose of section.

Language changed for simplification and clarification.

Reference to section 45-202 deleted because there is no mention of court-appointed appraisers in that section.

Title of section recommended to reflect this change.

947

Sec. 45a-312.[Sec. 45-194.] Beneficiary designation exempt from laws governing transfer BY WILL.

The designation in accordance with the terms of an insurance, annuity or endowment contract, or of any agreement issued or entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, or the designation in accordance with the terms of an employee pension, death benefit, stock bonus or profit-sharing plan, system or trust, of any person to be a beneficiary or owner of any right, title or interest thereunder upon the death of another, shall not be subject to any statute or law governing the transfer of property by will, even though such designation is revocable by the person who made it, or the rights of such beneficiary or owner are otherwise subject to defeasance. [This section shall apply to such designations made before or after July 8, 1955, by persons who die on or after said date. This section shall not be deemed to create any implication of invalidity as to any designation, of the nature herein described, made by any person who dies before said date.]

The last two sentences are deleted as obsolete inasmuch as estates of decedents who died prior to July 8, 1955 should all be settled.

Title of section recommended to clarify purpose of section.

CHAPTER XXII

CLAIMS AGAINST DECEDENTS' ESTATES

This chapter contains statutes which may be applicable to decedents' estates, whether the estates are solvent or insolvent. These statutes may be applicable to both testate and intestate estates.

PART I
CLAIMS - GENERAL

950

Sec. 45a- 313. [NEW] Definitions.

As used in this chapter, "fiduciary" includes the executor or administrator of a decedent's estate.

Definition added for simplification and economy of language.

951

Sec. 45a-314. [Sec. 45-206.] Claims to be presented in writing and sworn to if required.

All claims presented against the estate of any deceased person shall be in writing, and, if required by the [administrator or executor] FIDUCIARY of [such] THE estate or by the court of probate, any such claim shall be sworn to by the party presenting it.

Reviser's comments:

Minor language changes for clarification and simplification.

952

Sec. 45a-315. [Sec. 45-229.] Order of payment of claims.

On the final settlement of the estate, the court of probate shall direct the payment of claims against [such] THE estate to be made in the following order: First, the funeral expenses and the expenses of settling the estate; second, debts due for the last sickness of the deceased; third, all lawful taxes and all debts due the state and the United States; fourth, all debts due any laborer or mechanic for personal wages for labor performed by such laborer or mechanic for the deceased within three months. [next preceding] IMMEDIATELY BEFORE the decease of such person; fifth, other preferred claims; and last, all other debts allowed in proportion to their respective amounts.

Reviser's comments:

Minor language changes for clarification and simplification.

953

Sec. 45 a- 316. [Sec. 45-252a.] PAYMENT OF
[funeral] expenses OF FUNERAL AND LAST
ILLNESS OF MARRIED PERSON.

The funeral expenses and expenses of the last
illness of a married person shall be paid out
of his or her estate, if sufficient therefor
[, but if] . IF SUCH ESTATE IS NOT
sufficient therefor [they] , SUCH EXPENSES
shall be paid by his or her spouse.

Language and punctuation changed for
simplification and clarification.

Title of section recommended to
clarify purpose of section.

954

Sec. 45a-317. [Sec. 45-196a.] Notice to be given when deceased received aid or care from state, including the veterans' home and hospital commission. EFFECT ON LIMITATION OF CLAIMS.

(a) [In the case of any deceased person, the] THE application for admission of [his] A DECEDENT'S will to probate [,] or for administration of [his decedent] A DECEDENT'S estate [,] shall state that [he] THE DECEDENT either did, or did not, receive aid or care from the state, which shall also include aid or care from the veterans' home and hospital commission, whichever is true [, and a]. A copy of each application which states that the decedent did receive such aid or care shall be sent by the court to the department of administrative services or the veterans' home and hospital commission, or both, as the case may be.

(b) In any such case the period for limitation of claims shall not begin to run against the state until such copy has been so sent, or, in the case of a deceased recipient of such aid or care whose application alleged he was not such a recipient, until the application has been corrected to state his receipt of aid or care and a copy of the corrected application has been forwarded to [said] THE department of administrative services or said commission by the court.

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

955

PART II
CLAIMS AGAINST SOLVENT ESTATES

956

Sec. 45a-318. [Sec. 45-205.] Limitation of time for presenting claims TO FIDUCIARY. EFFECT OF FAILURE TO PRESENT CLAIM. ORDERS RE EXTENSION OF TIME. AMOUNT OF CLAIM. EXCEPTIONS.

(a) The court of probate may order the citation of the creditors of the deceased whose estate is in settlement before it to bring in their claims against such estate within such time, not more than twelve months nor less than three months, from the date of such order, as it limits, [by posting a notice to that effect on the signpost nearest to the place where the deceased last dwelt and in the same town or] by publishing [the same] A NOTICE TO THAT EFFECT in a newspaper having a circulation in the probate district in which such estate is in settlement [, or both,] and by such further notice as [such] THE court deems necessary. [, or, if such deceased was not a resident of this state, by posting such notice on such signpost in the probate district in which such estate is in settlement, and by such other notice as such court may direct.]

(b) If any creditor fails to exhibit his claim to the fiduciary or his attorney as directed in such order, within the time limited by such order, he shall be barred of his demand against such estate; but, when a right of action accrues after the time limited for the presentation of claims, it shall be exhibited within four months after such right of action accrues and shall be

Reviser's comments:

Reference to posting notices on signposts is eliminated as obsolete and publication in a newspaper is substituted as the modern equivalent.

Language and punctuation changed and statute subdivided for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

957

paid out of the estate remaining after the payment of the debts exhibited within the time limited.

(c) [Such] THE court may, for cause shown upon hearing after public notice, limit a further time for the presentation of claims not exceeding the period which it might have originally limited [; and]. THE COURT may, if any creditor, through no default of his own, has failed to present his claim within the time limited, for cause shown upon hearing after public notice, extend the time for such creditor to present his claim not more than thirty days beyond the period which it might have originally limited.

(d) Failure of a clerk of the court of probate to cause proper notice limiting the time for presentation of claims against such estates to be published [or posted] as required by the probate order within ten days from the issuance of such order by the court of probate shall be deemed a noncompliance with such order and shall be cause for a further order of limitation to creditors.

(e) The amount of a claim may not be increased after the time for the presentation of such claim has expired.

(f) [No] A notice of claim shall NOT be required under this section of any claim founded in tort or of any claim on which an action is pending in any court against the decedent at the time of his death.

958

(g) If any person against whom a claim founded in tort exists dies on the day the applicable statute of limitation expires or within thirty days prior to such day, a period of thirty days from the appointment of his executor or administrator shall be allowed within which to commence suit.

959

Sec. 45a- 319.[Sec. 45-208.] Presentation of claims when [executor] FIDUCIARY is a nonresident.

Whenever the [executor or administrator] FIDUCIARY of any DECEDENT'S estate in settlement in this state resides [without] OUTSIDE OF the state, claims against such estate may be left with the judge of probate in the district where such estate is in settlement [, and claims] . CLAIMS so left with the judge of probate within the time limited for the presentation of claims shall be as valid against such estate as if they had been left with the [executor or administrator] FIDUCIARY.

Language and punctuation changed for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

360

Sec. 45a-320.[Sec. 45-207.] Return of notice and list of claims.

Language changed for simplification and clarification.

Every [executor and administrator] FIDUCIARY, within thirty days after the expiration of the time limited by the court as [aforesaid] PROVIDED IN SECTION 45-205 for the presentation of claims, shall make sworn return to the court of the notice of such limitation given to the creditors, together with a list of all claims presented to him within the time limited.

Sec. 45a-321. [Sec. 45-209.] [Determination
of claims presented when executor or
administrator dies or is removed.]
DETERMINATION OF CLAIMS PRESENTED AGAINST
SOLVENT ESTATE IF FIDUCIARY DIES OR IS
REMOVED; PERIOD OF LIMITATION FOR SUIT ON
DISALLOWED CLAIMS IN SUCH CASE.

(a) [Whenever, in the course of the
settlement of an estate of any deceased
person] A SUCCESSOR FIDUCIARY OF A DECEDENT'S
ESTATE not represented insolvent, [the
executor or administrator] MAY, WHEN THE
ORIGINAL FIDUCIARY has died or has been
removed after the time limited for the
presentation of claims against such estate
has expired [without having] AND THE ORIGINAL
FIDUCIARY HAS NOT made a return of the notice
given of the time so limited and of the
claims presented in accordance therewith,
[and another person has been appointed
administrator to complete the settlement of
such estate,] APPLY TO the court of probate
having jurisdiction of such estate [shall, on
application of such administrator,] TO
DETERMINE WHAT CLAIMS WERE PRESENTED TO THE
ORIGINAL FIDUCIARY WITHIN THE TIME LIMITED.
UPON APPLICATION BY THE SUCCESSOR FIDUCIARY,
after public notice to all persons
interested, THE COURT OF PROBATE SHALL hear
and determine what claims, if any, were
presented to the original [executor or
administrator] FIDUCIARY within the time
limited [, and its]. THE COURT'S
determination shall, if unappealed from, be
final and conclusive. Thereupon the

Reviser's comments:

Language and punctuation changed and
statute subdivided for simplification
and clarification.

Title of statute is recommended to clarify
purpose of statute.

962

[administrator de bonis non] SUCCESSOR FIDUCIARY shall make a sworn return to the court of such claims as have been allowed and disallowed by him.

(b) If any creditor who is found by the court to have presented his claim within the time limited does not, within four months after receiving written notice from the [administrator de bonis non] SUCCESSOR FIDUCIARY that his claim is disallowed wholly or in part, commence suit against such [administrator] SUCCESSOR FIDUCIARY for the recovery thereof, he shall be barred of his claim against such estate, except such part as has been allowed.

963

Sec. 45a-322. [Sec. 45-213a.] Procedure when fiduciary ignores presented claim. PERIOD OF LIMITATION.

Any claimant who has presented his claim in accordance with sections 45-205 to 45-209, inclusive, ~~AS AMENDED BY SECTIONS 268, 264, 270, 269 AND 271 OF THIS ACT,~~ who has not received written notice of the disallowance of his claim from the [executor or administrator] FIDUCIARY, wholly or in part, within thirty days following the end of the limitation of time for presenting claims as set by the court of probate under section 45-205, ~~AS AMENDED BY SECTION 268 OF THIS ACT,~~ or any extension thereof, may give written notice to [such executor or administrator] THE FIDUCIARY that he intends to bring suit upon said claim within four months after the date of such notice. If such claimant fails to bring suit within four months from the date of such notice, such claimant shall be barred from commencing an action on his claim against [such executor or administrator but if] THE FIDUCIARY. IF such claimant dies within such four months and before suit has been brought, a period of four months from the date of death shall be allowed to his executor or administrator within which to commence such suit.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

964

Sec. 45a-323. [Sec. 45-213b.] [Decision of claims by probate courts; procedure; hearing commissioners;] HEARING ON DISALLOWED CLAIMS BY PROBATE COURT OR COMMISSIONERS. Appeals. Costs.

(a) Whenever [an executor or administrator] A FIDUCIARY of any estate of a deceased person disallows, in whole or in part, the claim of any creditor against [such] THE estate, which claim has been presented within the time limited for presenting claims against [such] THE estate, such creditor may, within thirty days after notice of such disallowance or as provided under section 45-213, ~~AS AMENDED BY SECTION 275 OF THIS ACT,~~ apply to the court of probate to receive and decide such claim or in the alternative may apply to said court for the appointment of one or more disinterested persons, at least one of whom shall be an attorney at law, admitted to practice in this state, to be a commissioner or commissioners to receive and decide upon such claim. The court may, in its discretion, grant [such] THE application, hear such claim if the application so requests or appoint such commissioner or commissioners, who shall be sworn to faithfully discharge their duties and shall have all the powers and duties concerning such claim that commissioners appointed under the provisions of sections 45-214, ~~AS AMENDED BY SECTION 276 OF THIS ACT,~~ and 45-215, ~~AS AMENDED BY SECTION 281 OF THIS ACT,~~ have with respect to claims against insolvent estates.

Reviser's comments:

Language changed and statute further subdivided for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

965

The court shall notify the applicant and the [executor or administrator] FIDUCIARY of [such] THE estate of its action on the granting or denying of [such] THE application within fifteen days after receipt of [such] THE application.

(b) Upon application of such commissioner or commissioners or upon its own motion, the court of probate shall cause notice of the time and place of the hearing on said matter to be served by registered or certified mail or as the court otherwise directs to such persons as [he] THE COURT may direct and the clerk of the court of probate shall mail such notices [not later than ten days prior to] AT LEAST TEN DAYS BEFORE the hearing date.

(c) If [such] THE application to receive and decide such claim by the court or for the appointment of a commissioner or commissioners is denied, the creditor may commence suit upon such claim in the manner provided by law within four months after the denial of [such] THE application.

(d) Any person aggrieved by the [doings] ACTIONS of such commissioner or commissioners may appeal therefrom as provided in accordance with the provisions of section 45-292, ~~AS AMENDED BY SECTION 96 OF THIS ACT,~~ with respect to insolvent estates.

(e) Any person aggrieved by the decision of the court of probate under this section

966

may appeal therefrom as provided in section
45-288, ~~AS AMENDED BY SECTION 92 OF THIS ACT.~~

[(c)] (f) Such commissioner or
commissioners may be allowed such reasonable
compensation and expenses as the judge of
probate shall determine, the cost of which
may be apportioned between the creditor and
the estate as [such] THE judge shall direct.
In the event that the judge of probate shall
receive and decide a claim, [no] costs shall
NOT be assessed other than those permitted by
section 45-17a, ~~AS AMENDED BY SECTION 36 OF
THIS ACT.~~

967

Sec. 45a-324. [Sec. 45-210.] Suit against solvent estate ON DISALLOWED CLAIM. LIMITATION PERIOD. Suspension of limitation period. Tort actions.

(a) [No suit by any] A creditor of any deceased person whose estate is in process of settlement as a solvent estate shall [be commenced] NOT COMMENCE A SUIT against [an executor or administrator] A FIDUCIARY OF THE ESTATE within the period allowed by the court for the presentation of claims against [such] THE estate, unless written notice of a total or partial disallowance of his claim has been given by the [executor or administrator] FIDUCIARY of [such] THE estate.

(b) Unless such creditor commences a suit against [such executor or administrator] THE FIDUCIARY within four months after written notice has been given him by the [executor or administrator] FIDUCIARY that his claim is disallowed, wholly or in part, he shall be barred of his claim against [such] THE estate, except such part as has been allowed [; but, if]. If such creditor dies within such four months and before suit brought as [aforesaid] PROVIDED IN THIS SECTION, a period of four months from his death shall be allowed to his executor or administrator within which to commence such suit.

(c) The running of any limitation period prescribed under any provision of chapter 925 or 926 and applicable to the claim of any

Reviser's comments:

Language and punctuation changed and statute subdivided for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

such creditor, which limitation period would otherwise expire within the period allowed by the court for the presentation of claims against [such] THE estate, shall be suspended from the time of presentation of such claim until written notice of a total or partial disallowance of such claim has been given by the [executor or administrator] FIDUCIARY or until the expiration of the period allowed by the court for presentation of claims, whichever is sooner.

(d) This section shall not apply to any claim founded in tort, provided written notice thereof shall be given to the [executor or administrator] FIDUCIARY.

969

Sec. 45a-325. [Sec. 45-213.] Suit upon claims against fiduciary. PERIOD OF LIMITATION.

When any [executor, administrator, guardian, conservator or testatmentary or other trustee] FIDUCIARY OF A DECEDENT'S ESTATE required to account in a court of probate is unable to settle or adjust any claim against him as such, or when any such [executor, administrator, guardian, conservator or trustee] FIDUCIARY and a claimant against him are unable to agree concerning the amount or validity of such claim, such [executor, administrator, guardian, conservator or trustee] FIDUCIARY may give written notice to such claimant of the disallowance of his claim, wholly or in part, and unless such claimant commences a suit against such [executor, administrator, guardian, conservator or trustee] FIDUCIARY within four months after such notice has been given such claimant shall be barred of his claim against such [executor, administrator, guardian, conservator or trustee] FIDUCIARY, except such part as has been allowed, and of any such claim against the estate [or trust; but if]. IF such creditor dies within such four months and before suit has been brought, a period of four months from his death shall be allowed to his executor or administrator within which to commence such suit.

Reviser's comments:

Original statute divided and references to guardians, conservators and trustees deleted from this portion as inappropriate in a chapter solely concerned with decedents' estates. Deleted material may be found in section 45a-216.

Language and punctuation changed for simplification and clarification.

970

Sec. 45a- 326.[Sec. 45-212.] PAYMENT OF claims of executor and administrator.

Language changed for simplification and clarification.

[No executor or administrator] A FIDUCIARY shall NOT pay any personal claim of his own against the DECEDENT'S estate in his charge until such claim has been approved by the court of probate after public notice and hearing, unless the court, for cause shown, dispenses with such notice and hearing. If any such claim is wholly or partly secured, it may be paid at any time after such approval to the extent of the value of the security as appraised pursuant to section 45-202. Any unsecured claim and the unsecured portion of any such claim shall not be paid until after such approval and until after the expiration of the time limited by the court for the presentation of claims.

Title of statute recommended to clarify purpose of statute.

971

PART III
CLAIMS AGAINST INSOLVENT ESTATES

972

Sec. 45a-327. [Formerly Sec. 45-226.]
Any estate may be settled as insolvent.

The estate of any deceased person may be settled as an insolvent estate if the court of probate deems it expedient. [When the settlement of any solvent estate has been commenced as an insolvent estate, the rights of all persons having claims against it subsequently accruing, which have not been exhibited to the commissioners thereon within the time limited for the exhibition of claims, shall be the same in respect to any estate of such deceased person remaining after the payment of the claims allowed by them as they would have been in regard to such remaining estate if such estate had always been treated as a solvent estate.]

Reviser's comments:

Original statute divided into two separate statutes because it deals with different concepts. Deleted material may now be found in section 45a-328(c).

973

Sec. 45a-328. [Sec. 45-227.] Estate IN SETTLEMENT AS INSOLVENT found TO BE solvent to pay interest on debts [; claims of nonresident creditors]. EFFECT ON NONRESIDENT CREDITORS AND EFFECT IN AFTER-ACCRUING CLAIMS IF SUCH AN ESTATE FOUND TO BE SOLVENT.

(a) ESTATE IN SETTLEMENT AS INSOLVENT FOUND TO BE SOLVENT TO PAY INTEREST ON DEBTS.

When any estate of a deceased person in settlement as an insolvent estate proves to be solvent or more than sufficient to pay the amount of debts presented and allowed against it, the court of probate shall order the payment of the debts and of the charges of settling [such] THE estate and shall, in so ordering such payment, add interest upon such debts from the time to which interest had been allowed upon them by the commissioners or by the superior court on appeal to the time when payment is so ordered. If [such] THE estate is not sufficient to pay such interest in full, such amount as is left after paying the principal of such debts shall be applied pro rata to pay interest upon the claims allowed [; and, if].

(b) EFFECT ON NONRESIDENT CREDITORS IF SUCH AN ESTATE FOUND TO BE SOLVENT. IF any surplus remains after such payment OF INTEREST, the creditors who are not inhabitants of this state and who have not presented their claims to such commissioners may present the same at any time within six months after the expiration of the time

Reviser's comments:

Language and punctuation changed and statute subdivided for simplification and clarification of language.

Title of section recommended to clarify purpose of section.

Internal catch-lines added to improve readability.

Subsection (c) formerly part of section 45-226.

974

limited by the court for the exhibition of claims [, and such] . THE commissioners shall proceed in regard to such claims in the same manner as in regard to those exhibited within said time [, and, upon]. UPON the return of their report of such claims to the court, all parties in interest shall have the same rights as on their first report [, and the]. THE court shall order such claims as are established to be paid from such surplus, or, if such property is not sufficient therefor, then in proportion to the sum so found to be due.

(c) EFFECT ON AFTER-ACCRUING CLAIMS IF SUCH AN ESTATE FOUND TO BE SOLVENT. WHEN THE SETTLEMENT OF ANY SOLVENT ESTATE HAS BEEN COMMENCED AS AN INSOLVENT ESTATE, THE RIGHTS OF ALL PERSONS HAVING CLAIMS AGAINST IT SUBSEQUENTLY ACCRUING, WHICH CLAIMS HAVE NOT BEEN EXHIBITED TO THE COMMISSIONERS THEREON WITHIN THE TIME LIMITED FOR THE EXHIBITION OF CLAIMS, SHALL BE THE SAME IN RESPECT TO ANY PROPERTY OF SUCH DECEASED PERSON REMAINING AFTER THE PAYMENT OF THE CLAIMS ALLOWED BY THE COMMISSIONERS AS SUCH RIGHTS WOULD HAVE BEEN IN REGARD TO SUCH REMAINING PROPERTY IF SUCH ESTATE HAD ALWAYS BEEN TREATED AS A SOLVENT ESTATE.

975

Sec. 45a-329. [Sec. 45-214.] Appointment of commissioners TO DETERMINE CLAIMS ON INSOLVENT ESTATES; notice to creditors.

(a) The court of probate shall direct the [executor or administrator] FIDUCIARY of the estate of a deceased person which is represented to be insolvent, and the trustee of the estate of an insolvent debtor, to give public notice to all persons in interest to appear if they see cause before [such] THE court, at a time and place appointed by it and designated in the notice, to be heard relative to the appointment of commissioners to receive and decide upon the claims of the creditors of [such] THE estate [and, after]. AFTER hearing, THE COURT shall appoint two or more disinterested persons to be such commissioners, who shall be sworn to faithfully discharge their duties [, and the].

(b) WITHIN TEN DAYS AFTER APPOINTMENT OF COMMISSIONERS THE [executor or administrator] FIDUCIARY shall cause public notice to be given of the time and place of [their] THE COMMISSIONERS' meeting [,] and shall also cause a copy of such notice to be sent to every known creditor of the estate [within ten days after their appointment].

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of statute recommended to clarify purpose of statute.

976

Sec. 45a-330. [Sec. 45-217.] Limitation of time for exhibiting claims TO COMMISSIONERS.

The court of probate shall allow not less than three nor more than twelve months for exhibiting claims to the commissioners on the insolvent estate of a deceased person; and not less than three nor more than six months for exhibiting claims to the commissioners on the estate of an insolvent debtor [; and such]. THE court may, on the application of any person claiming to be a creditor of [such] THE estate, either before or after the return of the commissioners' report, for good and sufficient cause shown, upon a hearing after public notice, order the hearing before the commissioners on any estate to be opened and limit a further time, not exceeding thirty days beyond the time it might have originally limited, for the presentation of such claims.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

- Title of section recommended to clarify purpose of section.

977

Sec. 45a-331. [Sec. 45-215.] Appointment of commissioners after time for presentation of claims has expired. FIDUCIARY TO DELIVER CLAIMS. NOTICE TO CREDITORS.

(a) [Whenever, in the course of] WHEN DURING the settlement of the estate of a deceased person, the [executor or administrator] FIDUCIARY, after the expiration of the time limited by the court of probate for presenting claims against [such] THE estate, represents [such] THE estate to be insolvent, the court shall appoint commissioners to receive and decide upon the claims of creditors of [such] THE estate, proceeding in the manner prescribed in section 45-214, ~~AS AMENDED BY SECTION 276 OF THIS ACT~~ [, but no further]. FURTHER time shall NOT be limited by [such] THE court for presenting claims against [such] THE estate, unless [such] THE court in its discretion finds such further limitation to be necessary.

(b) The [executor or administrator] FIDUCIARY shall deliver to such commissioners immediately upon their appointment all claims against [such] THE estate which have been presented to him within the time limited as [aforesaid, and] PROVIDED IN SECTION 45-205 ~~AS AMENDED BY SECTION 268 OF THIS ACT~~.

(c) THE FIDUCIARY shall cause notice of the names of such commissioners and of the time and place of their meeting to be given to every person who has presented a claim

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

978

against [such] THE estate, and, if a further
limitation is made, to every known creditor,
in such manner as the court of probate
directs.

979

Sec. 45a-332. [Sec. 45-230.] Settlement of estate without commissioners.

When it appears to the court of probate that the assets of the estate of any deceased person in settlement before [such] THE court, exclusive of the articles which may be legally set out to the surviving spouse and the allowance for support of such spouse and that of the family of the deceased, will not be more than sufficient to pay the funeral expenses, the expenses of settling the estate, the expenses of the last sickness and the lawful taxes and debts due the state and the United States, the court may, after notice to all persons interested [to appear], upon hearing, ascertain the amount of the funeral and other expenses and of such taxes and preferred debts, and decree that the settlement of [such] THE estate be completed without the appointment of commissioners.

Reviser's comments:

Language changed for simplification.

980

Sec. 45a-333. [Sec. 45-219.] Claims not exhibited are barred. Newly discovered assets.

Each creditor of an insolvent estate who does not exhibit his claim to the commissioners within the time limited shall be barred of his claim against [such] THE estate unless he can show some [estate] PROPERTY not embraced in the inventory or accounted for by the [executor, administrator] FIDUCIARY or trustee, in which case he shall notify the [executor, administrator] FIDUCIARY or trustee, who shall make an additional inventory of such newly discovered [estate, and the] PROPERTY. IN SUCH CASE THE court of probate shall examine his claim and allow what appears to be due him [, and, after]. AFTER deducting the additional charges, THE COURT shall order so much of the [avails] PROCEEDS of such discovered [estate] PROPERTY to be paid to [him] SUCH CREDITOR as will make him equal to the other creditors, if it is sufficient; if not SUFFICIENT, the whole shall be paid to him, but, if more than sufficient, the surplus shall be divided ratably between him and the other creditors.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

981

Sec. 45a-334. [Sec. 45-218.] What claims may be allowed.

Any claim against the estate of an insolvent debtor, whether founded in contract or tort, and any claim against the insolvent estate of a deceased person which by law survives, may be proved before the commissioners and allowed by them [, and no]. A claim against [such] THE insolvent estate shall NOT be deemed to be discharged by having become merged in any higher evidence of debt after the commencement of the settlement of [such] THE estate.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

982

Sec. 45a-335. [Sec. 45-221.] Procedure when creditor has security for his claim.

(a) If any creditor having any security for his claim against an insolvent estate upon any property of [such] THE estate presents his claim to the commissioners on [such] THE estate, they shall inquire into the cash value of such security and report the same to the court of probate.

(b) If [they] THE COMMISSIONERS allow such claim, the [executor, administrator] FIDUCIARY or trustee shall, within six days after the return of the commissioners' report, notify such creditor by registered or certified mail of the amount allowed and of such value as reported by the commissioners [; and, unless].

(c) UNLESS such creditor, within fifteen days after the giving or mailing of such notice, lodges with [such] THE court a certificate of his election to relinquish such security, he shall be entitled to a dividend from [such] THE estate only upon the excess of his claim above the value of such security.

Reviser's comments:

Statute subdivided and punctuation changed for simplification and clarification.

983

Sec. 45a-336. [Secs. 45-220 and 45-222.]
Commissioners report. NOTICE TO CLAIMANTS.
Hearing on objections. Appeal.

(a) COMMISSIONERS' REPORT. The commissioners, as soon after the expiration of the time limited FOR PRESENTATION OF CLAIMS as it may reasonably be done, shall report to the court a list of all the claims exhibited to them, specifying [particularly] the claims and the amounts presented, allowed and disallowed.

(b) FIDUCIARY TO NOTIFY CLAIMANTS OF CLAIMS DISALLOWED BY COMMISSIONERS. If ANY CLAIM AGAINST ANY INSOLVENT ESTATE IS DISALLOWED, IN WHOLE OR IN PART, BY THE COMMISSIONERS, THE FIDUCIARY OR TRUSTEE SHALL WITHIN SIX DAYS AFTER THE RETURN OF THE COMMISSIONERS' REPORT, NOTIFY THE CLAIMANT BY REGISTERED OR CERTIFIED MAIL.

(c) ACCEPTANCE OR REJECTION OF COMMISSIONER'S REPORT. APPEAL. (1) The court shall accept [such] THE commissioners' report unless, upon written objection of an aggrieved party filed within fourteen days after the filing of the report and after a hearing upon such objection of which notice shall be given to all those who presented claims to the commissioners and to the representatives of the estate, the court finds that the commissioners were guilty of misconduct affecting the validity of the report as a whole. If the court so finds, it may reject the report and proceed, as

Reviser's comments:

Language changed for simplification and clarification.

Section 45-220 subdivided. Subsection (b) was section 45-222.

Internal catch-lines added to improve readability.

984

provided in sections 45-214, ~~AS AMENDED BY SECTION 276 OF THIS ACT~~, and 45-215, ~~AS AMENDED BY SECTION 281 OF THIS ACT~~, to appoint the same or other commissioners to receive and decide upon the claims of creditors of the estate which were presented to the commissioners originally appointed. Upon such appointment the same proceedings shall be had for the determination of the validity of such claims as provided in said sections, except that [no] notice of the time and place of their meeting shall NOT be given except to creditors who presented claims to the commissioners originally appointed.

(2) An appeal may be taken from the order of the court accepting or rejecting the report after such written objection.

985

Sec. 45a-337. [Sec. 45-228.] Suits against insolvent estates prohibited. Exceptions. Pending suits.

[No suit, except] EXCEPT for debts due the United States or the state or for the expenses of the last sickness or funeral charges, SUIT shall NOT be brought against the [executor or administrator] FIDUCIARY of an estate in course of settlement as insolvent [; and, if]. IF judgment has been rendered against such [executor or administrator] FIDUCIARY before the commencement of its settlement as an insolvent estate, [no] execution shall NOT issue, but the creditor may exhibit his judgment to the commissioners appointed by the court of probate to receive and decide upon the claims of the creditors of [such] THE estate and receive his proportion of the estate with the other creditors, and, if judgment has not been rendered, any pending suit, except of the classes excepted above, shall abate; but, if such claim or any part thereof is allowed by the commissioners, [no] costs on such abatement shall NOT be allowed to the estate, and the creditor may exhibit his claim and the accrued costs of suit to the commissioners, and the costs contained in such judgment or accrued in such suit, if such claim is allowed, wholly or in part, shall be preferred by the court of probate, if in its opinion the bringing of such suit was necessary to protect the creditor's rights and not otherwise.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

986

Sec. 45a- 338.[Formerly part of Sec. 45-216.]
[Certain persons not to be commissioners.]
Compensation OF COMMISSIONERS.

[No court of probate shall appoint as commissioner on the estate of any deceased person or as trustee of the estate of any insolvent debtor any officer or employee of the court or any person employed by the judge thereof.] The court shall fix the compensation of commissioners appointed [as aforesaid] PURSUANT TO SECTIONS 45-214 OR 45-215 and [the] SUCH amount [so fixed] shall be paid from the funds of the estate.

Original statute divided into two separate statutes because it deals with different subjects.

Language and punctuation changed for simplification and clarification.

. Title of section recommended to clarify purpose of section.

987

PART IV
COMMISSIONERS - GENERAL

886

Sec. 45a-339. [Formerly part of Sec. 45-216.]
Certain persons not to be commissioners.

A court of probate shall not appoint as commissioner on the estate of any deceased person or as trustee of the estate of any insolvent debtor any officer or employee of the court or any person employed by the judge thereof.

Reviser's comments:

Original statute divided into two separate statutes because it deals with two different subjects.

Language changed for simplification and clarification.

989

Sec. 45a-340. [Sec. 45-225.] Commissioners disqualified; validity of acts.

(a) [No] A commissioner shall NOT be disqualified by reason of any relationship by blood or marriage, or by the relation of landlord and tenant, between himself and any person interested in the estate, [if no] UNLESS AN objection is made on that account at the time of his appointment by some person claiming to be interested [, but the]. THE court of probate shall remove any commissioner so related to any person interested in the estate as to legally disqualify him, if any person claiming to be interested in [such] THE estate so requests at any time before the expiration of the time limited for the exhibition of claims, or, if he does not discover such relationship until after such time, then upon such request at any time before the acceptance of the commissioners' report.

(b) The [doings] ACTIONS of commissioners [any of whom] WHO are disqualified shall be valid unless set aside for such cause by the court of probate before the acceptance of their report or on appeal.

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Sec. 45a-341. [Sec. 45-223.] When commissioners disagree or one cannot act.

(a) If there are two commissioners and they do not agree upon the allowance or rejection of any particular claim, the court of probate, after public notice and hearing, shall appoint a third commissioner to act with them, and the report signed by a majority of the commissioners and returned shall be a sufficient report.

(b) When any commissioner is prevented from completing his duties, the remaining commissioners may perform all the duties of the commission.

Reviser's comments:

Statute subdivided for simplification and clarification.

Sec. 45a-342. [Sec. 45-224.] Removal of commissioners. APPOINTMENT OF SUCCESSOR COMMISSIONERS.

The court of probate may remove any commissioner for cause and appoint another in his place, after notice as required in an original appointment [, who]. WHEN THE SUCCESSOR COMMISSIONER [being] IS sworn HE shall, with the remaining commissioners, after such notice as the court prescribes, examine and allow such claims only as have been exhibited within the time originally limited.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

992

CHAPTER XXIII

SETTLEMENT OF DECEDENTS' ESTATES-
IN GENERAL

This chapter contains miscellaneous provisions concerning fiduciaries' responsibilities and court procedures involved in the commencement of and settlement of decedents' estates. Some provisions relate to testate administration, some relate to intestate administration and some relate to both.

Sec. 45a-343. [NEW] Definitions.

As used in this chapter, "fiduciary" includes the executor or administrator of a decedent's estate.

Definition added for simplification and economy of language.

Sec. 45a-344. [Formerly part of Sec. 45-4.]
FINDING AS TO DOMICILE OF DECEDENT. APPEAL.

Upon the admission of any will to probate or the appointment of an administrator of the estate of any deceased person, the court of probate shall make a finding as to the domicile of such person at the time of death. Any person interested in such estate may appeal from such finding as provided in section 45-288 of the general statutes ~~as amended by section 92 of this act.~~

Reviser's comments:

Original statute divided into two separate statutes because the first part deals with powers of the probate court and the second part deals with a specific court procedure in the settlement of decedent's estates. Other portion of section 45-4 now found at section 45a-2.

Language and punctuation changed for simplification and clarification.

Sec. 45a-345. [Sec. 45-197.] Appointment of temporary administrator or trustee or an officer to preserve assets. BOND.

Whenever, upon the application of a creditor or other person interested in the estate of a deceased person or insolvent debtor, it [appears to and] is found by the court of probate having jurisdiction of [such] THE estate that the granting of administration on [such] THE estate or the probating of the will of [such] THE deceased or the appointment of a trustee in insolvency will be delayed, or that it is necessary for the protection of the estate of [such] THE deceased or insolvent person, [such] THE court may, with or without notice, appoint a temporary administrator or trustee to hold and preserve the estate until the appointment of an administrator or trustee or the probating of the will [, and]. THE COURT shall require from such administrator or trustee a probate bond [; or, if such]. IF THE court deems it more expedient, it may order any deputy sheriff or constable to take possession of the estate until the appointment of an administrator, executor or trustee.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

Sec. 45a-346. [Sec. 45-198.] Powers and duties of [such] temporary appointee. REMOVAL.

(a) THE TEMPORARY ADMINISTRATOR OR OFFICER APPOINTED PURSUANT TO THE PROVISIONS OF SECTION 45-197, ~~AS AMENDED BY SECTION 295 OF THIS ACT,~~ SHALL TAKE IMMEDIATE POSSESSION OF ALL THE REAL AND PERSONAL PROPERTY OF THE DECEASED, COLLECT THE RENTS, DEBTS AND INCOME THEREOF AND DO ANY ADDITIONAL ACTS NECESSARY FOR THE PRESERVATION OF THE ESTATE THAT THE COURT AUTHORIZES.

(b) Such administrator or officer may be authorized by [such] THE court to sell any personal property of [such] THE estate which is perishable in its nature or which the court finds cannot be retained to advantage, and may be further authorized to make up or complete any stock or materials in an unfinished state, and to continue any business, so far as may be necessary for the preservation of the same. [Such administrator or officer shall take immediate possession of all the estate of such deceased, both real and personal, collect the rents, debts and income thereof and do such further acts necessary for the preservation of such estate as the court authorizes and approves.]

(c) Such administrator or officer shall file forthwith under oath an inventory of all personal [estate] PROPERTY of the deceased

Reviser's comments:

Statute subdivided and reorganized and language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

936

and, when ordered to do so, shall exhibit to the court an account of his [doings] ACTIONS.

(d) Such administrator or officer may be removed by the court with or without notice and a successor appointed whenever such action appears to the court advisable.

(e) Upon the appointment and qualification of the administrator or the administrator with the will annexed or the qualification of the executor, such temporary administrator or such officer shall exhibit forthwith to the court an account of his trust and deliver to the administrator, executor or administrator with the will annexed all of the estate of [such] THE deceased remaining in his hands.

997

Sec. 45a-347.[Sec. 45-253.] Custody of remains of deceased persons.

Statute subdivided and language and punctuation changed for simplification and clarification.

(a) The custody and control of the remains of deceased residents of this state shall [pertain] BELONG to the [husband or wife] SURVIVING SPOUSE of the deceased [; but, if] . IF the surviving [husband or wife] SPOUSE had abandoned, and at the time of death was living apart from, the deceased, or if there is no [husband or wife] SPOUSE surviving, then such custody and control shall [pertain] BELONG to the next of kin [; but the] . THE court of probate for the district of the domicile of the deceased may at any time, upon the petition of any of the kin, award such custody and control to that relative who seems to [such] THE court most fit for the time being to have the same. If a deceased resident of the state leaves no [husband or wife] SPOUSE or next of kin surviving, or if the [husband or wife] SPOUSE or next of kin cannot be contacted after due diligence to assume custody and control of the remains of such decedent as [hereinbefore] provided IN THIS SECTION, or if the [husband or wife] SPOUSE or next of kin refuses to assume such custody and control, the court of probate for the district of the domicile or residence of the deceased may, upon the petition of a selectman or chief officer of such town, a licensed funeral director or the director of health of such town, grant such custody and control to some suitable person. (b) This section shall not apply to the disposition of a body of a deceased person under the provisions of sections 19-139 and 54-102; nor shall it affect the powers and duties of the chief medical examiner under the provisions of sections 19-530 to 19-532, inclusive.

Sec. 45 a-348. [Sec. 45-250.] Allowance for support of surviving spouse and family. Family car.

No change.

(a) The court of probate may allow out of any real or personal estate of a deceased person in settlement before such court such amount as it may judge necessary for the support of the surviving spouse or family of the deceased during the settlement of the estate.

(b) In making such allowance the court may in its discretion include in its decree ordering such allowance any one or more of the following provisions, to the extent they are not mutually inconsistent: (1) A provision that such allowance shall run (A) for the entire period the estate is in settlement, or (B) for a fixed period of time not to exceed the period of settlement, in which case such allowance shall be subject to renewal by the court in its discretion; (2) a provision that such allowance is to be paid in a lump sum; (3) a provision that such an allowance made for a surviving spouse shall vest in such spouse retroactively as of the moment of death of his spouse so that it will be a fixed sum certain as of said date of death and shall not terminate with the subsequent death or remarriage of the surviving spouse, such allowance to be the absolute property of the surviving spouse, or, if deceased, of the estate of such surviving spouse, without restriction as to use, encumbrance or disposition and for the purpose of this section, the right to seek such a vested allowance shall be a vested right as of the date of death of the deceased spouse, and (4) a provision that such allowance shall be charged ultimately in whole or in part

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against any right the surviving spouse or other family member for whom an allowance is ordered may have to the income of the estate earned during the period of settlement.

(c) The court may also allow for the use during the settlement of the estate by such surviving spouse or family of any motor vehicle maintained by the decedent during his lifetime as a family car.

1000

Sec. 45a-349. [Sec. 45-252.] Custody of real [estate] PROPERTY. PRODUCTS AND INCOME OF REAL PROPERTY. Family may occupy homestead.

(a) The [executors and administrators of deceased persons] FIDUCIARY OF A DECEDENT'S ESTATE shall, during [the] settlement [of the estates of such persons], have the possession, care and control of [their] THE DECEDENT'S real [estate] PROPERTY, and all the products and income of such real [estate] PROPERTY during such time shall vest in [them] THE FIDUCIARY as personal property, unless such real [estate] PROPERTY has been specifically devised or directions HAVE BEEN given by THE DECEDENT'S will [in regard to it] WHICH ARE inconsistent [herewith] WITH THIS SECTION; but the court may order surrender of the possession and control of such real [estate] PROPERTY to the heirs or devisees, [or to the widow if the same is set to her as dower,] or may, during [such] settlement, order distribution of such real [estate] PROPERTY.

(b) The family of [such] THE decedent shall be allowed to remain in the dwelling house occupied by him at the time of his death, and may occupy such land and buildings connected therewith as the court considers necessary for their convenience and comfort until the same is sold, distributed or otherwise disposed of according to law. [The above provisions shall not be construed so as to deprive a husband, being tenant by the curtesy, of the possession, care and control

Reviser's comments:

Reference to dower and curtesy deleted as obsolete.

Statute subdivided and language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1001

of the real estate of his deceased wife, nor
of the rents, income and products thereof,
during the settlement of the estate.]

1002

Sec. 45a-350. [Sec. 45-254.] Death of owner of real [estate] PROPERTY or oyster grounds to be recorded. PENALTY FOR FAILURE.

(a) The [executor of the will or the administrator] FIDUCIARY of the estate of any deceased person who at the time of his death was the owner of any real [estate] PROPERTY situated in this state or any interest in or mortgage or lien upon real [estate] PROPERTY so situated shall, within two months after becoming qualified to act, lodge, with the town clerk of each town in which such real [estate] PROPERTY is situated, his certificate in writing, stating the fact and date of the death of [such] THE decedent, the place where he last dwelt and whether [such] THE decedent left a will [; which]. SUCH certificate shall be recorded in the land records of such town.

(b) When [such] THE decedent was at the time of his death the owner of any oyster ground within the state jurisdiction, [such executor or administrator] THE FIDUCIARY shall, within two months after becoming qualified to act, lodge such certificate, stating the area and location of such oyster ground, with the [shell-fish commissioners] COMMISSIONER OF AGRICULTURE [; which]. SUCH certificate shall be recorded on the records of the [shell-fish commissioners] COMMISSIONER OF AGRICULTURE.

(c) If any [executor or administrator] FIDUCIARY fails to perform the duties imposed

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

Reference to shell-fish commissioners deleted as obsolete and replaced with reference to Commissioner of Agriculture pursuant to section 26-199.

Title of section recommended to clarify purpose of section.

1003

upon him by this section, he shall, if the decedent was the owner of real [estate] PROPERTY or any interest therein or mortgage or lien thereon, forfeit and pay to the town in which such real [estate] PROPERTY is situated the sum of twenty-five dollars, and shall, if the decedent was the owner of such oyster ground, forfeit and pay to the state the sum of twenty-five dollars, to be recovered in a civil action against [such executor or administrator] THE FIDUCIARY, or by an action upon his probate bond, in the name of the town or state, as the case may be.

1004

Sec. 45a-351. [Sec. 45-255.] Oyster grounds personal [estate] PROPERTY.

In the settlement of the estates of deceased persons and insolvent debtors before any court in this state, the interest of any such estate in or to any oyster grounds or oysters planted and growing thereon shall be treated as personal [estate] PROPERTY.

Language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

Sec. 45a-352. [Sec. 45-178.] [Sale of testate estate] POWER TO SELL REAL PROPERTY AS AUTHORIZED BY TESTATOR.

When any testator has authorized or directed any real [estate] PROPERTY to be sold by his executors and has appointed several executors, part or all of whom for any cause have failed to act or have died before such sale or conveyance, and, when a sole executor so authorized to sell has failed to accept or has died and an administrator with the will annexed or de bonis non has been appointed to settle [such] THE estate, the acting or surviving executor or executors or the administrator shall have power to sell and convey such real [estate] PROPERTY.

Reviser's comments:

Language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1005

Sec. 45a-353. [Sec. 45-257.] Execution of contract of decedent for sale of [land] REAL PROPERTY.

The court of probate having jurisdiction of the settlement of the estate of any deceased person may, concurrently with courts of equity, authorize the [executor or administrator] FIDUCIARY OF THE ESTATE to convey the title of the deceased in any real [estate] PROPERTY to any person entitled to it by virtue of any contract of [such] THE deceased person, or to convey the title of [such] THE deceased in any real [estate] PROPERTY held or taken by him in any fiduciary capacity to his successor or to the person or persons entitled thereto. [The court of probate in which the guardian of any minor or the conservator of any incapable person has been appointed may in like manner order such guardian or conservator to convey the interest of his ward in any real estate which ought in equity to be conveyed to another person.]

Reviser's comments:

Language changed for simplification and clarification.

Last sentence deleted because it is inappropriately located with decedents' estates. This part of the statute to be relocated with statutes pertaining to guardians and conservators. Deleted portion of statute now found at sections 45a-127, 45a-151.

1006

Sec. 45a-354. [Sec. 45-247 and Sec. 45-248.]
Partition or sale of undivided interest in
DECEDENT'S estate. NOTICE. HEARING.

(a) [When] DURING THE SETTLEMENT OF THE
ESTATE OF any person [dies] WHO DIED owning
an undivided interest in any property not
specifically devised or bequeathed, [the
court of probate having jurisdiction may, at
any time during the settlement of his estate,
upon the petition in writing of] the executor
or administrator of [such] THE estate and the
owner or owners of the major portion of the
other interest therein [,] MAY APPLY IN
WRITING TO THE COURT OF PROBATE HAVING
JURISDICTION OF THE ESTATE TO order partition
of the same [, and].

(b) UNLESS THE PETITION FOR THE
PARTITION OF SUCH INTEREST IN PROPERTY IS
SIGNED BY ALL THE PERSONS IN INTEREST, OR THE
GUARDIANS OF SUCH OF THEM AS ARE MINORS, OR
THE CONSERVATORS OF SUCH OF THEM AS ARE
INCAPABLE PERSONS HAVING CONSERVATORS, THE
COURT SHALL, FOLLOWING PUBLIC NOTICE, FULLY
HEAR THE CASE AND MAKE ALL ORDERS AS THE
INTERESTS OF THE PARTIES AND THE ESTATE
DEMAND. IN SUCH CASE THE COURT SHALL NOT
ORDER PARTITION UNLESS UPON FULL HEARING IT
APPEARS THAT THE BEST INTERESTS OF THE ESTATE
AND OF THE PARTIES CONCERNED WILL BE PROMOTED
THEREBY.

(c) IF, UPON SUCH PETITION, IT IS THE
OPINION OF THE COURT OF PROBATE THAT A SALE
WILL BETTER PROMOTE THE INTERESTS OF THE

Reviser's comments:

New language in subsections (b) and (c)
regarding notice and hearing in certain
cases prior to partition or sale is
taken from section 45-248 in order to
integrate the process in one consistent
statute.

Language and punctuation changed and
statute subdivided for simplification
and clarification. Reference to
section 45-240 added for clarification.

Statute transferred to chapter on
decedents' estates because it concerns
decedents' estates only.

Title of section recommended to clarify
purpose of section.

1007

OWNERS, OR THAT THE PROPERTY CANNOT BE BENEFICIALLY DIVIDED FOR THE PURPOSE OF DISTRIBUTION, IT MAY ORDER THE SALE OF ANY OR ALL SUCH PROPERTY IN SUCH MANNER AND UPON SUCH NOTICE AS IT DEEMS EXPEDIENT; BUT UNLESS THE PETITION FOR THE PARTITION OR SALE OF SUCH INTEREST IN PROPERTY IS SIGNED BY ALL THE PERSONS IN INTEREST, OR THE GUARDIANS OF SUCH OF THEM AS ARE MINORS, OR THE CONSERVATORS OF SUCH OF THEM AS ARE INCAPABLE PERSONS HAVING CONSERVATORS, THE COURT SHALL, FOLLOWING PUBLIC NOTICE, FULLY HEAR THE CASE AND MAKE ALL ORDERS AS THE INTERESTS OF THE PARTIES AND THE ESTATE DEMAND. IN SUCH CASE THE COURT SHALL NOT ORDER SALE UNLESS UPON FULL HEARING IT APPEARS THAT THE BEST INTERESTS OF THE ESTATE AND OF THE PARTIES CONCERNED WILL BE PROMOTED THEREBY. AN ORDER TO SELL PURSUANT TO THIS SECTION SHALL NOT BE MADE UNTIL THE EXECUTOR, ADMINISTRATOR OR PERSON DESIGNATED TO SELL GIVES A PROBATE BOND TO SECURE THE EXECUTION OF HIS TRUST ACCORDING TO THE ORDER OF THE COURT AND ACCORDING TO LAW UNLESS THE PROBATE COURT DISPENSES WITH THE REQUIREMENT OF A PROBATE BOND AS PROVIDED IN SECTION 45-240, ~~AS AMENDED BY SECTION 35 OF THIS ACT.~~

(d) THE COURT may appoint for [such] THE purpose OF PARTITIONING SUCH PROPERTY a committee of three [judicious and] disinterested persons, who shall be sworn and shall make a return of their [doings] ACTIONS to [such] THE court according to the order thereof. Such partition, when so made and returned to and accepted by [such] THE court,

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and all orders and decrees relating thereto, shall bind all persons interested therein and their heirs.

(e) The portion set to the estate of [such] THE deceased person shall be treated as if the same had been partitioned in the lifetime of such deceased person by a court of competent jurisdiction [; and, if].

(f) IF the [estate] PROPERTY so partitioned is real [estate] PROPERTY, a copy of such decree shall be recorded upon the land records of the town in which such land is situated. [If, upon such petition, it is the opinion of such court of probate that a sale will better promote the interest of the owners, or that the estate cannot be beneficially divided for the purpose of distribution, it may order the sale of any or all such property in such manner and upon such notice as it deems expedient; but no such order shall be made until the executor, administrator or person designated to sell gives a probate bond to secure the execution of his trust according to the order of the court and according to law.]

(g) If the name or residence of any party entitled to share in the [avails] PROCEEDS of property so sold is unknown to the court and cannot be ascertained, it shall appoint a trustee for the share of such party. Such trustee shall give a probate bond and shall hold such share until demanded by the person or persons entitled thereto.

1009

Sec. 45a-355. [Sec. 45-245.] Sale of DECEDENT'S real [estate] PROPERTY subject to mortgage.

[No] THE court of probate shall NOT order the sale of any real [estate] PROPERTY of a deceased person, when such real [estate] PROPERTY has been conveyed or mortgaged by the heirs or devisees of [such] THE deceased person to a purchaser or mortgagee, in good faith and for value, except within the period of ten years after the death of [such] THE deceased person; but a sale of the equity of redemption in real [estate] PROPERTY mortgaged as [aforesaid] PROVIDED IN THIS SECTION may be ordered by [such] THE court subject to such mortgage.

Sec. 45a-356. [Sec. 45-256.] [When stock and materials may be worked up] COURT MAY AUTHORIZE STOCK AND MATERIALS TO BE WORKED UP OR BUSINESS TO BE CONTINUED.

[Executors, administrators] FIDUCIARIES OF A DECEDENT'S ESTATE and trustees in insolvency may be authorized by the court of probate [before which the estate is in settlement] to work up and complete any stock and materials in an unfinished state, or to continue any business so far as may be expedient for the prudent winding up of the same, if the court finds that it will be for the interest of the estate.

Reviser's comments:

Language changed for clarification and simplification.

Title of section recommended to clarify purpose of section.

Reviser's comments:

Language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

Sec. 45a-357. [Sec. 45-199.] [Administration granted] SETTLEMENT OF ESTATE on presumption of death. BOND OR ALTERNATIVE SECURITY; EXCEPTION. LIABILITY OF FIDUCIARY.

(a) Any person who has been absent from his home and unheard of for a period of seven or more years shall be presumed to be dead.

(b) If such person left a will, it shall be presented for probate, and, if he left no will, administration on his estate shall be granted by the court of probate having jurisdiction, as [hereinbefore] provided IN SECTION 45-195, ~~AS AMENDED BY SECTION 254 OF THIS ACT~~, and [the settlement and distribution of] his estate may be [proceeded with] SETTLED AND DISTRIBUTED in the same manner as if he were known to be dead [; but the]_.

(c) THE court, before granting an order for distribution or for payment of legacies [named] PROVIDED FOR in such will, shall require from the legatees or distributees a bond or bonds with sufficient surety to the state, conditioned to return the amount distributed or paid, with lawful interest thereon, to the person presumed to be dead, if he reappears and demands the same. If any such legatee or distributee is unable to give the security [aforesaid] AS PROVIDED FOR IN THIS SECTION, [the same] SUCH LEGACY OR AMOUNT TO BE DISTRIBUTED shall be placed at interest on security approved by the court by the [administrator or executor, as the case

Reviser's comments:

Statute subdivided and language and punctuation changed for simplification and clarification.

"Wife" is changed to "spouse" because under state law concerning the liability of spouses for support of their families either surviving spouse may be entitled to support from the estate of the (presumably) deceased spouse and the sex of the surviving spouse is not a determining factor.

Title of section recommended to clarify purpose of section.

1011

may be] FIDUCIARY, which interest shall be paid annually by him to such legatee or distributee [, and such]. SUCH estate shall remain at interest until the court of probate [by] GRANTED such letters of administration or letters testamentary [were granted] orders it to be paid to the legatee or distributee [; but no]. AN order shall NOT be made permitting such payment or distribution without the security [hereinbefore] provided for IN THIS SECTION until at least five years have elapsed since the granting of such letters of administration or letters testamentary; provided, if such legatee or distributee is the [wife] SPOUSE, minor child or any other person whom the person presumed to be dead is under a legal obligation to support, the court of probate having jurisdiction may immediately order payments of either principal or income from the estate for the support of such [wife] SPOUSE, child or other dependent, without requiring bond.

(d) After such administration and distribution, the [executor or administrator] FIDUCIARY shall not be liable to the person so presumed to be dead in any action for the recovery of [such] THE estate.

Sec. 45a-358.[Sec. 45-200.] Time limited for granting administration or proving will AND EXCEPTIONS.

Except as provided in section 45-263, administration of the estate of any person shall not be granted, nor shall the will of any person be admitted to probate, after ten years from his decease, unless the court of probate upon written petition and after public notice and hearing finds that administration of such estate ought to be granted, or that such will should be admitted to probate; but when any minor is interested, one year shall be allowed after his arrival at [full] THE age OF MAJORITY to take out administration or to cause such will to be proved. In all cases where any person has died leaving [estate] PROPERTY which is not known to those interested in the same within the time above limited, but is discovered afterwards, administration may be granted within one year after its discovery.

Language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1013

Sec. 45a-359. [Sec. 45-201.] Settlement of estate after ten years. CLOSURE OF ESTATE FOR DORMANCY.

(a) Whenever for any cause the settlement of any DECEDENT'S estate after the appointment of [an administrator or executor] A FIDUCIARY has been delayed or not completed, the court of probate before which the same is pending may at its discretion proceed with the settlement of such estate, although more than ten years have elapsed since any proceedings have been taken, and in such case may make all such orders as might have been proper if such settlement had not been delayed.

(b) In any such case in which it appears to the court that the [executor or administrator] FIDUCIARY has neglected or refused to complete administration of the estate and the appointment of a successor [administrator or administrator C.T.A.D.B.N.] FIDUCIARY would serve no useful purpose, the court may hold a hearing, after giving public notice thereof and notice to the commissioner of revenue services and such others as the court deems reasonable. Thereafter, on its own motion, the court may order and decree the estate closed for dormancy and the bond released without adjudication and the estate shall be closed and only reopened by further order of the court; provided the bond shall be released for future acts and not for any acts or misdeeds occurring during the period of administration of the estate.

Reviser's comments:

Statute subdivided for simplification and clarification.

Title of section recommended to clarify purpose of section.

1014

Sec. 45a-360. [Sec. 45-196.] Notice to commissioner of revenue services when estate may escheat.

When an application is made to a court of probate to settle the estate of a decedent and it appears to the court that [such] THE estate may escheat to the state, THE COURT SHALL MAIL TO THE COMMISSIONER OF REVENUE SERVICES AT LEAST SEVEN DAYS BEFORE THE HEARING a copy of the application to probate [such] THE estate and of the order of notice of the hearing on [such] THE application [shall be mailed to the commissioner of revenue services at least seven days prior to such hearing].

Reviser's comments:

Minor language changes for clarification and simplification.

1015

Sec. 45a-361. [Sec. 45-260.] Payment of taxes due from estate.

Each trustee of the estate of an insolvent debtor or of any testamentary trust and each [executor or administrator] FIDUCIARY OF A DECEDENT'S ESTATE shall ascertain from the collector of taxes of the town where such insolvent debtor resided at the time of his insolvency, or where [such] THE decedent last resided, or in which [such] THE insolvent debtor or decedent owned real [estate] PROPERTY, whether any taxes are due upon any of the estate which has come into his hands and shall liquidate the same, if there are sufficient assets, before making a final settlement of his account.

Reviser's comments:

Minor language changes for clarification and simplification.

1016

Sec. 45a-362. [Sec. 45-258.] Lien of remainderman for repairs and improvements UPON REAL PROPERTY.

Any person having any vested remainder interest in any real [estate] PROPERTY in which any other person has a life interest, who has paid any money for necessary repairs or improvements upon such real [estate] PROPERTY, shall have a lien thereon for the same [, and the]. THE court of probate for the district in which such real [estate] PROPERTY or any part thereof is situated may, upon [his] SUCH REMAINDERMAN'S written application made during the continuance of such life estate or within sixty days thereafter and after such notice to parties in interest as it may prescribe, ascertain the amount so necessarily expended, and may order the sale, subject to such life interest if it is not terminated, of so much of such [estate] PROPERTY as will repay the sum so advanced.

Reviser's comments:

Language and punctuation changed for clarification and simplification.

Title of section recommended to clarify purpose of section.

1017

CHAPTER · XXI V

DISTRIBUTION

This chapter contains statutes concerning fiduciaries' responsibilities and court proceedings to ascertain the heirs and distributees of decedents' estates and to distribute the estates. Some provisions relate to testate estates, some relate to intestate estates and some relate to both.

1018

PART I

ABATEMENT AND CONTRIBUTION;
SECURITY FOR CONTINGENT OR FUTURE DEBTS

1019

Sec. 45a-363. (NEW) Definition.

As used in this chapter, unless otherwise required by the context, "fiduciary" includes the executor or administrator of a decedent's estate.

Reviser's comments:

Definition added for economy of language.

Sec. 45a-364. [Sec. 45-175.] PECUNIARY legacies a charge on real [estate] PROPERTY. Specific legacies.

Reviser's comments:

Minor language changes for clarification and simplification.

(a) PECUNIARY LEGACIES A CHARGE ON REAL PROPERTY. All pecuniary legacies given in any will shall, if the personal [estate] PROPERTY of the testator is insufficient for the payment thereof, be a charge on his real [estate] PROPERTY not specifically described and devised, unless otherwise directed in such will.

Section subdivided and internal catch-lines added to improve readability.

(b) SPECIFIC LEGACIES. Specific legacies shall not be taken or sold for the payment of debts and charges against the estate of the testator when there is other [estate] PROPERTY, real or personal, sufficient and available therefor and not specifically devised or bequeathed; but real [estate] PROPERTY may be sold in lieu thereof, when it is necessary for such purpose, unless such will otherwise directs.

1020

Sec. 45a-365. [Sec. 45-181.] Sale of real [estate] PROPERTY to pay legacies.

When the payment of a pecuniary legacy is charged, or is by law chargeable, upon the real [estate] PROPERTY of the testator, or when DEVISED real [estate] PROPERTY is [devised] to be sold and no provision is made by the will for the sale, or there is no person designated to sell who is capable or willing to act, the court of probate may order the sale of such estate, or so much thereof as may be necessary to effect the intention of the testator and to pay the incidental charges, by such person and in such manner as it deems proper.

Language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1021

Sec. 45a-366. [Sec. 45-239.] Sale or mortgage of real [estate] PROPERTY specifically devised. PROCEDURES FOR INSOLVENT AND SOLVENT ESTATES.

(a) If the court of probate finds that the estate of a deceased person is insolvent and if the real [estate] PROPERTY has been specifically devised or if the court finds that the estate of such person is solvent but that there are no assets of [such] THE estate, other than real [estate] PROPERTY specifically devised or forbidden by will to be sold or mortgaged, from which debts, taxes and administration charges against [such] THE estate may be paid, [such] THE court shall order personal notice of the pendency of the application for a decree authorizing the sale or mortgage of such real [estate] PROPERTY to be given to all devisees of such real [estate] PROPERTY whose existence, names and residences can be ascertained by the court and shall order such other notice as it deems advisable to be given to all such devisees whose existence, names and residences cannot be ascertained by the court.

(b) Except as [herein] provided IN THIS SECTION, real [estate] PROPERTY of a decedent whose estate is solvent and either specifically devised by will or forbidden by will to be sold or to be mortgaged shall not be so ordered to be sold or mortgaged without the written consent of the specific devisees or other parties interested as distributees of such real [estate] PROPERTY or of the guardians ad litem or guardians or conservators of the estates of those not legally competent so to consent.

Reviser's comments:

Language changed and statute subdivided for clarification and simplification.

Statute transferred from chapter dealing with sale or mortgage in general to chapter dealing with decedents' estates because it is concerned only with decedents' estates.

Title of section recommended to clarify purpose of section.

1022

Sec. 45a-367. [Sec. 45-180.] Contribution where estate is taken to pay debts.

When any estate bequeathed or devised to any person is taken for the payment of debts and charges, all the other legatees, devisees or heirs [, except the widow in case the devise has been made in lieu of dower,] shall contribute their proportional part of [such] THE estate to the person from whom such legacy or devise is taken and he may maintain an action to compel such contribution.

Reviser's comments:

Reference to "dower" deleted as obsolete.

1023

Sec. 45a-368. [Sec. 45-281.] WHEN distributees to give security for contingent or future debts.

Each person to whom any part of an estate is distributed or paid by order of the court of probate and each person to whom any [estate] PROPERTY is devised or bequeathed when no sufficient provision has been made by the will for the payment of the debts out of some particular [estate] PROPERTY shall, upon the request of any person having a claim against [such] THE estate, contingent or not yet matured, give a bond to the state, with surety to the acceptance of the court of probate, [conditioned]. THE BOND SHALL STIPULATE that if, after the settlement of the estate, debts appear and are allowed, [he] SUCH PERSON will pay to the [executor or administrator] FIDUCIARY his proportional part of such debts and of the charges of the [executor or administrator] FIDUCIARY.

Reviser's comments:

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1024

PART II
DISTRIBUTION PROCEDURES

1025

Sec. 45a-369. [Sec. 45-272.] Court to ascertain heirs and distributees. DISTRIBUTION.

(a) COURT TO ASCERTAIN HEIRS AND DISTRIBUTEES. The court of probate shall ascertain the heirs and distributees of each intestate estate, and the heirs and distributees of, and their respective shares in, each testate estate so far as the will may leave the same indefinite and necessary to be defined or so far as it is necessary to give effect to an agreement made in accordance with the provisions of section 45-182, ~~AS AMENDED BY SECTION 320 OF THIS ACT~~ [; and such].

(b) COURT TO ORDER FIDUCIARY TO DISTRIBUTE ESTATE. THE court shall order the administrator or other fiduciary charged with the administration of the estate to deliver possession of or pay over the [same] INTESTATE ESTATE AND THE SHARES IN EACH TESTATE ESTATE SO FAR AS THE WILL MAY LEAVE THE SAME INDEFINITE AND NECESSARY TO BE DEFINED to the person or persons entitled thereto in the proportions provided by law, or, if distributors are appointed or a mutual distribution is filed, as provided in section 45-273, ~~AS AMENDED BY SECTION 319 OF THIS ACT~~, or IF disinterested persons are appointed to make division or an agreement is filed, as provided in section 45-182, ~~AS AMENDED BY SECTION 320 OF THIS ACT~~, THE COURT SHALL ORDER THE FIDUCIARY OF THE ESTATE TO DELIVER POSSESSION OF OR PAY OVER THE SAME in

Reviser's comments:

Section subdivided and internal catch-lines added to improve readability.

Language changed for simplification and clarification.

1026

accordance with the division made by such distributors or mutual distribution or agreement, as the case may be [, taking]. THE FIDUCIARY SHALL TAKE proper receipts [therefor] FOR ANY SUCH DELIVERY OR PAYMENT.

Sec. 45a-370. [Sec. 45-284.] Distribution of estate, testate in part.

No change.

When part of an estate has been devised or bequeathed and part is intestate and held in common with the devisees or legatees, the court of probate may order a distribution of such estate.

1027

Sec. 45a-371. [Sec. 45-273.] Distribution of intestate estates BY FIDUCIARY. APPOINTMENT OF DISINTERESTED DISTRIBUTORS. MUTUAL DISTRIBUTION. CERTIFICATE OF DESCENT FOR REAL PROPERTY.

(a) [Intestate estates, after deducting expenses and charges,] AFTER PAYMENT OF EXPENSES AND CHARGES, AN INTESTATE ESTATE shall be distributed by the administrator or other fiduciary charged with the administration of the estate; provided the court of probate may, in its discretion, on its own motion or upon application by any interested person, appoint three disinterested persons to make the distribution [; but if].

(b) IF all the persons interested in the estate legally capable of acting and all fiduciaries for any other persons interested in the estate make and file in [such] THE court a division of the [same] ESTATE, made, executed and acknowledged like deeds of land, such division, being recorded in the records of [such] THE court, shall be a valid distribution of [such] THE estate. Any such fiduciary may petition the court of probate which appointed him for permission to enter into such a division, and such permission may be granted or, for cause shown, denied by [such] THE court, after a hearing on such petition held on such notice as the court may order.

Reviser's comments:

Statute subdivided and language and punctuation changed for clarification and simplification.

Title of section recommended to clarify purpose of section.

1028

(c) If any intestate estate consists wholly of real [estate] PROPERTY, the court of probate shall issue a certificate of descent to the heirs at law, as provided by section 45-286, ~~AS AMENDED BY SECTION 332 OF THIS ACT,~~ without formal distribution or without a mutual distribution as [hereinbefore] provided FOR IN THIS SECTION, unless there is filed in [said] THE court of probate, within one month after the acceptance of the administration account, the ascertainment of the distributees and the order of distribution, a mutual distribution executed by all of such heirs at law or a return of distribution as provided by this section.

1029

Sec. 45a-372. [Sec. 45-182.] Division of estate among joint devisees or legatees. AGREEMENTS TO DIVIDE ESTATE. TAX EFFECT.

(a) When a testator orders an estate to be divided among two or more devisees or legatees without appointing any person to divide it, or if he appoints persons to divide it who refuse or are unable to do so, or when in any will any estate or interest has been given to two or more persons jointly, and the same is susceptible of a division, the executor or other fiduciary charged with the administration of the estate shall make the division, provided the court before which such will was proved may, in its discretion, during the settlement of the estate of the testator, on its own motion or on the request of anyone interested, appoint three disinterested persons to make the division [; and such]. SUCH division shall, when accepted by the court, be binding on all persons interested [; but, if].

(b) IF the devisees, legatees or heirs are legally capable of acting and make a division in writing, in the manner provided for the division of intestate estate, such division shall be valid.

(c) Whenever there has been a contest with respect to the validity, admissibility to probate or construction of a will, if all persons interested in [such] THE estate, including persons interested as contestants or fiduciaries acting in behalf of a

Reviser's comments:

Statute subdivided and language and punctuation changed for clarification and simplification.

Title of section recommended to clarify purpose of section.

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contestant, make and file in [such] THE court an agreement as to the division of the estate, in writing, executed and acknowledged in the same manner as provided for conveyances of land in section 47-5, ~~AS AMENDED SECTION 1 OF PUBLIC ACT 79-602~~, such agreement shall be a valid division of the estate if approved by the court of probate. Any such fiduciary may petition the court of probate which appointed him for permission to enter into such an agreement. [Such] THE court may grant such petition or may deny such petition [; provided no]. SUCH petition shall NOT be denied unless a hearing has been held thereon for which [such] THE court shall make such order of notice as it deems reasonable. Any such contested estate which is settled by such an agreement shall be subject to the tax imposed under chapter 216, which shall be imposed on the basis of the disposition provided for in whatever will or codicil, if any, is admitted to probate after such agreement or if no will or codicil is admitted to probate, then on the basis of the dispositions provided for under the laws of intestacy.

1031

Sec. 45a-373. [Sec. 45-251.] What personal [estate] PROPERTY may be set out to SURVIVING spouse FROM INSOLVENT ESTATE.

When the personal [estate] PROPERTY of the deceased, exclusive of household goods exempt from execution, is not sufficient for the payment of his or her debts, the court [which granted administration on the estate] OF PROBATE shall set out [to the surviving spouse] such household goods and may set out [to such surviving spouse] any other EXEMPT property [of the deceased so exempt] TO THE SURVIVING SPOUSE.

. Language changed for simplification and clarification.

Title of section recommended to clarify effect of section.

1032

Sec. 45a-374. [Sec. 45-273a.] Succession upon the death of [either] SPOUSE. INDEFEASIBLE SHARE. ELECTION AGAINST WILL; PROCEDURE; TIME LIMITS; EFFECT OF FAILURE TO ELECT. SUPPORT. EXCEPTIONS TO INDEFEASIBLE SHARE. INTESTATE SUCCESSION TO SPOUSE. DEFINITION OF ISSUE.

(a) On the death of a husband or wife, the survivor shall be entitled to the use for life of one-third in value of all the property, real and personal, legally or equitably owned by the other at the time of his or her death, after the payment of all debts and charges against the estate [, such]. SUCH third [to] SHALL be set out by the fiduciary charged with the administration of the estate or, in the discretion of the probate court on its own motion or upon application by any interested person, by distributors appointed by the court of probate in any property, real or personal or both, according to the judgment of such fiduciary or distributors. The right to such third shall not be defeated by any disposition of the property by will to other parties. If the husband has by will devised or bequeathed a portion of his property to his surviving wife, or if the wife by will has devised or bequeathed a portion of her property to her surviving husband, such provision shall be taken to be in lieu of the share hereinabove provided for, unless the contrary is expressly stated in the will or clearly appears therein; but, in any such case, the surviving spouse, or the

Reviser's comments:

Statute further subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

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conservator or guardian of the estate of [such] THE surviving spouse, with the approval, after public notice and hearing, of the court of probate by which such conservator or guardian was appointed, shall have his or her election whether to accept the provision of such will or take such life use of one-third [, and such]. SUCH election shall be made in writing signed by the party entitled to make the [same] ELECTION and lodged with the court of probate before which [such] THE estate is in settlement, within two months after the expiration of the time limited for the exhibition of claims against [such] THE estate [; and, if]. IF SUCH ELECTION IS not so made, such person shall be taken to have accepted the provisions of the will and shall be barred of such statutory share. In any case where the husband or wife by will does not make any provision for the surviving wife or husband, [such] THE surviving spouse, or the conservator or guardian of the estate of [such] THE surviving spouse, with the approval, after public notice and hearing, of the court of probate by which such conservator or guardian was appointed, shall, within two months after the expiration of the time limited for the exhibition of claims against such estate, file a notice, in writing, of his or her intention to take a life use of one-third of [such] THE estate under the provisions of this section with the court of probate before which [such] THE estate is in settlement, and if such notice is not so filed, such person shall be barred of such statutory share. A

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surviving spouse shall also, when in the opinion of the court of probate it is necessary, be allowed a reasonable sum from [such] THE estate for his or her support and for the support of his or her family during the settlement of the estate; but, in that case, such person shall not take his or her statutory share until the expiration of the time for which such allowance is made. The provisions of this section with regard to the statutory share of the surviving husband or wife in the property of the other shall not apply to any case in which, by written contract made before or after marriage, either party has received from the other what was intended as a provision in lieu of such statutory share; nor shall either party be entitled to such statutory share who, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

(b) If there is no will, or if any part of the property, real and personal, legally or equitably owned by the deceased at the time of his or her death, is not effectively disposed of by the will or codicil of the deceased, the portion of the intestate estate of the deceased which the surviving husband or wife of the deceased shall take is: (1) If there is no surviving issue or parent of the deceased, the entire intestate estate absolutely; (2) if there is no surviving issue of the deceased but the deceased is survived by a parent or parents, the first fifty thousand dollars plus three-quarters of

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the balance of the intestate estate absolutely; (3) if there are surviving issue of the deceased all of whom are also issue of the surviving spouse, the first fifty thousand dollars plus one-half of the balance of the intestate estate absolutely; or (4) if there are surviving issue of the deceased one or more of whom are not issue of the surviving spouse, one-half of the intestate estate absolutely.

[(b)] (c) The provisions of this section shall apply to estates of all persons dying on or after January 1, 1974.

[(c)] (d) For the purposes of this section issue shall include children born out of wedlock and the issue of such children who qualify for inheritance under the provisions of section 45-274.

1036

Sec. 45a-375. [Sec. 45-274.] Distribution to spouse and children. EFFECT OF ADVANCEMENT. RIGHTS OF CHILDREN BORN OUT OF WEDLOCK.

(a) After distribution has been made to the husband or wife of the intestate of such portion or share of the estate of the intestate as such husband or wife is entitled to by law, all the residue of the real and personal estate shall be distributed in equal proportions, according to its value at the time of distribution, among the children and the legal representatives of any of them who may be dead, except that children or other descendants who receive estate by advancement of the intestate in his lifetime shall themselves or their representatives have only so much of the estate as will, together with such advancement, make their share equal to what they would have been entitled to receive had no such advancement been made.

(b) (1) Children born before marriage whose parents afterwards intermarry shall be deemed legitimate and inherit equally with other children. (2) A child born out of wedlock shall inherit from (A) his or her mother and (B) his or her father, provided such father (i) has been adjudicated the father of such child by a court of competent jurisdiction, or (ii) has acknowledged under oath in writing to be the father of such child.

(c) For the purposes of this section (1) issue shall include children born out of

Reviser's comments:

No change.

Title of section recommended to clarify purpose of section.

1037

wedlock and the issue of such children provided both the child born out of wedlock and any of such issue qualify for inheritance under this section; (2) legal representatives shall include legal representatives of children born out of wedlock, provided both the child born out of wedlock through whom such legal representatives inherit and the legal representatives qualify for inheritance under this section.

Sec. 45a-376. [Sec. 45-275.] Distribution of intestate estate [of minor.] WHEN MINOR CHILD DIES BEFORE DISTRIBUTION.

If any minor child dies intestate, unmarried and without issue, before any [legal] distribution of the estate, the portion of such deceased child shall be distributed as if such child had died in the lifetime of his parent.

Language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1038

Sec. 45a-377. [Sec. 45-276.] DISTRIBUTION when there are no children or representatives of them. RULE OF CIVIL LAW TO BE USED TO ASCERTAIN NEXT OF KIN.

(a) (1) If there are no children or any legal representatives of them, then, after the portion of the husband or wife, if any, is distributed or set out, the residue of the estate shall be distributed equally to the parent or parents of the intestate [, and, if]. (2) IF there is no parent, then THE RESIDUE OF THE ESTATE SHALL BE DISTRIBUTED equally to the brothers and sisters of the whole blood and those who legally represent them [, and, if]. (3) IF there is no such kindred, then THE RESIDUE OF THE ESTATE SHALL BE DISTRIBUTED equally to the brothers and sisters of the half blood and those who legally represent them [, and, if]. (4) IF there is no parent or brothers and sisters of the whole or half blood or those who legally represent them, then THE RESIDUE OF THE ESTATE SHALL BE DISTRIBUTED equally to the next of kin in equal degree, kindred of the whole blood to take in preference to kindred of the half blood in equal degree, and no representatives to be admitted among collaterals after the representatives of brothers and sisters [; provided, when].

(b) WHEN any will executed prior to January 1, 1902, fails for any reason to dispose of the whole or any part of the estate of the testator, and such estate becomes intestate, the same shall be

Reviser's comments:

Reference to dower deleted as obsolete.

Statute subdivided and language and punctuation changed for clarification and simplification.

Title of section recommended to clarify purpose of section.

1039

distributed in accordance with the statutes of distribution in force at the time such will was executed.

(c) Real [estate] PROPERTY subject [to dower or] to the life use of husband or wife, remaining undivided at the expiration of such life use, shall be distributed in the same manner by the same or other distributors, or the same may be distributed during the continuance of such life interest and subject thereto.

(d) In ascertaining the next of kin in all cases, the rule of the civil law shall be [adopted] USED.

Sec. 45a-378. [Sec. 45-261.] When deaths of husband and wife presumed simultaneous.

It shall be presumed that the deaths of husband and wife were simultaneous when there is no evidence to indicate the priority of death of either.

Reviser's comments:

No change.

1040

Sec. 45a-379. [Sec. 45-287.] Simultaneous death; disposition of property.

No change.

(a) When no sufficient evidence of survivorship. When the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this section.

(b) Successive beneficiaries. When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and such portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(c) Joint tenants. When there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(d) Life or accident insurance. When the insured and the beneficiary in a policy of life or accident insurance have died and

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there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(e) Applicability. This section shall not apply to the distribution of the property of a person who died before October 1, 1943, and shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision had been made for distribution of property otherwise than as provided by this section.

1042

Sec. 45a-380. [Sec. 45-176.] Death of devisee or legatee.

No change.

When a devisee or legatee, being a child, grandchild, brother or sister of the testator, dies before him, and no provision has been made in the will for such contingency, the issue of such devisee or legatee shall take the estate so devised or bequeathed.

Sec. 45a-381. [Sec. 45-177.] Lapsed devises of real [estate] PROPERTY.

Language changed for simplification and clarification.

When a specific devise of real [estate] PROPERTY in any will executed after October 1, 1947, is void or lapses or for any other reason fails to take effect, the real [estate] PROPERTY so devised, except as provided in section 45-176, in the absence of any provision in the will for such contingency, shall pass under and be disposed of by the residuary clause in the will.

1043

Sec. 45a-382. [Sec. 45-285.] Shares may be set out in real or personal [estate] PROPERTY OF INTESTATE ESTATE.

After the share or interest of the husband or wife has been distributed and set out, in the distribution of any estate, the share or interest of any distributee of [such] THE estate may be distributed and set OUT to such distributee in real or personal [estate] PROPERTY; or both.

Reviser's comments:

Language changed for clarification and simplification.

Title of section recommended to clarify purpose of section.

1044

Sec. 45a-383. [Sec. 45-282.] Distribution of [estates] REAL PROPERTY held by different titles.

When different parcels of real [estate] PROPERTY have descended to the same persons as heirs of different intestates or have been devised to the same devisees by different testators, the court of probate [to which the settlement] HAVING JURISDICTION of the several estates of such deceased persons [appertains] may cause such real [estate] PROPERTY to be distributed among such joint owners by distributors appointed for that purpose, in the same manner as though the whole of such real [estate] PROPERTY were held under one and the same title [, and such] . SUCH distribution, when accepted by the court, shall be valid.

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1045

Sec. 45a-384. [Sec. 45-283.] Distribution of
[avails] PROCEEDS of deceased minor's
[estate] REAL PROPERTY.

[So much of the avails] THE PROCEEDS of
the real [estate] PROPERTY of any minor sold
under an order or decree of any court
empowered to order such sale [,] and [of] any
investment [thereof, as has] OF SUCH PROCEEDS
WHICH HAVE not been expended for such minor
according to law shall, in case of his
decease, be distributed as such real [estate]
PROPERTY would have been if unsold.

Reviser's comments:

Language changed to eliminate archaic
word "avails" and other language
changed for clarification and simplification

Title of section recommended to clarify
purpose of section.

1046

Sec. 45a-385. [Sec. 45-277.] Distribution where heir is presumed dead. BOND OR SECURITY. LIABILITY.

(a) If, at any hearing before a court of probate on an application [praying] for an order for the distribution of the estate or for the payment of legacies provided for in the will of a deceased person whose estate is in process of settlement in [such] THE court, it is found by the court that any person who if living would be an heir at law of such decedent, or a legatee or distributee under such will, has been absent from his home and unheard of for a period of seven years or more next prior to the date of the death of the decedent and until the date of such hearing, [such] THE court shall find as a presumptive fact that such person died prior to the death of the decedent whose estate is in settlement, and shall order such distribution of [such] THE estate or payment of such legacies as would have been made if such person was known to have died prior to the death of the decedent whose estate is in settlement [; provided after] .

(b) AFTER the issuance of such order [no] ANY part of the legacy or portion of [such] THE estate that would have been distributed to such person if known to be living shall NOT be paid or distributed until the person or persons entitled to receive the same have filed in court a bond with sufficient surety to the state, conditioned to pay the amount so paid or distributed,

Reviser's comments:

Language and punctuation changed and statute subdivided for clarification and simplification.

Title of section recommended to clarify purpose of section.

1047

with lawful interest thereon, to the person presumed to be dead, upon his appearing and demanding the same within five years after the death of the person whose estate is in settlement [; and, in]. IN case of failure to give such security, such amount shall be placed at interest by the [administrator or executor, as the case may be,] FIDUCIARY OF THE ESTATE on security approved by the court, and the interest thereon shall be paid annually by him to the person or persons entitled to receive such estate, and the same shall so remain at interest until [such] THE court orders it to be paid to the person or persons entitled to receive it. [No] AN order permitting such payment or distribution without the security [hereinbefore] provided for IN THIS SECTION shall NOT be made until five years after the death of the person whose estate is in settlement.

(c) After such payment or distribution, neither such [executor or administrator] FIDUCIARY nor any distributee of [such] THE estate or person to whom any legacy has been paid as [hereinbefore] provided FOR IN THIS SECTION, after the expiration of five years from the death of such decedent, shall be liable to the executors, administrators, heirs or assigns of the person so presumed to be dead, in any action for the recovery of such estate, nor shall SUCH FIDUCIARY OR ANY SUCH DISTRIBUTE OR LEGATEE be liable to [him] THE PERSON PRESUMED DEAD except for the principal sum so received as a legacy or distributive share, excluding interest; and

1048

said last-mentioned and excepted liability shall be subject to the ordinary defense of the statute of limitations.

1049

Sec. 45a-386. [Sec. 45-192.] Distribution of income earned during administration.

No change.

(a) Unless otherwise expressly provided by the will of a testator dying after October 1, 1949, all net income from real and personal property earned during the period of administration of the estate of such testator and not payable to others or otherwise disposed of by the will shall be distributed pro rata as income to or for the benefit of the immediate income beneficiaries of any trusts created out of the residuary estate of such testator and the other persons entitled to such residuary estate. None of such income shall, after such distribution, be added to the principal of the residuary estate the whole or any part of which is devised or bequeathed in trust or for life or for a term of years, but shall be paid ratably to the income beneficiary of a trust, or to the tenant for life or for a term of years or to the absolute residuary distributee, as the case may be. Unless otherwise directed in the will, income shall be payable to the income beneficiaries of trusts, or to tenants for life or for a term of years from the date of testator's death. Nothing contained in this section shall affect the right of any person to income on any portion of the estate not part of the residuary estate of such testator.

(b) Where a general bequest other than of residue is given in trust or for life or for a term of years, that portion of the net income of the estate, except income from assets specifically devised or bequeathed, earned during the period of administration up to the time of distribution of such bequest,

1050

computed as hereinafter provided, shall be distributed as income to or for the benefit of the immediate income beneficiary of such bequest. Such portion shall be that proportion of the net income of the estate earned to the time of distribution of such bequest, except income from assets specifically devised or bequeathed, which the value of such bequest is of the inventory value of the estate less the inventory value of assets specifically devised or bequeathed.

1051

Sec. 45a-387. [Sec. 45-279.] When person guilty of killing another to inherit from or receive property as beneficiary of victim.

(a) [No] A person finally adjudged guilty, either as the principal or accessory, of murder, shall NOT inherit or receive any part of the estate of the deceased, whether under the provisions of any act relating to intestate succession, or as devisee or legatee, or otherwise under the will of the deceased, or receive any property as beneficiary or survivor of the deceased; [nor shall] AND such person SHALL NOT inherit or receive any part of the estate of any other person when such homicide terminated an intermediate estate, or hastened the time of enjoyment. With respect to inheritance under the will of the deceased, or rights to property as beneficiary of the deceased, the person whose participation in the estate of another or whose right to property as such beneficiary is so prevented under the provisions of this section shall be considered to have predeceased the person killed [; with]. WITH respect to property owned in joint tenancy with rights of survivorship with the deceased, the final adjudication as guilty, either as principal or accessory, of murder, shall be a severance of the joint tenancy, and shall convert the joint tenancy into a tenancy in common as to the person so adjudged and the deceased but not as to any remaining joint tenant or tenants, such severance being effective as of the time such adjudication of guilty becomes

Reviser's comments:

Language and punctuation changed for clarification and simplification.

1052

final. When such jointly owned property is real [estate] PROPERTY, a certified copy of the final adjudication as guilty shall be recorded by the [executor or administrator] FIDUCIARY of the deceased's estate, or may be recorded by any other interested party in the land records of the town where such real [estate] PROPERTY is situated.

(b) In all other cases where a defendant has been convicted of killing another person, the right of such defendant to inherit or take any part of [such] THE estate of the person killed or to inherit or take any estate as to which such homicide terminated an intermediate estate, or hastened the time of enjoyment, or to take any property as beneficiary or survivor of the deceased shall be determined by the common law, including equity.

1053

Sec. 45a-388. [Sec. 45-280.] Distribution of damages for causing death.

(a) All damages recovered for injuries resulting in death, which death occurred before October 1, 1961, after payment of the costs and expenses of suit, all expenses of last illness and all funeral bills, the expenses of administration and such amount for the support of the surviving spouse or family of the deceased during the settlement of the estate as the court of probate may allow, shall be distributed in accordance with the law concerning the distribution of intestate personal estate.

(b) All damages recovered for injuries resulting in death, which death occurred on or after October 1, 1961, after payment of the costs and expenses of suit, all expenses of last illness and all funeral bills, the expenses of administration and claims against the estate and such amount for the support of the surviving spouse or family of the deceased during the settlement of the estate as the court of probate may allow, shall be distributed as personal estate in accordance with the last will and testament of the deceased if there is one or, if not, in accordance with the law concerning the distribution of intestate personal estate [, provided such] . SUCH damages shall not be subject to taxation under the provisions of chapter 216.

Language and punctuation changed and statute subdivided for simplification and clarification.

1054

Sec. 45^a-389. [Sec. 45-249.] Sale of REAL property passing by devise or intestacy to alien.

The probate court shall order the sale of any real estate set forth in any devise to an alien not a resident of the United States or which would otherwise pass to such alien by the laws of intestacy, and shall order the distribution to such alien of the net proceeds of such sale, except in such cases where present treaties or law permit distribution of real estate to a nonresident alien.

Reviser's comments:

No change.

Title of section recommended to clarify purpose of section.

1055

Sec. 45a-390. [Sec. 45-278.] Property due person residing outside United States.

No change.

When it appears that a legatee, distributee, cestui or beneficiary not residing within the territorial limits of the United States of America or any territory or possession thereof would not have the benefit or use or control of property due him or that special circumstances make it desirable that delivery to him be deferred, any court of probate may in its discretion order: (1) That such legacy or distributive share be paid in whole or in part, to the executor, administrator, trustee or interested party for use by him in the purchase of goods such as food, clothing, medicine and the necessities of life to be sent to such legatee, distributee, cestui or beneficiary and that thereafter the executor, administrator, trustee or interested person account to the court indicating the purchase of such goods and forwarding the receipt for the same sent by said legatee, distributee, cestui or beneficiary; or (2) that such property be converted into available funds and paid to the state treasurer, to be invested by him at his discretion and, together with any proceeds thereof, to be held subject to such further order as such court may enter, provided the reasonable fees, as allowed by such court, of the attorney for any such legatee, distributee, cestui or beneficiary whose funds are payable to the state treasurer hereunder shall be considered a lien thereon and shall be paid by the fiduciary having such funds in charge to such attorney prior to payment to the state treasurer.

1056

Sec. 45 a-391. [Sec. 45-286.] Descent or distribution of real [estate] PROPERTY to be recorded. PENALTY FOR FAILURE TO RECORD.

(a) When the real [estate] PROPERTY of any deceased person, or any part thereof or interest therein, is devised or distributed or set out to the devisee or devisees, heir or heirs or [husband or wife] SPOUSE of such decedent or is legally divided by the voluntary act of all the persons interested therein or descends to the heir or heirs or [husband or wife] SPOUSE of such decedent, the [executor of the will or the administrator] FIDUCIARY of the estate of such decedent shall, within one month thereafter, or, in case of descent to the heir or heirs or [husband or wife] SPOUSE of such decedent, within one month after the acceptance by the court of the final administration account of such [executor or administrator] FIDUCIARY, procure from the judge, clerk or assistant clerk of the court of probate having jurisdiction of the settlement of the estate of such decedent, and cause to be recorded in the land records of each of the towns in which such real [estate] PROPERTY is situated, a certificate [under the hand of] SIGNED BY such judge, clerk or assistant clerk [, containing] . SUCH CERTIFICATE SHALL CONTAIN the name and place of residence of each person to whom such real [estate] PROPERTY, or any portion thereof or interest therein, is distributed, set out or divided or descends, and a particular description of the estate, portion or interest distributed, set out or divided or descending to each person. (b) If any [executor or administrator] FIDUCIARY fails to perform the duties imposed upon him by the

Language and punctuation changed and statute subdivided for simplification and clarification.

Title of section recommended to clarify purpose of section.

1057

provisions [hereof] OF THIS SECTION, he shall
be fined not more than twenty-five dollars.

1058

Sec. 45a-392. [Sec. 45-183.] Securing of interest of remainderman in personal property after life estate.

When a life estate in any personal [estate] PROPERTY is given by will to one with remainder to another, and there is no trustee named for such [estate] PROPERTY during the continuance of the life estate therein, the court of probate having [cognizance] JURISDICTION of such will may order the executor to deliver such personal [estate] PROPERTY to the person having the life estate upon his giving a probate bond [, and it]. IT shall be [his] THE duty OF THE PERSON HAVING THE LIFE ESTATE thereupon to safely and properly keep such [estate] PROPERTY to be delivered to the person entitled to receive it on the determination of the life estate therein [, and, if] . IF such person fails to give bond as [aforesaid] PROVIDED IN THIS SECTION, [such] THE court shall appoint a trustee for such [estate] PROPERTY during the continuance of such life estate and the annual expense of such trust shall be chargeable upon the annual income of such [estate] PROPERTY.

Reviser's comments:

Language and punctuation changed for clarification and simplification.

1059

Sec. 45a-393. [Sec. 45-296.] When property escheats to the state. PROCEDURE.

When no owner of any estate can be found, it shall be presumed abandoned and it shall escheat to the state in accordance with the provisions of part III of chapter 32 [, and judges] . JUDGES of probate shall [make inquiry] INQUIRE in their respective districts [after] CONCERNING any such estate, and appoint an administrator thereon and give notice to the treasurer, who shall receive it from such administrator and treat it as abandoned property in accordance with the provisions of said part III.

Language and punctuation changed for simplification and clarification.

Title of section recommended to clarify effect of section.

1060

CHAPTER XXV

RELEASE OF POWERS OF APPOINTMENT

This chapter contains statutes concerning
release of powers of appointment.

1061

Sec. 45a-394. [Sec. 45-120.] Power of appointment may be released; definitions.

[A power of appointment, whether or not coupled with an interest, and whether the power is held by the donee in an individual or in a fiduciary capacity, may be released, wholly or partially, by the donee thereof, unless otherwise expressly provided in the instrument creating the power.]

(a) DEFINITIONS. As used in this chapter, (1) "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the language used in creating them and (2) "release" includes [(a)] (A) an instrument wherein the person who executes it in substance states that he wholly releases, or agrees in no respect to exercise or participate in the exercise of, a power of appointment, and [(b)] (B) an instrument wherein the person who executes it in substance states that he releases all right to exercise, or participate in the exercise of, a power of appointment otherwise than within limits therein defined, or agrees not to exercise, or participate in the exercise of, a power of appointment otherwise than within the limits therein defined.

(b) POWER OF APPOINTMENT MAY BE RELEASED. A POWER OF APPOINTMENT, WHETHER OR NOT COUPLED WITH AN INTEREST, AND WHETHER THE POWER IS HELD BY THE DONEE IN AN INDIVIDUAL OR IN A FIDUCIARY CAPACITY, MAY BE RELEASED,

Reviser's comments:

Statute subdivided and renumbered for clarification and simplification.

Internal catch-lines added to improve readability.

1062

WHOLLY OR PARTIALLY, BY THE DONEE THEREOF,
UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE
INSTRUMENT CREATING THE POWER.

1063

Sec. 45a-395. [Sec. 45-121.] Method of release. Not valid as to land unless recorded.

(a) A power releasable according to section 45-120, ~~AS AMENDED BY SECTION 335 OF THIS ACT~~, may be released, wholly or partially, by the delivery of a written release executed by the donee of the power, for consideration or under seal, to any person who could be adversely affected by the exercise of the power, or to any person who, alone or with another or others, holds in trust property subject to the power, or, in the case of a power created by will, by the filing of such release in the court of probate in which [such] THE will was proved or allowed.

(b) [No] A release of a power of appointment shall NOT be valid as to land in the state subject to such power, except as against the releasor and persons having actual notice of the release, unless [(a)] (1) in case of a power created by will or other written instrument, the release is acknowledged in the manner required in the case of deeds of land to entitle them to be recorded and is recorded in the land records of the town in which the land lies or [(b)] (2) in case of a power created by will, the release is filed in the probate court in which [such] THE will was proved or allowed.

Reviser's comments:

Statute subdivided and language changed for clarification and simplification.

1064

Sec. 45a-396. [Sec. 45-122.] Extent OF
RELEASE.

A release executed by the donee of a power
releasable according to section 45-120, and
delivered or filed in accordance with section
45-121, shall be effective to release the
power to the extent provided in such release.

Sec. 45a-397. [Sec. 45-123.] Effect of
release of one donee upon other donee.

If a power of appointment releasable
according to section 45-120 is or may be
exercisable by two or more persons in
conjunction with one another or successively,
a release or disclaimer of the power, in
whole or in part, executed and delivered or
filed, in accordance with section 45-121, by
any one of the donees of the power, shall,
subject to the provisions of section 45-121,
be effective to release or disclaim, to the
extent therein provided, all right of such
person to exercise, or to participate in the
exercise of, the power, but, unless the
instrument creating the power otherwise
provides, shall not prevent or limit the
exercise or participation in the exercise
thereof by the other donee or donees thereof.

No change in statute.

Title of section recommended to
clarify purpose of section.

No change in statute.

1065

Sec. 45a-398. [Sec. 45-123a.] Exercise in favor of further power.

Typographical errors corrected.

(a) Except to the extent otherwise [expresssly] EXPRESSLY provided in the instrument creating the power, the donee of a power of appointment over any trust may appoint all or any part of the property subject to such power in further trust and may create further special powers of appointment. Where the donee of the original power could have appointed the property outright to the donee of the further power, any restrictions on the class of [permissable] PERMISSIBLE appointees imposed by the donor of the original power shall lapse with the exercise of such power. The trustee of any trust the property of which is so appointed shall transfer and pay over such appointed property to the trustee designated by the donee, to be administered subject to the jurisdiction of any court having jurisdiction over the trust to which such property is appointed.

(b) Nothing contained in this section shall be construed to permit the creation of any interest which violates the rule against perpetuities.

(c) This section shall be applicable to all powers of appointment whether created before, on or after June 9, 1976.

1066

CHAPTER XXVI

DISCLAIMER OF ESTATE PROPERTY

This chapter contains statutes concerning disclaimer of property. The statutes concern property passing under nontestamentary instruments as well as testamentary instruments.

1067

Sec. 45a-399. [Sec. 45-299.] Disclaimer of property. Definition.

No change.

As used in this chapter, the term "nontestamentary instrument" includes, but is not limited to, a trust, an annuity, a policy of life, health or accident insurance, a bank account or any contract naming another party as beneficiary thereof whether such beneficiary takes by survivorship, payment on death or by any other means.

1068

Sec. 45 a-400. [Sec. 45-300.] Filing of disclaimer of property in decedent's estate. WHO MAY FILE. REQUIREMENTS FOR INSTRUMENT.

(a) An heir, next of kin, devisee, legatee, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, surviving joint-tenant of personalty, donee of a power of appointment granted by a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument, may disclaim in whole or in part the succession to any property, real or personal, or interest therein by filing a written instrument of disclaimer within the time and at the place [hereinafter] provided IN SECTION 45-301. [The instrument of disclaimer shall (i) describe the property or part thereof or interest therein disclaimed, (ii) be signed and acknowledged by the disclaimant in the manner provided for the execution of deeds of real estate and (iii) declare the disclaimer and the extent thereof.] (b) A guardian, conservator, executor, administrator or other personal representative of the estate of a minor, incompetent, or decedent, if he deems it in the best interests of those interested in the estate of such person and not detrimental to the interests of such minor, incompetent or decedent's estate, with the approval of the probate court having jurisdiction over such minor's, incompetent's or decedent's estate, may execute and file a disclaimer on behalf of such estate within the time and in the manner such minor, incompetent or decedent could disclaim if he were living, of legal age and competent. (c) THE INSTRUMENT OF DISCLAIMER SHALL (1) DESCRIBE THE PROPERTY OR

Statute subdivided and reorganized and language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1069

PART THEREOF OR INTEREST THEREIN DISCLAIMED,
(2) BE SIGNED AND ACKNOWLEDGED BY THE
DISCLAIMANT IN THE MANNER PROVIDED FOR THE
EXECUTION OF DEEDS OF REAL PROPERTY AND (3)
DECLARE THE DISCLAIMER AND THE EXTENT
THEREOF.

1070

Sec. 45a-401. [Sec. 45-301.] Time and place for filing disclaimer. DISCLAIMER OF REAL PROPERTY.

(a) When a disclaimer, as specified in section 45-300, ~~AS AMENDED BY SECTION 340 OF THIS ACT~~, of any transfer is to be made other than a transfer resulting from the exercise of a power of appointment, such disclaimer shall be filed within nine months after the death of the transferor. When a disclaimer, as specified in [said] section 45-300, ~~AS AMENDED BY SECTION 340 OF THIS ACT~~, of a transfer resulting from an exercise of a power of appointment is to be made, such disclaimer shall be filed within nine months after the death of the donee of such power of appointment.

(b) The place of filing the instrument shall be the probate court in which the estate of the decedent or the donee of the power is administered or, if there is no administration within nine months after the death of the decedent or donee, then in the probate court for the district provided by law as the place of probate or administration of the estate of the decedent or donee.

(c) If an interest in real [estate] PROPERTY is disclaimed, a copy of the disclaimer also shall be recorded in the office of the town clerk in the town in which the real [estate] PROPERTY lies.

Reviser's comments:

Statute subdivided and language and punctuation changed for clarification and simplification.

Title of section recommended to clarify purpose of section.

1071

Sec. 45a-402. [Sec. 45-302.] Passing of disclaimed property.

No change.

The disclaimer shall relate back for all purposes to the date of death of the decedent, donor or the donee, as the case may be. Unless the decedent, donor or donee of the power has otherwise provided, the property or interest therein or part thereof disclaimed hereunder shall pass, descend or be distributed as a part of the rest, residue and remainder of the decedent's estate; unless the disclaimed property or interest therein shall be a disclaimer of the rest, residue and remainder of the decedent's estate, or an interest therein, in which event such disclaimed property or interest therein shall pass as though the disclaimant had predeceased the decedent, and if there are no effective takers of such residue, said disclaimed property shall pass, descend or be distributed as intestate property; and if the disclaimant disclaims property or an interest therein in an intestate share, the property or part thereof or interest therein disclaimed shall pass, descend or be distributed as if the disclaimant had predeceased the decedent, or if the disclaimant is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, then as if the disclaimant had predeceased the donee of the power.

1072

Sec. 45a-403. [Sec. 45-303.] Right to disclaim barred, when. Binding effect of disclaimer or waiver.

(a) Any [(i)] (1) assignment, conveyance, encumbrance, pledge or transfer of property or any interest therein or any contract therefor, [(ii)] (2) written waiver of the right to disclaim or any acceptance of property or interest therein by an heir, next of kin, devisee, legatee, person succeeding to a disclaimed interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or [(iii)] (3) sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he may disclaim, as [herein] provided IN SECTION 45-301, ~~AS AMENDED BY SECTION 341 OF THIS ACT~~, bars the right to disclaim as to the property or interest.

(b) The right to disclaim granted by sections 45-300 to 45-305, inclusive, ~~AS AMENDED BY SECTIONS 340 TO 343, INCLUSIVE, OF THIS ACT~~, shall exist irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(c) A disclaimer when filed and recorded as provided in this [section] CHAPTER, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or person waiving and all parties claiming by, through or under him.

Reviser's comments:

Statute subdivided and language changed for clarification and simplification.

Reference to this "section" corrected to this "chapter."

1073

Sec. 45a-404. [Sec. 45-304.] Right to disclaim under other law.

No change.

Sections 45-300 to 45-305, inclusive, shall not abridge the right of any person to assign, convey, release, or renounce any property or interest therein arising under any other section of this chapter, other statute or under common law. The enactment of said sections shall not be construed as an impairment of the validity of a partial or complete disclaimer under a testamentary instrument whether or not such disclaimer was made prior to April 20, 1972.

Sec. 45a-405. [Sec. 45-305.] Prior interests.

Language changed for simplification and clarification.

Any interest in real or personal property which exists on April 20, 1972, 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 said date in the manner provided [herein] IN THIS CHAPTER, but [no] ANY interest which has arisen prior to said date in any person other than the disclaimant shall NOT be destroyed or diminished by any action of the disclaimant taken pursuant to sections 45-300 to 45-305, inclusive.

1074

Sec. 45a-406. [Sec. 45-306.] Filing of disclaimer of property passing under nontestamentary instrument. WHO MAY FILE. REQUIREMENTS FOR INSTRUMENT.

(a) A grantee, donee, joint-tenant of personalty, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument as defined in section 45-299, donee of a power of appointment granted by a nontestamentary instrument, or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument may disclaim in whole or in part the succession to any property, real or personal, or interest therein by delivering or filing a written disclaimer within the time and at the place [hereinafter] provided IN SECTION 45-307, ~~AS AMENDED BY SECTION 345 OF THIS ACT.~~ [The disclaimer shall (i) describe the property or part thereof or interest therein disclaimed, (ii) be signed and acknowledged by the disclaimant in the manner provided for the execution of deeds of real estate and (iii) declare the disclaimer and the extent thereof.]

(b) A guardian, conservator, executor, administrator or other personal representative of the estate of a minor, incompetent or decedent, if he deems it in the best interests of those interested in the estate of such person and not detrimental to the interests of such minor, incompetent or decedent's estate, with the approval of the probate court having jurisdiction over such

Reviser's comments:

Statute reorganized and subdivided and language and punctuation changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1075

minor's, incompetent's or decedent's estate, may execute and file a disclaimer on behalf of such estate within the time and in the manner such minor, incompetent or decedent could disclaim if he were living, of legal age and competent.

(c) THE DISCLAIMER SHALL (1) DESCRIBE THE PROPERTY OR PART THEREOF OR INTEREST THEREIN DISCLAIMED, (2) BE SIGNED AND ACKNOWLEDGED BY THE DISCLAIMANT IN THE MANNER PROVIDED FOR THE EXECUTION OF DEEDS OF REAL PROPERTY AND (3) DECLARE THE DISCLAIMER AND THE EXTENT THEREOF.

1076

Sec. 45a-407. [Sec. 45-307.] Time and place for filing. DISCLAIMER OF REAL PROPERTY.

(a) The disclaimer shall be delivered or filed within nine months after the effective date of the nontestamentary instrument or if the taker of the property or interest is not then finally ascertained or his interest has not become indefeasibly fixed both in quality and quantity, then not later than nine months after the event when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and in quantity.

(b) A copy of the disclaimer shall be delivered in person or by registered mail to the trustee, insurance company, banking institution, issuer or other person, firm, corporation or entity who has legal title to, or possession of, the property disclaimed.

(c) If an interest in real [estate] PROPERTY is disclaimed, a copy of the disclaimer also shall be recorded in the office of the town clerk in the town in which the real [estate] PROPERTY lies.

Reviser's comments:

Statute subdivided and language changed for simplification and clarification.

Title of section recommended to clarify purpose of section.

1077

Sec. 45a-408. [Sec. 45-308.] Passing of disclaimed property.

No change.

The disclaimer shall relate back for all purposes either to the effective date of the nontestamentary instrument or to the date when the taker has become finally ascertained and his interest has become indefeasibly fixed both in quality and quantity, as the case may be. Unless otherwise provided in the nontestamentary instrument or unless otherwise disposed of by the grantor, if the property or interest therein or part thereof disclaimed shall pass and be distributed as a part of the estate of the grantor, the effect of a disclaimer shall be as enumerated under section 45-302.

1078

Sec. 45a-409. [Sec. 45-309.] Right to disclaim barred, when. Binding effect of disclaimer or waiver.

(a) Any [(i)] (1) assignment, conveyance, encumbrance, pledge or transfer of property or interest therein or contract therefor, [(ii)] (2) written waiver of right to disclaim or any acceptance of property or interest therein by a grantee, donee, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument or [(iii)] (3) sale or other disposition of property pursuant to judicial process made before the expiration of the period in which he may disclaim as [herein] provided IN SECTION 45-307, ~~AS AMENDED BY SECTION 345 OF THIS ACT,~~ bars the right to disclaim as to the property or interest.

(b) The right to disclaim granted by this chapter shall exist irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(c) A disclaimer when delivered and recorded or filed as provided in this chapter, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or person waiving and all parties claiming by, through or under him.

Reviser's comments:

Statute subdivided and language changed for clarification and simplification.

1079

Sec. 45a-410. [Sec. 45-310.] Right to disclaim under other law.

No change.

Sections 45-306 to 45-311, inclusive, shall not abridge the right of any person to assign, convey, release or renounce any property or interest therein arising under any other section of this chapter, other statute or under common law. The enactment of said sections shall not be construed as an impairment of the validity of a partial or complete disclaimer under a nontestamentary instrument whether or not such disclaimer was made prior to April 20, 1972.

Sec. 45a-411. [Sec. 45-311.] Prior interests.

Language changed for simplification and clarification.

Any interest in real or personal property which exists on April 20, 1972, but which has not then become indefeasibly fixed in quality and in quantity, or the taker of which has not then become finally ascertained, may be disclaimed after said date in the manner provided [herein] IN THIS CHAPTER, but [no] ANY interest which has arisen prior to said date in any person other than the disclaimant shall NOT be destroyed or diminished by any action of the disclaimant taken pursuant to sections 45-306 to 45-311, inclusive.

1080

Sec. 45a-412. [Sec. 45-312.] Taxation.

No change.

Any interest, rights or powers in property, real or personal, which have been duly disclaimed pursuant to the provisions of this chapter shall be subject to the tax imposed under chapter 216, and acts amendatory thereof, to the same extent and in the same manner as the same would have been subject to said tax as if said interests, rights or powers had been transferred to those who would have taken such interests, rights or powers without giving any effect to such disclaimers under the foregoing provisions of this chapter.

1081