AN ACT ADOPTING A NEW DECEDENTS ESTATES LAW INCLUDING A PROBATE COURT PROCEDURE CODE

It is enacted by the Senate and House of Representatives of the Republic of Liberia, in Legislature Assembled:

Section 1. Title 9 of the Liberian Code of Laws of 1956, known as the Decedents Estates Law, as amended through the Third Regular Session of the Forty-Sixth Legislature, is hereby repealed, and there is enacted in lieu thereof a new Decedents Estates Law, to be title 8 of the Liberian Code of Laws Revised, a copy of which title is hereto annexed.

TITLE 8

DECEDENTS ESTATES LAW

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PART I

Law of Wills and Intestate Succession

Chapter 1. GENERAL PROVISIONS

§ 1.1. Short designation of Part I.
§ 1.2. Application
§ 1.3. Definitions.
§ 1.4. Rules of construction governing dispositions and distributions in general.
§ 1.5. Advancements and their adjustment.

§ 1.1. Short designation of Part I.

Part I of this title shall be known and cited as the Law of Wills and Intestate Succession.

§ 1.2. Application.

Except for the estates of persons subject to tribal inheritance laws who have not executed wills in accordance with the provisions therefor contained in this part, unless otherwise stated herein, the provisions of this part apply to the estates, and to instruments making dispositions or appointments thereof, of persons living on its effective date or born subsequent thereto, without regard to the date of execution of any such instrument provided that the provisions of this part shall not impair or defeat any rights which have accrued under dispositions or appointments in effect prior to its effective date.

§ 3. Definitions.

In this part, unless the context otherwise requires or a different

meaning is expressly provided, the words and phrases set forth in this section shall be given their indicated meaning:

(a) "Beneficiary": Any person entitled to any part or all of the estate of a decedent under a will or in intestacy.

(b) "Codicil": A codicil is a supplement to a will, either adding to, taking from or altering its provisions, or confirming it in whole or in part by republication, but not totally revoking such will.

(c) "Disposition": A disposition is a transfer of property by a person by will.

(d) "Distributee": A distributee is a person entitled to take or share in the property of a decedent under the statutes governing descent and distribution.

(e) "Distribution": A distribution is the transfer of the property of a decedent under the statutes governing descent and distribution.

(f) "Estate": Depending upon the context, the term estate may mean:

(i) The interest which a person has in property.

(ii) The aggregate of property which a person owns.

(g) "Fiduciary": A fiduciary is a person who meets the description, in this section, of a "personal representative" or who is designated by a court to act as an assignee for the benefit of creditors, or a conservator, curator, custodian or guardian.

(h) "Incompetent": An incompetent is a person judicially declared to be incapable of managing his affairs.

(i) "Issue": Unless a contrary intention is indicated, issue are the descendants in any decree from a common ancestor. The terms "issue" and "descendants" include adopted children.

(j) "Personal representative": A personal representative is a person who has received letters to administer the estate of a decedent. The term does not include an assignee for the benefit of creditors, or a conservator, curator, custodian or guardian.

(k) "Property": Property is anything that may be the subject of ownership, and is real or personal property.

(1) "Specific dispositions": A specific disposition is a disposition of a specified or identified item of the testator's property.

(m) "Testamentary beneficiary": A testamentary beneficiary is a person in whose favor a disposition is made by will.

(n) "Will": A will is an oral declaration or written instrument made as prescribed by sections 2.11 and 2.12, to take effect upon death, whereby a person disposes of property or directs how it shall not be disposed of, disposes of his body or any part thereof, exercises a power, appoints a fiduciary or makes any other provision for the administration of his estate, and which is revocable during his lifetime. Unless the context otherwise requires, the term "will" includes a "codicil".

§ 1.4. Rules of construction governing dispositions and distributions in general.

1. Heirs at law and next of kin defined. Whenever used in a statute or instrument, unless a contrary intention is expressed therein, the terms "heirs," "heirs at law," "next of kin" or any term of like import means the distributees as provided in chapter 3.

2. Adopted children and posthumous children as members of a class. Unless a testator expresses a contrary intention, a disposition of property to persons described in any will or other testamentary instrument as the issue, lawful issue, children, descendants, heirs, heirs at law, next of kin, distributees, or by any term of like import, of the testator or of another, includes the following:

(a) Adopted children and their issue.

(b) Children conceived before, but born after such disposition becomes effective.

3. Shares of widows of legally recognized plural marriages other than tribal. Where in this part a beneficial interest is allocated to a widow designated as such or as a surviving spouse, if a legally recognized plural marriage is involved other than a marriage under tribal customary law, the surviving widows of such plural marriage, when there is more than one, shall take equal shares of any such beneficial interest.

4. Words of inheritance unnecessary. The word "heirs" or words of inheritance of like import are not necessary to create or dispose of a fee in real property.

§ 1.5. Advancements and their adjustment.

1. Advancement defined. An advancement is an irrevocable gift intended by the donor as an anticipatory distribution in complete or partial satisfaction of the interest of the donee in the donor's estate, either in intestacy or under the will of the donor.

2. Not binding unless proved by contemporaneous writing. No advancement shall affect the distribution or disposition of the estate of the donor unless proved by a writing contemporaneous therewith

signed by the donor evidencing his intention that the gift be treated as an advancement and by the donee acknowledging that such was the intention.

3. Effect of proven advancement. When proved as provided in paragraph 2, the advancement is part of the estate of the donor for the purpose of distribution or disposition. If such advancement is equal to or greater than the interest of the donee, whether in intestacy or under the will, such donee or his successor in interest may not share in the distribution or disposition of the estate; but if less than such intestate share or testamentary interest, the donee or his successor in interest may take his intestate share or testamentary interest reduced by the amount of the advancement.

4. Adjustment of advancement. Unless otherwise provided in a writing contemporaneous with the advancement and signed by the donor and the donee, an advancement made as provided in this section shall be adjusted out of the estate of the donor in such manner as may be equitable.

Chapter 2. SUBSTANTIVE LAW OF WILLS

Subchapter A. Who May Make and Receive Testamentary Disposition of Property; What Property May be Disposed of by Will.

§ 2.1. Who may make wills of and exercise testamentary powers of appointment over property.
§ 2.2. What property may be disposed by will.
§ 2.3. Who may receive testamentary dispositions of property.

Subchapter B. Execution of Wills

§ 2.11. Execution and attestation; formal requirements.

§ 2.12. Nuncupative (oral) wills

Subchapter C. Rules of Construction Governing Testamentary Dispositions

§ 2.21. What a testamentary disposition includes.
§ 2.22. Competence of attesting witness who is a beneficiary; effect of attestation on disposition.
§ 2.23. Method of division of disposition among surviving issue taking in representative capacity.
§ 2.24. Dispositions to issue or brothers or sisters of testator not to lapse if their issue survive testator.
§2.25. Conditions qualifying dispositions; conditions against contest and limitations thereon
§2.26. Limitations and powers and immunities of executors and testamentary trustees.
§ 2.27. Designation per se does not discharge debt due from executor to testator; effect of discharge by will.
§ 2.28. Validity of a purchase of real property from a distribute not withstanding its disposition by will.

Subchapter D. Revocation and Alteration of Wills and Related Subjects

§ 2.41. Procedures for revocation and alteration of wills; effect on codicils.
§ 2.42. Agreement to convey property previously disposed of by will not a revocation.
§ 2.43. Revocatory effect of a conveyance, settlement or other act affecting property previously disposed of by will.
§ 2.44. Conveyance of property of incompetent by his guardian, previously disposed of specifically by will, not revocation or ademption.
§ 2.45. Revocation or alteration of later will not to revive prior will or any provisions thereof.
§ 2.46. Methods of reviving a revoked prior will.

Subchapter E . Rules Governing Wills Having Relation to Another Jurisdiction
§ 2.61. Foreign and domestic jurisdictional requirements for formal validity of wills.

subchapter A. WHO MAY MAKE AND RECEIVE TESTAMENTARY DISPOSITION OF PROPERTY; WHAT PROPERTY MAY BE DISPOSED OF BY WILL

§ 2.1. Who may make wills of and exercise testamentary powers of appointment over property.

Every person eighteen years of age or over, of sound mind and memory, may by will dispose of real and personal property and exercise a power to appoint such property.[1]

§ 2.2. What property may be disposed of by will.

Every estate in property may be devised or bequeathed except as limited in section 2.12.

§ 2.3. Who may receive testamentary disposition of property.

1. In general. A testamentary disposition of property may be made to any person having capacity to acquire and hold property.

2. Dispositions to unincorporated associations. When a will disposes of property to an association which lacks capacity to receive such property by will because it is unincorporated and the association may

1 *Prior legislation:* Com. L. (Aug. 19, 1824), 2 Hub. 1344, 1345 (5th).

become incorporated under the laws of this Republic, such disposition is valid despite the lack of capacity of the beneficiary if within three years after probate of the will such beneficiary becomes incorporated with capacity to take such disposition. In such case such property shall be treated as a trust for the period pending incorporation subject to the direction and control of the probate court as if it had been created by express provision in the will. If the association is incorporated and empowered to receive, the disposition, the trustee appointed by the court shall transfer the property to the corporation so formed, but if the association is not incorporated within the time limited herein or if it waives or renounces such disposition in the manner permitted by law, the trust provided for herein shall terminate and the property including accumulations shall vest in the persons otherwise entitled thereto as if no such disposition had been made. This section does not limit the power of the court to give effect to the intention of the testator through the use of cv pres and other equity doctrines to preserve a disposition for the use and benefit of unincorporated associations.

Subchapter B. EXECUTION OF WILLS

§ 2.11. Execution and attestation; formal requirements.

Except for nuncupative wills authorized by section 2.12, all wills shall be in writing signed by the testator and by two or more attesting witnesses and shall be executed in the following manner;

(a) Signature. The testator's signature may be made by himself, or by someone for him in his presence and by his direction, and his signature shall either be made or exhibited and acknowledged by her in the presence of each of the attesting witnesses, though not necessarily in the presence of each of them at the same time. Any person who signs the testator's name to the will as provided

herein, shall sign his own name to the will and may be counted as one of the necessary attesting witnesses; provided that a failure to comply shall not affect the validity of the will.

(b) Witnesses. The attesting witnesses shall set forth their names in full when affixing their signatures and need not sign in the presence of the testator nor of each other, but if any of them do not sign in the presence of the testator the one or ones not so signing shall exhibit his or their signature or signatures to the testator and acknowledge the same to him.

(c) Publication. The testator, at some time during the ceremony or ceremonies of execution and attestation, shall state or by his conduct indicate that he intends the instrument to which his signature has been affixed to take effect and that he wishes the attesting witnesses to witness it. No formal publication or request to the witnesses to sign shall be necessary nor shall it be necessary that the witnesses know the contents of the instrument or that it is a will but before the will shall be admitted to probate, the trier of fact must be satisfied that the testator intended the instrument to take effect and that the witnesses knew from the statements or conduct of the testator that he intended the instrument to take effect and wished them to witness it.

§ 2.12. Nuncupative (oral) wills.

1. Requisites. A nuncupative will may be made only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator died as a result of the impending peril and only if the following is also established:

(a) That it was declared to be his will by the testator before at least two disinterested witnesses;

(b) That it was reduced to writing by or under the direction of one of the witnesses within thirty days after such declaration; and

(c) That it was submitted for probate within six months after the death of the testator.

2. Monetary and property limitations. The nuncupative will may dispose of personal property only and to an aggregate value not exceeding one thousand dollars, except that in the case of persons in active military, air or naval service in time of war the aggregate amount may be ten thousand dollars.

Subchapter C. RULES OF CONSTRUCTION GOVERNING TESTAMENTARY DISPOSITION

§ 2.21. What a testamentary disposition includes.

Unless the will provides otherwise, a disposition by the testator of all of his property passes all of the property he was entitled to dispose of at the time of his death.

§ 2.22. Competence of attesting witness who is a beneficiary: effect of attestation on disposition.

1. Interested witness competent and can be compelled to testify. An attesting witness to a will to whom a beneficial disposition or appointment of property is made therein is a competent witness and compellable to testify respecting the execution of such will as if no such disposition or appointment had been made.

2. Validity of disposition dependent on coexistence of uninterested witnesses. A beneficial disposition or appointment made to an attesting witness is void unless there are, at the time of execution and

attestation, at least two other attesting witnesses to the will who receive no beneficial disposition or appointment thereunder, but in such event, such disposition or appointment to an attesting witness shall still not be effective if the will cannot be proved without the testimony of such witness.

3. Redress for interested witness who is also a distributee. Any attesting witness whose disposition is void under the provisions of this section, who would be a distributee if the will were not established, is entitled to receive so much of his intestate share as does not exceed the value of the disposition made to him in the will, such share to be recovered as follows:

(a) In case the void disposition becomes part of the residuary disposition, from the residuary disposition only;

(b) In case the void disposition passes in intestacy, ratably from the distributees who succeed to such interest. For this purpose, the void disposition shall be distributed under section 3.2 as though such attesting witness were not a distribute.

4. Rules herein apply to nuncupative will. The provisions of this section apply to witnesses to a nuncupative will authorized by section 2.12.

§ 2.23. Method of division of disposition among surviving issue taking in representative capacity.

Unless the will provides otherwise, whenever by the terms thereof or by statute a disposition vests in surviving issue as representatives of a beneficiary named in the will who has died during the lifetime of the testator, if the surviving issue entitled to share in the disposition are all of equal degree of kinship to such deceased beneficiary, they shall take equal shares. If they are of unequal degree, their respective

shares in the disposition shall be determined in the following manner: the disposition shall be divided into as many equal shares as there shall be persons in the nearest degree of consanguinity living and taking shares therein and persons in that degree who have predeceased such deceased beneficiary and who have left issue surviving who are to receive shares. One equal share shall be transferred to each such living person in the nearest degree. The remaining part of the disposition shall then be divided into as many equal shares as there are surviving issue in the nearest degree of consanguinity living and taking shares therein (exclusive of those whose shares therein have already been determined) and persons in the same degree who have predeceased such deceased beneficiary and who have left issue surviving who are to receive shares. The living persons of such class shall receive equal shares in the remaining part of the disposition. The balance of the disposition shall be divided according to the same process until the entire disposition shall have been transferred.

§ 2.24. Dispositions to issue or brothers or sisters of testator not to lapse if their issue survive testator.

Whenever a testamentary disposition is made to the issue or to a brother or sister of the testator, and such beneficiary dies during the lifetime of the testator leaving issue surviving such testator, unless the will provides otherwise, such disposition does not lapse but vests in such surviving issue in their representative capacity. As used in this section, the terms "issue", "surviving issue" and "issue surviving" include adopted children and illegitimate children; for this purpose, an illegitimate is the child of his mother and is the child of his father, if he is entitled to inherit from his father under section 3.5.

§ 2.25. Conditions qualifying dispositions; conditions against contest and limitations thereon.

1. Validity of conditions generally. A condition qualifying a

disposition of property is operative despite the failure of the testator to provide for an alternative gift to take effect upon the breach or non-occurrence of such condition.

2. *Limitations on validity of "no contest" condition.* A condition, designated to prevent a disposition from taking effect in case the will is contested by the beneficiary, is operative despite the presence or absence of probable cause for such contest, subject to the following

(a) Such a condition is not breached by a contest to establish that the will is a forgery, or that it was revoked by a later will or that it is void because the testator was not competent to make a will or was under restraint, or because fraud or undue influence was practiced upon him, provided that such contest is based on probable cause;

(b) An infant or incompetent may affirmatively oppose the probate of a will without forfeiting any benefit thereunder;

(c) The following conduct, singly or in the aggregate, shall not result in the forfeiture of any benefit under the will:

(i) The assertion of an objection to the jurisdiction of the court in which the will was offered for probate;

(ii) The disclosure to any of the parties or to the court of any information relating to any document offered for pro-bate as a last will, or relevant to the probate proceeding;

(iii) A refusal or failure to join in a petition for the probate of a document as a last will, or to execute a consent to or waiver of notice of a probate proceeding

(iv) The preliminary examination, under section 113.4 of the

Probate Court Procedure Code, of a proponent's witnesses in a probate proceeding;

(v) The institution of, or the joining or acquiescence in a proceeding for the construction of a will or any provision thereof.

§ 2.26. Limitations on powers and immunities of executors and testamentary trustees.

1. Prohibited powers. The attempted grant to an executor or testamentary trustee or the successor of either, of any of the following enumerated powers or immunities is contrary to public policy:

(a) The exoneration of such fiduciary from liability for failure to exercise reasonable care, diligence and prudence.

(b) The power to make a binding and conclusive fixation of the value of any asset for purposes of distribution, allocation or otherwise.

2. Will valid despite prohibited grant therein. The attempted grant in any will of any power or immunity in contravention of the terms of this section shall be void but shall not be deemed to render such will invalid as a whole, and the remaining terms of the will shall, as far as possible, remain effective.

3. No forfeiture results because of contest by beneficiary. Any person interested in an estate or testamentary trust may contest the validity of any purported grant of any power or immunity within the purview of this section without diminishing or affecting adversely his interest in the estate or trust, any provision in any will to the contrary notwithstanding.

§ 2.27. Designation per se does not discharge debt due from executor to testator; effect of discharge by will.

The designation by will of a person as executor does not operate as a discharge or testamentary disposition of any just claim which the testator had against him, but such claim must be included as an asset of the estate. The executor is liable for the value of the claim when it becomes due, and he must apply and distribute the same in the course of administering the estate. However, the discharge or disposition of such a claim or of a claim against any other person by will shall be treated as a specific disposition. Clothing contained herein precludes an executor from raising any defense to a claim by the estate against him which would be available to any other person against whom the estate has a claim.

§ 2.28. Validity of a purchase of real property from a distributee notwithstanding its disposition by will.

The title of a purchaser of real property, in good faith and for valuable consideration, from a distributee of a person who died owning such property shall not be affected by a testamentary disposition of such property by such decedent, unless within two years after the testator's death the will disposing of the property is admitted to probate. If, however, at the time of the testator's death, the devisee of such property is either an infant, incompetent, imprisoned for a term less than life, or without this Republic, or if the will was concealed by one or more of the distributees of the decedent, the two year period prescribed herein does not commence until the expiration of one year from time of the removal of such disability or the delivery of the will to the devisee or to the probate court having jurisdiction to admit the will to probate.

Subchapter D. REVOCATION AND ALTERATION OF WILLS AND RELATED SUBJECTS

§ 2.41. Procedures for revocation and alteration of wills: effect on codicils.

Except as otherwise provided in this title, a revocation or alteration of a will or any part thereof, if intended by the testator, may be effected in the following ways only:

(a) Revocation by will or by writing executed with same formalities: A will or any part thereof may be revoked or altered as follows:

(i) By another will;

(ii) By a writing of the testator clearly indicating an intention to effect such revocation or alteration, executed with the formalities prescribed in this chapter for the execution and attestation of a will;

(b) Revocation by destruction. A will may be revoked by an act of burning, tearing, cutting, cancellation, obliteration or other mutilation or destruction performed by any of the following:

(i) The testator;

(ii) Another person in the presence and by the direction of the testator, in which case the fact that the will was so revoked in the presence and by the direction of the testator shall be proved by at least two witnesses, neither of whom shall be the person who performed the act of revocation;

(c) Revocation or alteration by nuncupative declaration. In addi-

tion to the methods set forth in subparagraphs (a) and (b), a will may be revoked or altered by a nuncupative declaration of revocation or alteration made in the circumstances prescribed by section 2.12 by any person therein authorized to make a nuncupative will. Any such nuncupative declaration of revocation or alteration must be clearly established by at least two witnesses.

(d) Codicils revoked by revocation of wills. The revocation of a will, as provided in this section, revokes all codicils thereto.

§ 2.42. Agreement to convey property previously disposed of by will not revocation.

An agreement made by a testator to convey any property does not revoke a prior testamentary disposition of such property; but such property passes under the will to the beneficiaries, subject to whatever rights were created by such agreement.

§ 2.43. Revocatory effect of a conveyance, settlement or other act affecting property previously disposed of by will.

A conveyance, settlement or other act of a testator by which an estate in his property, previously disposed of by will, is altered but not wholly divested, does not revoke such disposition, but the estate in the property that remains in the testator passes to the beneficiaries pursuant to the disposition. However, any such conveyance, settlement or other act of the testator which is wholly inconsistent with such previous disposition revokes it.

§ 2.44. Conveyance of property of incompetent by his guardian, previously disposed of specifically by will, not revocation or ademption.

In the case of a sale or other transfer by a guardian of any in-

competent person, during the lifetime of the incompetent, of any property which such incompetent had previously disposed of specifically by will when he was competent, and no order had been entered setting aside the adjudication of incompetency at the time of such incompetent's death, the beneficiary of such specific disposition is entitled to receive the money or the other property into which the proceeds from such sale or transfer may be traced.

§ 2.45. Revocation or alteration of later will not to revive prior will or any provisions thereof.

If after executing a will the testator executes a later will which revokes or alters the prior one, a revocation of the later will does not, of itself, revive the prior will or any provision thereof.

§ 2.46. Methods of reviving, a revoked prior will.

A revival of a prior will, or one or more of its provisions, which has been revoked or altered in accordance with the provisions of this subchapter may be effected as follows:

(a) By the execution of a codicil which in terms incorporates by reference such will or one or more of its provisions;

(b) By a writing declaring the revival of such prior will or one or more of its provisions, which is executed and attested in accordance with the formalities prescribed by this chapter for the execution and attestation of a will;

(c) By a republication of such prior will, whether to the original witnesses or to new witnesses, which shall require a re-execution and re-attestation of the prior will in accordance with the formalities prescribed by sections 2.11 and 2.12.

Subchapter E. RULES GOVERNING WILLS HAVING RELATION TO ANOTHER JURISDICTION

§ 2.61. Foreign and domestic Jurisdictional requirements for formal validity of wills.

A will disposing of personal property, wherever situated, or real property situated in this Republic, made within or without this Republic by a domiciliary or non-domiciliary thereof, is formally valid and admissible to probate in this Republic, if it is in writing and signed by the testator, and otherwise executed and attested in accordance with the local law of:

(a) This Republic;

(b) The jurisdiction in which the will was executed, at the time of execution; or

(c) The jurisdiction in which the testator was domiciled, either at the time of execution or of death.

Chapter 3. DESCENT AND DISTRIBUTION OF INTESTATE ESTATES

§ 3.1. Separate rules for intestate succession to real and personal property abolished.
§ 3.2. Succession to property, real and personal on intestacy.
§ 3.3. Intestate shares of spouse and minor children not diminished by other benefits.
§3.4. Division among relatives of equal and different degrees.
§3.5. Inheritance by, from and through illegitimate children.

§3.6. Inheritance by kindred of the half blood.
§3.7. Inheritance by, from and through adopted children.
§3.8. Posthumous heirs.
§3.9. Circumstances disqualifying a parent from taking intestate share.

§ 3.1. Separate rules for intestate succession to real and personal property abolished.

All existing modes, rules and canons of descent are hereby abolished. All distinctions between the persons who take as heirs at law and next of kin are abolished and the descent of real property and the distribution of personal property shall be governed by this chapter except as otherwise specifically provided by law. Whenever in any statute the words "heirs," "heirs at law", "next of kin", or "distributees" are used, such words shall be construed to mean and include the persons entitled to take as provided by this chapter.

§ 3.2. Succession to property, real and personal, on intestacy.

The property of a decedent not disposed of by will or otherwise, after payment of administration and funeral expenses, debts and taxes, shall descend and be distributed in the following manner:

(a) If the decedent leaves surviving a spouse and one or more lineal descendants, property to the value of $5,000 to the spouse outright and one-half the residue to the spouse for life with the remainder thereof to the children and to the issue of any deceased child in accordance with the provisions of section 3.4, and the remaining one half of the residue outright to the said children and to the issue of any deceased child in accordance with the provisions of section 3.4;

(b) If the decedent leaves surviving one or more lineal descendants

but no spouse, the entire estate to the children and to the issue of any deceased child in accordance with the provisions of section 3.4;

(c) If the decedent leaves surviving a spouse and one or both of his parents but no lineal descendants, property to the value of $10,000 and one-half of the residue to the spouse, and the balance to the parent, or if both parents survive, to them in equal shares;

(d) If the decedent leaves surviving a spouse and one or more brothers and sisters but no lineal descendant or parent, property to the value of $10,000 and three quarters of the residue to the spouse, and the balance to the brothers and sisters and to the issue of any deceased brother or sister in accordance with the provisions of section 3.4;

(e) If the decedent leaves surviving a spouse but no lineal descendant, parent, brother or sister, the entire estate to the spouse;

(f) If the decedent leaves surviving one or both parents and one or more brothers and sisters but no spouse or lineal descendant, property to the value of $10,000 and one-half of the residue to the parent, or if both survive, to them in equal shares, and the balance to the brothers and sisters and to the issue of any deceased brother or sister in accordance with the provisions of section 3.4;

(g) If the decedent leaves surviving, one or both parents but no spouse or lineal descendent or brother or sister, the entire estate to the parent, or if both survive, to them in equal shares;

(h) If the decedent leaves surviving no spouse or lineal descendant or parent, then to the following persons living at the death of

the decedent, and in the following order and manner:

First, to the brothers and sisters and to the issue of any deceased brother or sister in accordance with the provisions of section 3.4, but if there is no member of this class, then

Secondly, to the grandparents in equal shares, but if there is no member of this class, then

Thirdly, to the uncles and aunts and to the issue of any deceased uncle or aunt in accordance with the provisions of section 3.4, but if there is no member of this class, then

Fourthly, to the Republic of Liberia.[2]

§ 3.3. Intestate shares of spouse and minor children not diminished by other benefits.

The shares provided for the spouse and minor children under section 3.2 shall be in addition to any benefits received by them from the estate under sections 4.3 and 4.4.

§ 3.4. Division among relatives of equal and different degrees.

If the distributees entitled to share in an estate under the provisions of section 3.2 are all of equal degree of kinship to the decedent, they shall take equal shares. If they are of unequal degree, their respective shares shall be determined in the following manner:

The part of the estate which is to be distributed to any such distributees shall be divided into as many equal shares as there shall be

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2 *Prior legislation:* 1956 Code 9:2; L. 1946-47, ch. IX; Rev. Stat. (adopted L. 1929, ch. VII, § 303); L. 1903-04, 23.

persons in the nearest degree of consanguinity living and taking shares therein and persons in that degree who have predeceased the decedent and who have left issue surviving who are to receive shares. One equal share shall be distributed to each such living person in the nearest degree. The remaining part of the estate to be distributed among such distributees shall then be divided into as many equal shares as there are distributees in the nearest degree of consanguinity living and taking shares therein (exclusive of those whose shares have already been determined) and persons in the same degree who have predeceased the decedent and who have left issue surviving who are to receive shares. The living persons of such class shall receive equal shares in the estate. The balance of the estate to be distributed shall be divided according to the same process until the entire estate shall have been distributed.

§ 3.5. Inheritance by from and through illegitimate children.

An illegitimate child and his issue shall inherit under the provisions of section 3.2 from his mother and from her lineal and collateral relatives, and his mother and her lineal and collateral relatives shall inherit from such child and his issue as if he were legitimate. An illegitimate child and his issue shall inherit under the provisions of section 3.2 from his father and from the lineal and collateral relatives of the father, and the father and his lineal and collateral relatives shall inherit from such child and his issue as if he were legitimate under any of the following conditions:

(a) If the child is adopted by his father; or

(b) If the father acknowledges his paternity in writing before a justice of the peace or notary public and such acknowledgment is probated and registered; or

(c) If the parents marry subsequent to the birth; or

(d) If the child has been legitimated under the provisions of the Domestic Relations Law; or

(e) If the paternity of the child has been adjudicated by a court of appropriate jurisdiction.

Such child shall be treated as if he were the legitimate child of his mother, and, if any of the conditions enumerated in this section is present, as the legitimate child of his father, for the purpose also of receiving benefits under sections 4.3 and 4.4.

§ 3.6. Inheritance by kindred of the half blood.

A decedent's relatives of the half blood, for all purposes of section 3.2, shall be treated as if they were relatives of the whole blood.

§ 3.7. Inheritance by, from and through adopted children.

If, at any time after the making of an adoption order, an adoptive parent or the adopted child or any other person dies intestate in respect to any property, that property shall devolve in all respects as if the adopted child were the legitimate child of the adoptive parent and were not the child of any other person; provided, that if a person is adopted by the spouse of a natural parent, the adopted person shall be deemed the child of such natural parent as well as the child of the adoptive parent in determining the devolution of intestate property. An adopted child shall also be entitled to benefits under sections 4.3 and 4.4 in any estate a share of which he would be entitled to inherit under the provisions of this section in case of intestacy.

§ 3.8. Posthumous heirs.

Descendants and other relatives of the deceased, begotten before his death but born thereafter, shall take in the same manner on intestacy

under the provisions of section 3.2 as if they had been born in the lifetime of the deceased and had survived him.

§ 3.9. Circumstances disqualifying a parent from taking intestate share.

No distributive share in the estate of a deceased child shall be allowed to a parent who has failed or refused to provide for, or has abandoned such child during infancy, whether or not such child dies during infancy, unless the parental relationship and duties are subsequently resumed and continued until the death of the child. In the event that a parent is disqualified from taking a distributive share in the estate of a decedent under this section, the estate of such decedent shall be distributed in accordance with section 3.2 as though such parent had predeceased the decedent.

Chapter 4. FAMILY RIGHTS

§ 4.1. Rights of surviving spouse.
§ 4.2. Right of surviving spouse to purchase matrimonial home.
§ 4.3. Exempt personal property for spouse and children.
§ 4.4. Temporary use of dwelling house by surviving spouse and/or minor children pending settlement of estate.
§ 4.5. Disqualification as surviving spouse.
§ 4.6. Revocatory effect of divorce, annulment or declaration of nullity or dissolution of marriage on disposition, appointmentor other provisions in will to former spouse.
§ 4.7. Revocatory effect of birth of child after execution of will.
§ 4.8. Limitations on testamentary dispositions or charitable and other purposes.

§ 4.1. Rights of surviving spouse.

1. Constitutional right of election by widows. The constitutional

right of a widow to one-third of her deceased husband's real estate during her natural life and to hold one-third of his personal estate in her own right subject to alienation by her, by devise or otherwise, is hereby preserved. A widow has the personal right to elect to take such share in lieu of any testamentary disposition or distribution on intestacy provided for her.

2. *Statutory right of election by widowers.* A widower shall be entitled to one-third of his deceased wife's real estate during his natural life and to one-third of her personal estate, which he shall hold in his own right subject to alienation by him by devise or otherwise. He has the personal right to elect to take such share in lieu of any testamentary disposition or distribution on intestacy provided for him.

3. *Property applicable to elective share.* For the purposes of this section, only the real and personal estate of which the decedent died seized is applicable to the elective share of the surviving spouse.

4. *Procedure for exercise of right of election.* An election under this section must be made within six months from the date of issuance of letters testamentary or of administration, as the case may be. Written notice of such election shall be served upon any personal representative in the manner herein provided and the original thereof shall be filed and recorded, with proof of service, in the probate court in which such letters were issued. Such notice may be served personally or, if there is regular communication by mail, by mailing a copy thereof, addressed to any personal representative at the place of residence stated in the designation required by section 107.6 of the Probate Court Procedure Code. The time limited in this paragraph for making an election is exclusive and shall not be suspended or otherwise affected by any provision of law, except that a probate judge may, in his discretion, permit an election to be made on behalf of an infant or incompetent spouse at any time up to, but not later

than, the entry of the decree of the first judicial account of the permanent personal representative of the estate, made more than seven months after the issuance of letters.

5. *Provisions governing rights and obligations upon election.* The following provisions shall govern the rights and obligations of a surviving spouse and of all other persons interested in an estate upon the exercise of a right of election under this section:

(a) *Effect of election on other shares.* Where an election has been made under this section, the method of distribution on intestacy, or the disposition to be made under a will or other instrument making a testamentary disposition, as the case may be, is valid as to the residue after the share to which the surviving spouse is entitled has been admeasured, and the provisions for distribution on intestacy or disposition under the terms of such will or instrument, as the case may be, remain otherwise effective so far as possible;

(b) *Ratable contributions to be made by beneficiaries of other shares.* Except as otherwise expressly provided in a will or other instrument making a testamentary provision, ratable contribution to the share to which the surviving spouse is entitled shall be made by the distributees or testamentary beneficiaries, as the case may be, other than the surviving spouse;

(c) *Election for spouses under disability.* The right of election is personal to the surviving spouse except that an election may be made, by the guardian of the property of an infant spouse, when so authorized by the probate court having jurisdiction of the decedent's estate, and by the guardian of an incompetent spouse, when so authorized by the court which appointed him;

(d) *Cancellation of election by spouse.* Upon application by a

surviving spouse who has made an election under this section, the probate court may make an order cancelling such election, provided that no adverse rights have intervened and no prejudice is shown to creditors of such spouse or other persons interested in the estate. Such application shall be made on notice to such persons and in such manner as the court may direct. A certified copy of such order shall be indexed and recorded in the same manner as a notice of pendency of an action under the Civil Procedure Law.

§ 4.2. Rights of surviving spouse to purchase matrimonial home.

1. Written notice within six months after letters required; no sale permitted during such period without surviving spouse consent. If the estate of a decedent comprises an interest in fee simple in a dwelling house in which the surviving spouse was resident at the time of the decedent's death and which is not subject to an existing homestead exemption as provided in the Civil Procedure Law, the surviving spouse may, by notice in writing, require the personal representative to appropriate the said interest in the dwelling house toward the satis-faction of the share of any surviving husband or wife in the estate of the decedent under the will or under the provisions of section 3.2, including an election under section 4.1. Such notice shall be ineffec-tive unless served within six months from the issuance of letters to the personal representative. During such period of six months, the personal representative shall not, without the consent of the surviving spouse, sell or otherwise dispose of the said interest in the dwelling house.

2. Devise of such dwelling ineffective if spouse exercises right. A devise of such a dwelling house to a person other than the surviving spouse shall pro tanto, be ineffective and invalid if the spouse exercises the right conferred under this section.

3. Appraisal of dwelling for purposes of section. Such dwelling house shall be appraised for the purposes of this section at the price it would bring if sold in the open market at the time of the decedent's death. The surviving spouse may require the personal representative to have the dwelling house appraised in accordance with this section and to inform him of the result of such appraisal before notice is given that the dwelling house is to be appropriated toward the satisfaction of his share.

4. Dwelling house defined. A "dwelling house" within the meaning of this section includes

(a) any part of a building which was at the date of the death of the decedent occupied as a separate dwelling by the surviving spouse; and:

(b) any garden or portion of ground attached to and usually occupied with such dwelling house or otherwise required for the amenity or convenience of such dwelling house.

5. Court application required when dwelling combined with other uses. Where:

(a) such dwelling house forms part of a building and an interest in the whole of the buildings is included in the estate, or

(b) such dwelling house is held with agricultural land and an interest in the agricultural land is included in the estate, or

(c) the whole or part of such dwelling house was at the time of the decedent's death used as a hotel or lodging house or apartment house, or

(d) a part of such dwelling house was at the time of the decedent's

death used for purposes other than domestic purposes, the right conferred on the surviving spouse by this section shall not be exercisable unless the court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the residuary estate or make them more difficult to dispose of, so orders.

§ 4.3. Exempt personal property for spouse and children.

The surviving spouse, or if there is no spouse, then any child or children, shall be entitled absolutely to such personal property of the estate as he or they may select not exceeding in the aggregate $500, any portion or all of which may be taken in money; provided, that if the decedent has died testate, an article which has been made the subject of a specific bequest to another person shall not be applied in satisfaction of a claim by a spouse or child under this section unless other assets of the estate do not exceed $500. The property selected shall belong to the spouse, if any, otherwise to the children in equal shares. At any time after the return of the inventory the court upon application shall set apart the selected property to the persons entitled thereto. Such property shall not be subject to administration and shall be exempt from all claims against the estate except any lien thereon at the time of the decedent's death, taxes, claims for the costs of administration and reasonable funeral expenses.

§ 4.4. Temporary use of dwelling house by surviving spouse and/or minor children pending settlement of estate.

If the estate of a decedent comprises an interest in fee simple in a dwelling house in which the surviving spouse and/or minor children were resident at the time of decedent's death, such spouse and/or minor children may continue to occupy such dwelling house and make use of the furnishings, household goods and provisions therein and crops to the extent necessary for family use without liability for

payment of rent or other charges until the expiration of seven months after the issuance of letters to the personal representative.

§ 4.5. Disqualification as surviving spouse.

1. Circumstances causing forfeiture. A wife or husband is a surviving spouse, or a widow or widower, within the meaning and for the purposes of sections 3.2., 4.1, 4.2, 4.3, and 4.4, unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that anyone of the following circumstances is applicable:

(a) The marriage was void as incestuous, or bigamous, or a prohibited marriage under the provisions of the Domestic Relations Law;

(b) That a final decree or judgment of divorce, or of annulment, or a decree declaring the nullity of their marriage or dissolving such marriage on the ground of absence, was in effect when the deceased spouse died;

(c) That the surviving spouse had procured outside of this Republic a final decree or judgment of divorce or annulment, or a decree declaring the nullity of the marriage with the deceased spouse, or dissolving such marriage on the ground of absence, which is not recognized as valid under the law of this Republic;

(d) That a final decree or judgment of separation, recognized as valid under the law of this Republic, was rendered against the surviving spouse and such decree or judgment was in effect when the deceased spouse died;

(e) That a husband failed or refused to provide for his wife, unless such marital duty was resumed and continued until the death of the wife.

2. Effect of forfeiture on share in intestacy. In the event that a surviving spouse, under the provisions of this section, is disqualified from taking a distributive share in the estate of the deceased spouse, the intestate estate of such decedent shall be distributed in accordance with section 3.2 as though the surviving spouse had predeceased the deceased spouse.

§ 4.6. Revocatory effect of divorce, annulment or declaration of nullity or dissolution of marriage on disposition, ap-appointment or other provision in will to former spouse.

If, after executing a will, the testator is divorced, his marriage is annulled or its nullity declared or such marriage is dissolved on the ground of absence, the divorce, annulment, declaration of nullity or dissolution revokes any disposition or appointment of property made by the will to the former spouse and any provision therein naming the former spouse as executor or trustee, unless the will expressly provides otherwise.

§ 4.7. Revocatory effect of birth of child after execution of will.

1. Conditions for and extent of protection. Whenever a testator, during his lifetime or after his death, has a child born after the execution of a last will and dies leaving the after-born child unprovided for by any settlement, and neither provided for nor in any way mentioned in the will, every such child shall succeed to a portion of the testator's estate as herein provided:

(a) If the testator has one or more children living when he executes his last will, and in the event:

(i) No provision is made therein for any such child, an after-born child is not entitled to share in the testator's estate; but if

(ii) Provision is made therein for one or more of such children, an after-born child is entitled to share in the testator's estate as follows:

A. The portion of the testator's estate in which the after-born child may share is limited to the disposition made to children under the will.

B. The after-born child shall receive such share of the testator's estate, as limited in subparagraph (a)(ii)(A), as he would have received had the testator included all after-born children with the children upon whom benefits were conferred under the will, and given an equal share of the estate to each such child.

C. To the extent that it is feasible, the interest of the after-born child in the testator's estate shall be of the same character, whether an equitable or legal life estate or in fee, as the interest which the testator conferred upon his children under the will.

(b) If the testator has no child living when he executes his last will, the after-born child succeeds to the portion of such testator's estate as would have passed to such child had the testator died intestate.

2. Sources from which share is taken. The after-born child if protected under this section, may recover the share of the testator's estate to which he is entitled, either from the other children under subparagraph 1(a)(ii) or from, the testamentary beneficiaries under subparagraph 1(b), ratably, out of portions of such estate passing to such persons under the will. In abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent possible.

§ 4.8. Limitations on testamentary dispositions for charitable and other purposes.

A person may make a testamentary disposition of his entire estate to any person for a benevolent, charitable, educational, literary, scientific, religious or missionary purpose, provided that if any such disposition is contested by the testator's surviving issue or parents in accordance with the conditions herein set forth, it shall be valid only to the extent of one-half of such testator's estate, wherever situated, after the payment of debts. An issue or parent may not contest a disposition as invalid hereunder unless he will receive a pecuniary benefit from a successful contest as a beneficiary under the will, or as a distributee of the testator's estate. In addition, an election to contest under this section must be made within six months from the date of the issuance of letters by written notice to be served upon any personal representative in the manner prescribed by paragraph 4 of section 4.1 for the service of notice of election by a surviving spouse except that if an infant or an incompetent defaults in making such election, the probate court, for reasonable cause, may relieve such person from such default and authorize the making of an election on his behalf provided that no decree settling the account of the personal representative has been made and that twelve months have not elapsed since the issuance of letters.

AN ACT TO GOVERN THE DEVOLUTION OF ESTATES AND ESTABLISH RIGHTS OF INHERITANCE FOR SPOUSES OF BOTH STATUTORY AND CUSTOMARY MARRIAGES

WHEREAS, the Constitution of this Republic guarantees that "All persons are equal before the law and are therefore entitled to the equal protection of the law"; and

WHEREAS, since the inception of this Republic over a century ago, there has been a dichotomy of legal rights between the customary wife/widow regarding dower rights and the administration of their deceased husband's estates; and

WHEREAS, it is a political truism that the quality of justice a nation metes out to its citizens determines the degree of democracy of that country; and

WHEREAS, according to law extent, the customary wife is considered a chattel, the property of her husband, which doctrine is repugnant not only to the/universal Declaration of Human Rights, but also the Liberian Constitution which provides that "... the person shall be held in slavery of forced labor within this Republic, nor shall any citizen of Liberia or any person resident therein deal in slaves or subject any other person to forced labor, debt, bondage or personage..."; and

WHEREAS, the Constitution of this Republic mandates the Legislature to enact laws to govern the devolution of estates and establish rights of inheritance arid decent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages".

NOW, THEREFORE:

It is entitled by the Liberian National Legislature of the Government of the Republic of Liberia in Legislature Assembled.

Section 1. Title of Act. This Act shall be cited as the Equal Rights of the Customary Marriage Law of 1998.

CHAPTER 1. DEFINITION'S

Section 1. In this Act, unless the context otherwise requires:

(a) "Customary marriage" means marriage between a man and a woman performed according to the tribal tradition of their locality;

(b) "Tradition" means those values, norms and customs which a tribe of a locality has practiced over the ages and is considered their way of life;

(c) 'Dover" means the one-third (1/3) interest of the tribal husband's property to which his widow is entitled as of right regardless of whether or not the widow and children are for her late husband, or whether or not she assisted him in acquiring the property;

(d) "Widow" means a woman whose husband is dead;

(e) "In loco parentis" means those persons standing in the place of a person, or a substitution of parents;

(f) "Letters of Administration" means the authority given by the probate court to a tribal widow/widows, children of tribal marriage, or next of kin to take care of or control the property of the decease which he left at the time of his death;

(g) "Estate" means the total amount of property, real, personal and mixed, which a person died seized of at the time of his death;

(h) 'intestate estate" means the property left by one who has died without leaving a Last Will and Testament describing how said property is to be divided;

(i) 'Tribal or customary spouse" means either the husband or wife

who is married according to tribal tradition;

(j) "To confess" means for a woman, whether married or not, to call the name of a man, other than her husband or boyfriend, with whom she has illicit sexual intercourse;

(k) "Christian marriage" means that marriage which is performed either in the church, at home, or any place by a priest, pastor or judge, according to statute;

(1) "Inchoate dower" means a wife's vested interest in the property of her husband immediately upon marriage during his lifetime, which may become a right of dower after his demise.

CHAPTER 2. RIGHTS, DUTIES AND LIABILITIES OF CUSTOMARY MARRIAGE

§ 2.1. Equal Right to be Accorded Customary Wife.

All customary marriages shall be legal within this Republic, and the rights, duties and liabilities of the statutory wife shall likewise be accorded to all customary wives, consistent with and pursuant to the provisions contained in the Act Adopting A New Domestic Relations Law, known as title 9 of the Liberian Code of Laws Revised, 1973, and which is hereby fully incorporated, as if quoted verbatim herein.

§ 2.2. Recovery of Dowry Prohibited.

The recovery of dowry (token) from the, wife or her parents by the husband is hereby prohibited. Any husband who collects or attempts to collect dowry from his wife or her parent by use of force, directly or indirectly, has committed a felony of the first degree, and upon conviction in a court of competent jurisdiction, shall be fined the

amount of not less than LD500.00 nor more than LD1,000.00, including restitution, if any dowry was refunded.

§ 2.3. Husband/Wife Inchoate Dower.

Immediately upon marriage, the customary wife shall be entitled to one-third of her husband's property, personal or real, and vice versa, regardless whether or not he/she helped him/her to acquire said property.

§ 2.4. Compulsory Wife Labor Prohibited.

It shall be the responsibility of customary spouses to work in partnership and adequately maintain and support their household, according to their financial or physic means.

§ 2.5. Wife's Human Right to be Respected.

Every customary husband shall respect his wife's human rights. any violation of this section shall entitle the wife to seek redress in a court of law.

§ 2.6. Wife's Property Exclusively Her Own.

(a) The property acquired or owned by a customary woman either before or during marriage, belongs to her exclusive of her husband and she is therefore free to do any lawful business in her own name, including the right to contract with third parties but to the full knowledge and consent of her husband.

(b) Any customary husband who shall control, or attempts to control his wife's property, or prevents her from operating her lawful business, has committed a felony of the second degree (Theft of Property), and upon conviction in a court of competent jurisdiction,

shall be fined the amount of not less than LD$200.00 nor more than LD500.00, including restitution of property of the wife converted to his personal use.

§ 2.7. Confession Damages Prohibited.

No customary husband shall aid, abet, or create the situation for his customary wife to have illicit sexual intercourse with another man for the sole purpose of collecting damages. Any customary husband who shall violate this section has committed a felony of the first degree and, upon conviction in a court of competent jurisdictions, shall be fined the amount of not less than LD200.00, nor more than LD500.00, including restitution of the damages collected, if any.

§ 2.8. "Confessions" Names Unlawful.

It shall be unlawful for any customary person or husband to compel or demand any female of legal age, whether or not she is his customary wife, to "confess" or call the name of her lover with whom she has had illicit sexual intercourse in order to collect damages from said lover, for interferences with domestic relations, either spouse may seek redress through a court of competent jurisdiction or tribal court. Any violation of this section shall constitute a felony of the second degree, and the offender shall, upon conviction in a court of competent jurisdiction, be fined the amount of not less than LD500.00, nor more than LD1,000.00.

§ 2.9. It shall be unlawful for any customary female under the age of 16 to be given in customary marriage to a man. Any tribal person who violates this section has committed a felony of the first degree and, upon conviction, shall be fined the amount of not less than LD500.00 nor more than LD1,000.00.

§ 2.10. Unlawful for Parents to Choose Daughter's Husband.

(a) Every customary female of legal ago shall have the unrestricted right to marry the man of her choice. It shall be unlawful for any tribal parent to choose a husband for his/her daughter, or compel the daughter or other female relative to marry a man not of her choice.

(b) Any tribal parent or next of kin who shall violate section 2.10(a) of this Act has committed a felony of the first degree and, upon conviction, is punishable by a fine of not less than LD500.00 nor more than LD1,000.00.

CHAPTER 3. DEVOLUTION OF ESTATES AND RIGHTS OF INHERITANCE

§ 3.1. Decedents Estates Law Applicable to Customary Marriage.

The provision as contained in Title 8 of the Liberian Code of Laws Revised of 1972, known as the New Decedents Estates Law, including a Probate Court Procedure Code, are hereby incorporated as if quoted verbatim and which shall equally apply to alt native customary marriages immediately after the passage of this Act.

§ 3.2. Widow's Dower Rights.

Upon the husband's death, the widow or multiple widows shall be entitled to only one-third (1/3) of the late husband's property; the balance two-thirds (2/3) of the decedent's property shall descent to his children, if any, or to his collateral heirs according to the Decedents Estates Law.

§ 3.3. Widow's Liberty Not Restricted After Husband's Death.

After the death or burial of her/their husband, the customary widow or multiple widows shall be at liberty either to remain on the premises of her/their late husband to administer said estate, or she/they may take another husband of her/their choice and shall vacate the premises of the husband in as much as the new marriage entered automatically reverses said rights and same property returned to the heirs or children of the late husband.

§ 3.4. Compulsory Marriage of Widow of Deceased Husband's Kin Unlawful.

(a) No family member of the deceased husband shall compel the widow or widows to remain within the family or marry a kin of her/their late husband.

(b) Any family member who shall compel a widow to marry one of her husband's relatives against her will in order for said widow to be able to subsist or earn a livelihood has committed a felony of the first degree and, upon conviction in a court of competent jurisdiction, shall be fined amount of not less than L$500.00 nor more than L$1,000.00.

§ 3.5. Widow to Administer Deceased Husband's Estate.

A widow or multiple widows collectively, children or collateral heirs shall have the unrestricted right to petition the probate court in their jurisdiction for Letters of Administration to administer the property of said decedent, and which right shall not be denied by probate court within the Republic. Any denial of this right shall en-title the aggrieved party to appal to the Supreme Court of Liberia.

§ 3.6. Right of Tribal Inhabitants to Make Last Will and Testament.

Every male and female of legal age under customary or tribal law

shall have the right to make his/her Last Will and Testament, describing how his/her property is to be distributed after his/her death.

§ 3.7. Custody of Minor Children Right of Spouse.

Upon the death of either spouse (husband or wife), said children, if minors, shall remain with the spouse living as of right. No member of the deceased family shall deprive the spouse living of the right to custody of said minor children, taking into consideration the best interest of the child.

Section 2. Repealers. Sections 404 (paragraphs 2-3), sections 405 and 406 of title 1 of the Liberian Code of Laws of 1956, known as the Aborigines Law, and all Regulations of the Ministry of Internal Affairs governing tribal citizens of this Republic which are repugnant to any provisions of this Act, are hereby declared repealed.

Section 3. This act shall take effect immediately upon publication in handbills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

PART II

Probate Court Procedure Code

Chapter 101. GENERAL PROVISIONS

Subchapter A. Application of Code
§ 101.1. Title of Code.
§ 101.2. Scope and application of Civil Procedure Law and other laws.
§ 101.3. Application of Code to pending and subsequent proceedings.
Subchapter B. Definitions
§ 101.11. Terms defined.

Subchapter A. APPLICATION OF CODE

§ 101.1. Title of Code.

This part shall be entitled and cited as the Probate Court Procedure Code.

§ 101.2. Scope and application of Civil Procedure Law and other laws

This Code shall govern the practice and procedure in the special proceedings coming within the jurisdiction of the Monthly and Probate Court, the Provisional Monthly and Probate Courts, and the probate divisions of the Circuit Court. Where the practice and procedure in any such special proceedings is not prescribed by this Code, the practice and procedure shall be in accord with the rules of court promulgated for probate courts and, if none has been promulga-

ted, the Civil Procedure Law and any other laws applicable to practice and procedure shall apply.

§ 101.3. Application of Code to ending and subsequent proceedings.

This Code shall apply to all proceedings hereafter commenced. This Code shall also apply to all further proceedings in pending matters except to the extent that the court determines that application in a particular pending proceeding would not be feasible or would work injustice, in which event the former procedure applies. Proceedings pursuant to law in a proceeding taken prior to the time this Code takes effect shall not be rendered ineffectual or impaired by this Code.

Subchapter B. DEFINITIONS

§ 101.11. Terms defined.

When used in this Code, unless otherwise required by the context, or unless a contrary intent is expressly declared in the provision to be construed, the words, phrases or clauses hereafter set forth shall be construed as follows:

(a) "Acknowledged": Acknowledged or proved in the same manner as a deed conveying real property is required to be acknowledged or proved.

(b) "Administrator": Any person to whom letters of administration have been issued to administer the estate of a decedent who died intestate.

(c) "Administrator cum testamento annexo", designated herein as "administrator c.t.a.": Any person to whom letters of admini-

stration with the will annexed have been issued to administer the estate of a decedent who died testate when there is no executor qualified to act.

(d) "Administrator de bonis non," designated herein as "administrator d.b.n.": Any person to whom letters of administration have been issued as a successor to an administrator or executor.

(e) "Ancillary administrator": Any person to whom ancillary letters of administration have been issued to administer property in Liberia of an intestate estate of decedent whose domicile was in a foreign state.

(f) "Ancillary executor or administrator c.t.a.": Any person to whom ancillary letters testamentary or ancillary letters of administration c.t.a. have been issued to administer property in Liberia of the testate estate of a decedent whose domicile was in a foreign state.

(g) "Beneficiary": Any person entitled to any part or all of the estate of a decedent under a will or in intestacy.

(h) "Bequest" or "legacy": A transfer of personal property by will.

(i) "Court" or "probate court": The Monthly and Probate Court, the Provisional Monthly and Probate Courts, and the probate division of the Circuit Court, including any judge, justice or probate judge assigned or appointed to serve as judge of such a court.

(j) "Creditor": Any person having a claim against a decedent.

(k) "Decree": The determination of the rights of the parties to a special proceeding in the court.

(l) "Devise": (1) When used as a noun, a transfer of real property by will; (2) when used as a verb, to transfer real property by will.

(m) "Devisee": Any person to whom real property is transferred by will.

(n) "Distributee": Any person entitled to take or share in the property of a decedent under the statutes governing descent and distribution.

(o) "Domiciliary": A person whose domicile is within the Republic of Liberia.

(p) "Domicile". A fixed, permanent and principal home to which a person wherever temporarily located always intends to return.

(q) "Eligible to receive letters": Not disqualified on any of the grounds set forth in section 107.5.

(r) "Estate": All of the property of a decedent or trust, as originally constituted and as it from time to time exists during administration.

(s) "Executor": Any person to whom letters testamentary have been issued to administer the estate of a decedent who died testate.

(t) "Fiduciary": An administrator, administrator c.t.a., administrator d.b.n., ancillary administrator, executor, guardian, temporary administrator, testamentary trustee, to any of whom letters have been issued, and also a voluntary administrator and a curator acting as administrator or a curator to whom letters have been

issued.

(u) "Funeral expense": Includes reasonable expenses of a funeral, suitable church or other services as an integral part thereof, expense of internment or other disposition of the body, a burial lot and suitable monumental work thereon.

(v) "Guardian": Any person to whom letters of guardianship, whether of the person, property, or both, of an infant or an incompetent have been issued.

(w) "Incapacitated person": Any person who for any cause is incapable adequately to protect his rights, although not judicially declared an incompetent,

(x) "Incompetent": Any person judicially declared incompetent to manage his affairs.

(y) "Infant": Any person under the age of 21 years.

(z) "Intestate": (1) A person who dies without leaving a valid will; (2) where it is used with respect to particular property, a person who dies without effectively disposing of that property by will.

(aa) "Judicial settlement": A proceeding whereby the account of a fiduciary is settled and adjudicated by decree of the court.

(bb) "Legacy" or "bequest": A transfer of personal property by will.

(cc) "Legatee": Any person designated to receive a transfer by will of personal property.

(dd) "Order": A direction of the court made or entered in writing and not included in a decree.

(ee) "Person interested": Any person entitled either absolutely or contingently to share as a beneficiary in the estate. A creditor shall not be deemed a person interested. Where this Code provides that a "person interested" may apply for relief, a verified allegation of an interest in fact, suffices for the purpose of the application, although the interest may be disputed, unless or until the fact of interest has been judicially determined and no appeal is pending therefrom.

(ff) "Person under disability": Any person who is (1) an infant, or (2) an incompetent, or (3) an incapacitated person, or (4) unknown or whose whereabouts are unknown or (5) confined as a prisoner and who fails to appear under circumstances which the court finds are due to confinement in a penal institution.

(gg) "Presumptive distributes": Any person who would be a distributes if the person alleged to be deceased, or an absentee, were dead.

(hh) "Probate court" or "court": The Monthly and Probate Court, the Provisional Monthly and Probate Court and the probate divisions of the Circuit Court, including any judge, justice or probate judge assigned or appointed to serve as judge of such a court.

(ii) "Process": Citation, order to show cause, subpoena and any other mandate of a probate court by which jurisdiction is obtained of a party.

(JJ) "Property": Anything that may be subject of ownership and is real or personal property.

(kk)"Respondent": Every party to a proceeding except a petitioner.

(ll) "Temporary administrator": Any person to whom letters of temporary administration have been issued to administer a decedent's estate pending issuance of either letters of administration or letters testamentary thereon.

(mm) "Testamentary trustee": Any person to whom letters of trusteeship have been issued to administer a trust created by provisions of a will.

(nn) "Voluntary administrator": Any person administering an estate without letters having been issued to him.

(oo) "Will": A last will including all the codicils thereto.

Chapter 102. JURISDICTION AND POWERS

§ 102.1. General jurisdiction of court.
§ 102.2. Jurisdiction of parties and subject matter; when and how obtained.
§ 102.3. Restrictive effect of due exercise of jurisdiction.
§ 102.4. Exclusive territorial jurisdiction of individual courts.
§ 102.5. Resolution of primacy when two or more courts have concurrent jurisdiction over estate of non-domiciliary.
§ 102.6. Powers incidental to jurisdiction of the court.
§ 102.7. Territorial extent of service of process.

§ 102.1. General Jurisdiction of court.

The court, except as otherwise provided by statute, shall exercise full and complete general jurisdiction in law and in equity to administer justice in all matters relating to the affairs of decedents and others over whose affairs the court has jurisdiction.

§ 102.2. Jurisdiction of parties and subject matter; when and how obtained.

1. Subject matter. The court obtains jurisdiction in every case to make a decree or other determination by the existence of the jurisdictional facts prescribed by statute. The jurisdiction of the court is exercised by the commencement of a proceeding in the court. All proceedings are special proceedings and are commenced by filing a petition with the clerk of court and issuance of a citation thereon.

2. Parties. Personal jurisdiction of parties is obtained by service of process upon the parties or by submission to the jurisdiction of the court by waiver of issuance and service of process, appearance in person or by attorney or by pleading.

§ 102.3. Restrictive effect of due exercise of Jurisdiction.

Jurisdiction once duly exercised over any estate or probate matter by the court excludes the subsequent exercise of jurisdiction by another probate court over the same estate or matter, except as specially prescribed by law. All further proceedings in the same estate or matter involving proceedings in a probate court must be taken in the same court subject to the aforestated exception.

§ 102.4. Exclusive territorial Jurisdiction of individual courts.

A probate court has jurisdiction exclusive of every other probate court over the estates of the following persons:

(a) Any person who at the time of his death or disappearance was a domiciliary domiciled within the area over which the court has territorial Jurisdiction;

(b) A non-domiciliary who:

1. left property at the time of his death or disappearance within the area over which the court has territorial jurisdiction and in no other area in Liberia, or

2. left personal property which since his death or disappearance has come into that area and in no other area in Liberia and remains unadministered, or

3. left a cause of action against a domiciliary of that area for damages for the wrongful death of the non-domiciliary decedent and who left no property in any other area in Liberia.

§ 102.5. Resolution of primacy when two or more courts have concurrent Jurisdiction over estate of non-domiciliary.

When an estate or other probate matter may be within the jurisdiction of two or more probate courts by virtue of personal or real property of a non-domiciliary decedent or absentee being within two or more areas over which separate probate courts have territorial jurisdiction, the court which first exercises jurisdiction thereto by the commencement of the proceeding shall retain jurisdiction thereafter.

§ 102.6. Powers incidental to jurisdiction of the court.

The court has the following powers:

(a) To open, vacate, modify or set aside any decree or order of the court directing distribution of the property of an estate which was made prior to the probate of and without knowledge of a will which affects such distribution, and in the same or a different proceeding, on notice to the persons or the fiduciaries of the persons to whom the property has been distributed, to make such further and different direction as to such distribution as justice may require and as incident thereto, order the refund

of any property theretofore distributed erroneously.

(b) To transfer for trial in the probate court having jurisdiction any action or proceeding pending in any court other than the Circuit Court, the Debt Court or the Tax Court, which affects or relates to the administration of a decedent's or absentee's estate and to receive for trial any such action or proceeding pending in the Circuit Court, the Debt Court or the Tax Court which may by order of these courts be transferred to the probate court on the prior order of that court.

(c) To determine a decedent's or absentee's interest in any property claimed to constitute a part of his gross estate subject to inheritance tax, if any, or the payment of inventory fees hereunder and like charges, or to be property available for distribution under his will or in intestacy or for payment of claims, and to determine the rights of any persons claiming an interest therein, as against the decedent, or as between themselves. and to construe any instruments made by him affecting such property. Nothing herein provided shall be construed to confer jurisdiction on the court over inter-vivos trusts.

(d) To dismiss any proceeding which the petitioner has neglected to prosecute diligently.

(e) To determine any unfinished business pending before its predecessor in office and to sign or certify papers or records left uncompleted or unsigned by its predecessor.

(f) In the exercise of its jurisdiction the court shall have all of the powers that the Circuit Court would have in like actions and proceedings including but not limited to such incidental powers as are necessary to carry into effect all powers expressly conferred herein.

(g) The enumeration of powers herein shall not be deemed exclusive.

§ 102.7. Territorial extent of service of process.

All processes of the court may be served and executed in any part of the Republic of Liberia, and without the Republic when authorized by law.

Chapter 103. PROCEEDINGS, PLEADINGS AND PROCESS

§ 103.1. Statute of limitations.
§ 103.2. Pleadings.
§ 103.3. Verification.
§ 103.4. Contents of petition.
§ 103.5. Process where returnable.
§ 103.6. Contents of citation.
§ 103.7. Service of process.
§ 103.8. Return day of citations
§ 103.9. When service of process is completed.
§ 103.10. Who may serve process.
§ 103.11. Issuance of process to designee for person under disability; to Attorney General where distributees unknown.
§ 103.12. Additional parties; supplemental process.
§ 103.13. Proof of service of subpoena or process.

§ 103.1. Statute of limitations.

For the purpose of computing the period of limitation under chapter 2 of the Civil Procedure Law, a proceeding is commenced upon the

filing of a petition with the clerk of court and issuance of a citation thereon.

§ 103.2. Pleadings.

1. Kinds of pleading. Unless otherwise provided in this Code, pleadings shall consist of a petition, an account in an accounting proceeding and a return consisting of an answer or objections. There shall be no other pleading unless directed by the court.

2. Time of servings answer or objection. Except as provided in sections 113.11 and 116.8(d) answers or objections shall be served on all parties who have appeared at least one day before the date fixed for the return of process and shall be filed with the clerk of court on or before such date.

3. Form of averments. Statements in a pleading shall be sufficiently particular to give the court and parties notice of the claim, objection or defense and shall contain a demand for the relief sought.

4. Upon whom service of copies are to be made. In addition to the requirements set forth in section 103.7 copies of all pleadings shall be served on any party who has appeared in the proceeding and demanded that a copy of all papers be served upon him, and upon all parties upon whom the court by written order or oral direction entered in the minutes directs that service be made. A party who fails to comply with this requirement may be treated as a party in default.

§ 103.3. Verification.

All pleadings shall be verified in the manner provided in chapter 9 of the Civil Procedure Law.

§ 103.4. Contents of petition.

In addition to such other requirements as may be applicable to the petition in a particular proceeding, a petition must substantially set forth:

(a) The title of the proceeding, the name and domicile of the person to whose estate or person the proceeding relates and of the petitioner.

(b) The facts upon which the jurisdiction of the court depends in the particular proceeding.

(c) So far as they can be ascertained with due diligence, the names and addresses of all the persons interested upon whom service of process is required or concerning whom the court is required to have information; and in addition there shall be shown in form satisfactory to the court, the following:

(i) If any person be an infant, his age, the date of his birth, whether he has a guardian, whether his father, or if he be dead, his mother, is living, his connection with the estate, and the names and addresses of such persons and the person with whom the infant resides.

(ii) If any person be an incompetent, the name and address of his guardian, if any, and of the person or institution having his care and custody and if there be no guardian, the name and address of an adult relative or friend having an interest in his welfare.

(iii) If any person be an incapacitated person, the facts regarding his incapacity and if confined, the name and address of the institution having his care and custody and the name and address of an adult relative or friend having an interest in his welfare.

(iv) If any person be unknown or his name or whereabouts be unknown, a general description of such person, showing his connection with the estate and his interest in the proceedings and the facts showing what effort has been made to ascertain his name or whereabouts.

(v) If any person be a prisoner confined in the Republic or elsewhere, the name and address of the institution in which he is confined, and the name and address of an adult relative or friend having an interest in his welfare.

(vi) If any person be included in a class, and his name be unknown, the names and addresses of those persons of the class who are known, and a general description of all other persons belonging to the class, their connection with the estate, and their interest in the proceeding.

(d) That so far as known to the petitioner, there are no other persons than those mentioned interested in the application or proceeding.

(e) A request for relief sought.

§ 103.5. Process, where returnable.

The process of a probate court, except where otherwise prescribed by law, must be made returnable before the court from which it was issued.

§ 103.6. Contents of citation.

1. Basic requirements. A citation must be attested in the name of the judge of the court and by the seal of the court and must substantially

set forth the following:

(a) The name and domicile of the person to whose estate or person the proceeding relates and of the petitioner;

(b) The names of all persons to be served who have not waived issuance and service of process, or have not appeared;

(c) The time when and the place where the citation is returnable, which time must be within the requirements of section 103.8 but not more than four months after the date of issuance;

(d) The object of the proceeding and the relief sought;

(e) The date when issued;

(f) The name and address of the petitioner's attorney;

(g) A notice to persons to be served that they are not obliged to appear in person and that if they fail to appear it will be assumed that they do not object to the relief requested.

2. *Additional requirements in specific cases.* In addition, in the cases herein specified, it must substantially set forth the following:

(a) Where the names of some persons to be served comprising a class are unknown, the names of those persons of the class who are known and a general description of all other persons belonging to the class, showing their interest in the proceeding.

(b) Where the persons to be served are unknown, a general description of such persons, showing their interest in the proceeding.

(c) In either of such cases, where the petitioner is ignorant of the name of a person to be served, he may designate that person in the citation by a fictitious name or so much of his name and identity as is known.

§ 103.7. Service of process.

1. Civil Procedure Law generally followed. Except for the specifications for the special cases set forth in paragraphs 2 and 3, a citation shall be served in the same manner as is provided in the Civil Procedure Law for the service of a summons in an action. A copy of the petition and of supporting papers, if any, shall be served therewith on all respondents required to be served.

2. Service by publication. There it is shown in the petition or by affidavit or by the return of the sheriff, that in spite of the exercise of due diligence, service of a citation by personal delivery within Liberia cannot be effected on a respondent, the court may direct that service be made by publication in the manner set forth in chapter 3 of the Civil Procedure Law for publication of a summons subject to the provisions of sections 103.8 and 103.9, provided that where the person to be served is an absentee alleged to be deceased, the court may direct that in addition to publishing in the manner set forth in chapter 3 of the Civil Procedure Law, the citation be published for a like period in a newspaper serving the area at or near the place where the absentee was last known to be.

3. Service on consular officials in certain cases concerning non-domiciliary aliens. When the interest of a non-domiciliary alien in an estate is less than $500 or his address is unknown or such estate's gross assets are less than $5000, service of citation upon the non-domiciliary alien may be made by delivery of a copy to a consular representative of the alien's nation, if any there be stationed in the Republic of Liberia.

§ 103.8. Return day of citation.

1. Based on place of service. Except as otherwise provided in paragraphs 2 and 3, the time of the return day of a citation shall be governed by the requirement that the citation shall be served at least 10 days before the return day if the person is served within Liberia and at least 30 days before the return day if the person is served without the Republic. The time periods shall commence to run from the time that service is completed as provided in section 103.9.

2. Upon service by publication. If a citation is served by publication,. the return day shall not be earlier than the tenth day after service is completed as provided in section 103.9.

3. When a consular official is served. If a citation is served upon a consular official pursuant to paragraph 3 of section 103.7, it shall be served at least 30 days prior to the return day.

§ 103.9. When service of process is completed.

1. Service by personal delivery. The service of process is completed immediately upon personal delivery to the respondent when service is so made.

2. Service by publication. Service by publication is complete on the day when the last notice is published pursuant to the order of the court, except in the following instances:

(a) If the respondent shall have appeared before such last notice is published, the service shall be deemed complete on the day of his appearance; or

(b) If the respondent has received the mailed copy of the publication containing a citation as evidenced by the return of

a receipt signed by him, the service shall be deemed complete as of the date of such receipt.

§ 103.10. Who may serve process.

Service of process within and without the Republic may be made by any of the persons authorized to serve a summons by the provisions of chapter 3 of the Civil Procedure Law as set forth therein.

§ 103.11. Issuance of process to designee for person under disability; to Attorney General where distributees unknown.

1. Person under disability. Whenever the person to be served is a person under disability, whether or not a party so requests, the court may in the interest of such person, require by order or direction in the minutes that a copy of the process issued be delivered to a person designated to protect his interests, in the manner and within the time specified. The person so designated shall have with respect to the proceeding while so designated, in behalf of such person, until the return of process and such further time as directed by the court, the same powers and duties as a guardian ad litem and is authorized to admit service of such process.

2. Where distributees unknown. In every case where it appears that there is no distributee or that it is not known whether or not there be such, the process shall be issued to the Attorney General.

§ 103.12. Additional parties; supplemental process.

The court may issue a supplemental process at any time and require any party to procure it and cause it to be served in conformity with the provisions of sections 103.7 and 103.8 on any person in any proceeding, so that any person necessary or proper to a final determination therein may be made a party thereto.

§ 103.13. Proof of service of subpoena or process.

Proof of service of a subpoena or process shall be made in the same manner and form as is prescribed in chapter 3 of the Civil Procedure Law for making return as to service of process in a civil action.

Chapter 104. APPEARANCE: PROTECTION OF PERSONS UNDER DISABILITY

§ 104.1. Appearance of parties.
§ 104.2. Appearance for infant or incompetent.
§ 104.3. Appointment of guardian ad litem.
§ 104.4. Qualification and duties of guardian ad litem.
§ 104.5. Person under disability bound by proceeding when represented.
§ 104.6. Compensation of guardian ad litem.

§ 104.1. Appearance of parties.

1. Who may appear. A party other than an infant or incompetent may appear and prosecute or defend a special proceeding in person or by attorney, except that a corporation or voluntary association shall appear by attorney. An infant or an incompetent may appear and prosecute or defend a special proceeding by the guardian of his property, who may do so in person or by attorney as provided in section 104.2.

2. How made. An appearance is made by pleading, by written waiver of process, by serving upon the attorney for the petitioner and filing with the clerk a signed and acknowledged notice of appearance or by appearance in person noted upon the record in open court. The notice may be signed by any person authorized under paragraph 1 to appear for the party.

3. Evidence of attorney's authority. Where a party is a nondomiciliary or has not been served personally with process within the Republic, the court may require that any person appearing for the party furnish acknowledged evidence of authority so to appear. The authorization shall set forth whether there has been executed previously by the party any power of attorney or similar instrument relating to the party's interest in the estate and any assignment of the interest.

4. Appearance by waiver of process. Any adult competent party may also appear by an acknowledged waiver of issuance and service of process which upon filing with the clerk is equivalent to the filing of an acknowledged notice of appearance under paragraph 2. In a probate proceeding the waiver shall state the date of the will to which it relates.

5. Termination of appearance of consul. When a consular official shall have appeared in behalf of an alien, a subsequent appearance by the attorney in fact of the alien pursuant to recorded power of attorney or appearance by an authorized attorney shall terminate the appearance of the consul.

§ 104.2. Appearance for infant or incompetent.

1. By guardian of the property. An infant or an incompetent shall appear by the guardian of his property, unless the court appoints a guardian ad litem. If a guardian ad litem is appointed, such appointment does not bar the guardian of the property from appearing as a party. The person so appearing as guardian of the property and his attorney shall each file on or before the return day of process an affidavit showing the following:

(a) that he is qualified to protect their rights;

(b) whether he is related to or connected in business with any party

to the proceeding or the attorney for any party;

(c) whether he is entitled to share in the estate in which the infant or incompetent is interested or is in any way interested therein;

(d) whether he has any interest adverse to or in conflict with that of the infant or incompetent; and

(e) such additional facts as may be required by the court.

2. By guardian ad litem. An infant or incompetent shall appear by a guardian ad litem where no appearance is made as provided in paragraph 1 or where the court so directs because of possible adversity or conflict of interest or for other cause.

§ 104.3. Appointment of guardian ad litem.

A person under disability who does not appear by his guardian pursuant to section 104.2, except as otherwise expressly provided, shall appear by a guardian ad litem appointed by the court on nomination or on its own initiative whenever such person is a necessary party or for other reason the court deems it necessary to appoint a guardian ad litem to protect the interests of such party. The court, however, shall not appoint a nominated attorney or counsellor at law as guardian ad litem if by reason of adversity or conflict of interest or for other cause a different appointment is required.

§ 104.4. Qualification and duties of guardian ad litem.

A guardian ad litem, shall be an attorney or counsellor at law and upon appointment shall comply with the following:

(a) Before entering upon his duties, he shall file a consent to act and unless he has previously done so, a verified statement of no

interest adverse to or in conflict with the person under disability for whose protection he has been appointed, and

(b) He shall file an appearance and take such steps with diligence as deemed necessary to represent and protect the interest of the person under disability, and file a report of his activities together with his recommendation upon the termination of his duties or at such other time as directed by the court.

§ 104.5. Person under disability bound by Proceeding when represented.

Whenever a guardian ad litem shall be appointed for a person under disability as defined in this Code, or an infant or incompetent shall appear by his guardian, or where such appointment is not required under this Code or is dispensed with pursuant to power conferred by this Code, the proceeding shall be binding upon such person to the same extent as if such person had appeared therein and was under no disability.

§ 104.6. Compensation of guardian ad litem.

For services rendered, a guardian ad litem shall receive reasonable compensation to be allowed by the court, payable from the estate or from the interest of the person under disability or from both in such proportion as directed by the court, which shall not exceed 5 percent of such interest. When circumstances preclude the rendering of an award, the court may direct that the fixation of the amount of compensation be reserved to future determination.

Chapter 105. TRIALS AND HEARINGS

§ 105.1. Trial by jury; when, where and how obtained.
§ 105.2. Proceedings upon jury trial.

§ 105.3. Trial by the court.
§ 105.4. Trial by referee.
§ 105.5. Testimony of distant witnesses in uncontested proceedings.
§105.6. Effect of uncontroverted allegations of fact.

§ 105.1. Trial by Jury; when, where, and how obtained.

1. Right to jury trial. A party is entitled to trial by jury, if duly demanded, in any proceeding where any controverted issue of fact arises as to which any party has a constitutional right of trial by jury and in any proceeding for the probate of a will in which such an issue of fact arises.

2. Demand for Jury. Any party may demand a trial by jury of any controverted issue of fact triable of right by a jury by serving upon the other parties and filing with the clerk of court a demand therefor in writing at any time after the commencement of the proceeding and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be separately and distinctly indorsed upon a pleading of a party. A party may not withdraw a demand for trial by jury without the consent of all other parties.

3. Order framing issue. When a jury trial has been duly demanded, within twenty days after joinder of issue and on two day's notice to the other parties who have appeared and pleaded, a proposed order framing the issues to be tried by the jury shall be submitted to the probate judge by the party demanding a jury trial; a counter-proposed order may be submitted by any of the other parties. In addition, the court may direct any party to submit a proposed order framing issues. After the submission, the court shall make an appropriate order setting forth the issues to be tried, a copy of which shall be served by the clerk of the court on all parties who have appeared and pleaded.

4. Place of jury trial. After issues have been framed for the jury, the proceeding and, where necessary, the papers and other records therein, shall be transferred to the trial term part of the circuit court within the county in which the probate court sits and the controverted issues of fact shall there be tried by a jury.

§ 105.2. Proceedings upon jury trial.

1. Procedure in general. Except as otherwise provided herein, the procedural provisions set forth in chapters 22 and 23 of the Civil Procedure Law shall apply to the conduct of jury trials.

2. Verdicts. In every case the trial court shall direct the jury to return a special verdict in accordance with the procedure set forth in connection with special verdicts unless in his opinion the law and the facts adduced in evidence justify the return of a general verdict. The verdict, if not set aside by the court before which the issues are tried, shall be conclusive except upon appeal and after being entered in the minutes shall be certified to the probate court by the clerk of the court in which the trial took place, whereupon the probate court shall enter a final decree accordingly.

§ 105.3. Trial by the court.

1. Issues to be decided by the court. The judge of the probate court shall decide on any controverted issue of fact not required to be tried by a jury unless it is submitted to an advisory jury in accordance with paragraph 2 or it is referred to a referee to determine.

2. Advisory jury. Upon the motion of any party or on the court's own initiative, the court may submit any controverted issue of fact required to be decided by the court to an advisory jury by transferring the proceeding and, where necessary, the papers and other records therein, to the trial term part of the circuit court within the county in

which the probate court sits, for trial by jury. The order directing such action shall specify the issues to be tried. The probate court, upon receipt of the certified special verdict, may confirm or reject in whole or in part the verdict of any advisory jury, may make new findings with or without taking additional testimony or may order a new hearing.

3. Decision of the court. In proceedings tried upon facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct entry of the appropriate order or decree. If an opinion or memorandum of decision is filed, it shall be sufficient if the findings of fact and conclusions of law appear therein. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court.

§ 105.4. Trial by referee.

In any pending proceeding the court may appoint, on motion of any party or on its own initiative, a referee to take evidence, make findings, and determine specific issues, to report issues, to perform particular acts or only to receive and report evidence. Referees appointed hereunder shall be governed by the provisions contained in chapter 24 of the Civil Procedure Law.

§ 105.5. Testimony of distant witnesses in uncontested proceedings.

In any uncontested proceeding where an attesting or a material witness who is in another county or in a distant part of the same county cannot conveniently attend before the court, it may make an order directing that the witness be examined in a more conveniently located probate court and specifying the nature and manner of the examination. A copy of the order must be transmitted to the judge of

the probate court so designated, together with the original will or court certified reproduction thereof where the testimony relates to the execution of a will. After the examination is reduced to writing and subscribed by the witness or otherwise duly authenticated, it, together with a statement of the proceeding upon the execution of the order, must be certified by the probate judge taking the examination, attested by the seal of his court and returned with the original will or court certified reproduction thereof, if any, to the court which directed the examination and there filed in its office.

§ 105.6. Effect of uncontroverted allegations of fact.

Except as otherwise prescribed by law, a petition or account filed in a proceeding, unless denied by answer, objection or other proof, is due proof of the facts contained therein.

Chapter 106. ORDERS AND DECREES: ENFORCEMENT

§ 106.1. Effect of entry of decree or order.
§ 106.2. Decree or order, when evidence of assets.
§ 106.3. Contempt or other execution does not preclude action on bond.

§ 106.1. Effect of entry of decree or orders.

A decree or order has the same effect and may be enforced in like manner as a similar judgment, decree or order made by the circuit court in a civil action.

§ 106.2. Decree or order, when evidence of assets.

Except as hereinafter set forth, a decree directing payment by a fiduciary to a creditor of the estate or to a person interested therein,

or an order permitting a judgment creditor to issue execution against a fiduciary is, except upon an appeal there from, presumptive evidence that there are sufficient assets in his hands to satisfy the sum which the court directs him to pay or for which the order permits the execution to issue. However, a decree charging a deceased fiduciary with assets upon an accounting under section 119.15 is not evidence of assets in the hands of the accounting fiduciary.

§ 106.3. Contempt or other execution does not preclude action on bond.

No proceedings taken to enforce a decree or order of the court, either by execution, punishment for Contempt or otherwise, shall preclude or affect in any manner an action or proceeding on a bond given by the person against whom the decree or order was directed.

Chapter 107. GENERAL PROVISIONS RELATING TO LETTERS GRANTED TO FIDUCIARIES

§ 107.1. Common requisites of letters.
§ 107.2. Limited and restrictive letters.
§ 107.3. Letters evidence of authority; effect of appeal and subsequent court measures.
§ 107.4. When surviving or remaining fiduciary may act; when successor must be appointed.
§ 107.5. Eligibility to receive letters.
§ 107.6. Qualification by fiduciaries.
§ 107.7. Filing and hearing of objections to grant of letters.
§ 107.8 Objections which require bond from fiduciary not otherwise required to file bond.
§ 107.9. Issuing court retains exclusive power over letters.
§ 107.10. Suspension, modification or revocation of letters for disqualification or misconduct.

§ 107.11. Suspension of letters pendente lite.
§ 107.12. Application by fiduciary for permission to resign.
§ 107.13. Cases in which letters may be suspended, modified or revoked without process.
§ 107.14. Effect and contents of decree suspending, modifying or revoking letters.
§ 107.15. Qualification to section 107.14 validation of acts done in good faith.

§ 107.1. Common requisites of letters.

Letters granted by any probate court to a fiduciary shall be issued in the name of the Republic, attested in the name of the judge of the court, sealed with the seal of the court and signed by the court or the clerk of the court or such other officer as shall be authorized or deputized for the purpose.

§ 107.2. Limited and restrictive letters.

Letters may be granted limiting and restricting the powers and rights of the holder thereof as follows:

(a) To the enforcement or prosecution of a cause of action in favor of the decedent or his fiduciary under general or special provisions of law, to the defense of any claim or cause of action against a decedent or his fiduciary, and from compromise of the action or the enforcement of a judgment recovered therein until the further order of the court and the filing of satisfactory security if required;

(b) Where it is impracticable to give a bond in the full amount required by statute, to receiving and administering only the property which the court may specify, and restraining him from receiving or administering other property until further order of

the court;

(c) To the adjustment, settlement, satisfaction or discharge of any claim in favor of or against the decedent or his fiduciary;

(d) To the performance of any act required in order to discharge the estate of a decedent from liability;

(e) To an account in behalf of the decedent for the performance by him of any trust or other responsibility;

(f) To the completion of any transfer made by a decedent or his fiduciary and to the execution of any instruments confirming any transfer so made;

(g) To the appearance in and conduct of an action in which a decedent or his fiduciary is a necessary or proper party;

(h) To any other purpose or act deemed by the court to be appropriate or necessary in respect of the affairs of the estate, the protection thereof or to the proper administration thereof.

In any case where limited and restrictive letters are granted, the court may reduce the amount of security otherwise required or dispense therewith according to the circumstances. In addition, such letters may contain appropriate recitals restraining the holder from doing any such acts or exercising any such powers as may be specified therein until the further order of the court and upon the filing, if ordered, of satisfactory security.

§ 107.3. Letters evidence of authority; effect of appeal and subsequent court measures.

Letters granted to fiduciaries by the court are conclusive evidence of

the authority of the persons to whom they are granted until the decree granting them is reversed or modified upon appeal or the letters are suspended, modified or revoked by the court granting them.

§ 107.4. When surviving or remaining fiduciary may act: when successor must be appointed.

1. When a fiduciary remains. When one of two or more fiduciaries die or where letters issued to one of them is revoked, a successor to the deceased fiduciary or to the one whose letters have been revoked shall not be appointed except when such appointment is necessary in order to comply with the express terms of a will; but the others may proceed and complete the administration of the estate pursuant to the letters and may continue any action or special proceeding brought by or against all.

2. When no fiduciary remains. When all the persons to whom letters have been issued die or where letters issued to all of them have been revoked by a decree of the probate court, that court has, except in a case where it is otherwise specially prescribed by law, the same power to appoint a successor to the person or persons whose powers have ceased as if the letters had not been issued. The successor may complete, the administration of the estate committed to his predecessor, he may continue in his own name as fiduciary a civil action or proceeding pending in favor of his predecessor and he may enforce a judgment, order or decree in favor of the latter.

§ 107.5. Eligibility to receive letters.

1. General rule and exceptions. Letters may issue to a natural person or to a person authorized by law to be a fiduciary except that the following are ineligible:

(a) An infant;

(b) An incompetent;
(c) A non-domiciliary alien;
(d) A felon;
(e) One who is incompetent to execute the duties of his office by reason of drunkenness, dishonesty, improvidence or want of understanding.

2. Persons ineligible in court's discretion. The court may declare ineligible to act as the only fiduciary, a person unable to read and write the English language.

§ 107.6. Qualification by fiduciaries.

Before letters are granted to a fiduciary, in order to qualify, he shall file in the office of the probate court the following:

(a) An acknowledged instrument stating his domiciliary address. If the fiduciary shall change his address so stated he shall promptly notify the court of his new address.

(b) His written oath to the effect that he will well, faithfully and honestly discharge the duties of his office and the trust reposed in him and duly account for all moneys or other property which may come into his hands. The oath shall also describe his office and state that he is not ineligible to receive letters.

(c) Such bond as may be required by law or by order of the court.

§ 107.7. Filing and hearing of objections to grant of letters.

Any person interested, before letters are granted to a fiduciary, may file objections showing his interest in the estate and stating one or more legal objections to granting the letters to one or more of the persons about to receive them. Where such objections are filed the

court may stay the granting of letters to the person against whom the objection is made until the matter is determined.

§ 107.8. Objections which require bond from fiduciary not otherwise required to file bond.

1. With respect to certain ineligibilities. Although an objection has been established to the satisfaction of the court that a person named as executor or a testamentary guardian or trustee, who is not required by the will to give a bond, is:

(a) a non-domiciliary, or

(b) does not possess the degree of responsibility required of a fiduciary, he may nevertheless entitle himself to letters by giving a bond as prescribed by law.

2. Citizens who subsequently become non-domiciliaries. If after the issuance of letters, a fiduciary not required by the will to give a bond, who is a citizen of this Republic, becomes a non-domiciliary, he may be required to give a bond in an amount to be fixed by the court upon objection filed and proof taken.

§ 107.9. Issuing court retains exclusive power over letters.

No court except the court which issues letters shall have power to suspend, modify or revoke them, so long as the court issuing them has jurisdiction of the estate or matter in which the letters were issued.

§ 107.10. Suspension, modification or revocation of letters for disqualification or misconduct.

In any of the following cases a creditor or person interested, any

person in behalf of an infant or any surety on bond of a fiduciary, may present to the court having jurisdiction a petition praying for a decree suspending, modifying or revoking those letters and that the fiduciary may be cited to show cause why a decree should not be made accordingly:

(a) Where the respondent was, when letters were issued to him, or has become since ineligible or disqualified to act as fiduciary and the grounds of the objection did not exist or for good cause the objection was not taken by the petitioner or a person whom he represents before the letters were granted;

(b) Where by reason of his having wasted or improperly applied the assets of the estate, or made investment unauthorized by law or otherwise improvidently managed or injured the property committed to his charge or by reason of other misconduct in the execution of his office, or dishonesty, drunkenness, improvidence, or want of understanding, he is unfit for the execution of his office;

(c) Where he has wilfully refused or without good cause neglected to obey any lawful direction of the court contained in any decree or other or any provision of law relating to the discharge of his duty;

(d) Where the grant of his letters was obtained by a false suggestion of a material fact;

(e) Where by the terms of a will, deed or order, his office was to cease upon a contingency which has happened;

(f) Where he has failed without sufficient reason to notify the court of change of his domiciliary address within 30 days after such change;

(g) Where he has removed property of the estate outside of the Republic without prior approval of the court;

(h) In the case of a testamentary trustee, where he has violated or threatens to violate his trust or is insolvent or his insolvency is apprehended or is for any other cause deemed an unsuitable person to execute the trust.[3]

§ 107.11. Suspension of letters pendente lite.

Upon the issuance of process in a proceeding under the provisions of section 107.10, the court, where it deems it necessary to protect the interests of the estate involved, may by order suspend the respondent from the exercise of his powers and authority during the pendency of the proceeding. A certified copy of the order so made must be served upon the respondent with the process, but from the time it is made, the order is binding upon the respondent and upon all other persons, without service thereof, subject to the exceptions and limitations prescribed in sections 107.14 and 107.15.

§ 107.12. Application by fiduciary for permission to resign.

1. Petition; contents. A fiduciary may present to the court at any time a petition praying that he be permitted to resign, that his letters be revoked and that he be permitted to file and proceed to the judicial settlement of his account as such fiduciary within a time to be fixed by the court and that notice of the application be given to the persons necessary to be cited and in the manner directed by the court. The petition must show the facts upon which the application is founded.

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3 *Prior legislation:* 1956 Code 9:25; L. 1935-36, ch. XXIV, 5; Rev. Stat. § 1060; OBB 113, Judiciary, art. III, § 4.

2. *Proceedings thereupon.* If it shall be determined that the petition should be granted, an intermediate order may be entered forthwith or at any time during the pendency of the proceeding, permitting the petitioner to resign, revoking his letters, appointing a successor, and directing the resigning fiduciary to turn over all assets in his hands to his successor and file his account and a petition for the judicial settlement thereof and proceed to have it judicially settled. The proceedings thereupon, whether the letters of the petitioner be revoked or not, must be the same as upon a petition for the judicial settlement of the petitioner's account, except that the successor fiduciary, if one shall have been appointed, shall be a necessary party to it. Upon the resigning fiduciary fully accounting and paying over all money which is found to be due from his and delivering over all books, papers and other property in his hands to his successor, or in such manner as the court directs, a decree may be made discharging him accordingly.

§ 107.13. Cases in which letters may be suspended, modified or revoked without process.

In any of the following cases, the court may make a decree suspending, modifying or revoking letters issued to a fiduciary from the court without a petition or the issuance of process:

(a) Where the fiduciary being duly cited to account neglects to appear upon the return of process without showing a satisfactory excuse therefor and the court has sufficient reason to believe that no valid excuse can be made;

(b) Where process issued to a fiduciary in a case prescribed by law cannot be personally served upon him by reason of his having absconded or concealed himself;

(c) Where he has defaulted in supplying information concerning

assets or affairs of the estate as ordered by the court pursuant to section 118.2, or has neglected or refused to obey the order;

(d) Where by the judgment of another court of competent jurisdiction the will under which letters have been issued declared to be invalid;

(e) Where an administrator has failed to give the bond required to sell or to receive the proceeds of a sale of real property or to give a new bond or a new surety when required to do so by an order or decree of the court;

(f) Where he has been convicted of a felony or has been judicially committed as an insane person or has been declared an incompetent;

(g) Where he mingles the funds of the estate with his own or deposits them with any person, association or corporation authorized to do business under the banking law in an account other than as fiduciary;

(h) In any case in which ancillary letters have been issued where the original letters in the domiciliary jurisdiction have been revoked;

(i) Where a temporary administrator has been appointed of the estate of an absentee, and it is shown that the absentee has returned or that he is living and capable of resuming the management of his affairs or that an executor or administrator has been appointed of his estate or that a guardian of his property has been duly appointed;

(j) Where any of the facts provided in section 107.10 are brought to the attention of the court.

§ 107.14. Effect and contents of decree suspending, modifying or revoking letters.

Upon the entry of a decree made as prescribed in this Code, suspending, modifying or revoking letters issued to a fiduciary, his powers are suspended, modified or cease, as the case may be. The decree may require him to account for all money and other property received by him and to pay over and deliver all money and other property in his hands, to the court or to his successor or to such other person as is authorized by law to receive it, or it may be made without prejudice to an action or special proceeding for that purpose then pending or thereafter to be brought. Except as provided in section 107.15, the suspension, modification or revocation does not affect the validity of any act within the powers of the fiduciary done by him before the suspension, modification, or revocation of his letters or the service of process, where the other party acted in good faith, or done after the service of process and before entry of the decree where his powers with respect thereto were not suspended or modified by service of process or where the court in a case prescribed by law, permitted him to do the same, notwithstanding the pendency of the special proceeding against him and he is not liable for such an act done by him in good faith.[4]

§ 107.15. Qualification to section 107.14 validation of acts done in good faith.

The provisions of section 107.14 do not affect the liability of a person to whom money or other property has been delivered as distributee or legatee to respond to the person lawfully entitled thereto where letters are revoked because a supposed decedent is living or because a will is discovered after administration has been granted, in a case of

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4 *Prior legislation:* 1956 Code 9:25; L. 1935-36, ch. XXIV, § 5; Rev. Stat. § 1060.

supposed intestacy, or where a prior will is revoked upon which letters were granted.

Chapter 108. GENERAL PROVISIONS RELATING TO BONDS

§ 108.1. Fiduciaries and others required to file bonds.
§ 108.2. Amount; condition; number of sureties; obligee.
§ 108.3. Approval and filing of bonds; filing of surety's address.
§ 108.4. Action or proceeding on bond; summary determination in certain cases.

§ 108.1. Fiduciaries and others required to file bonds.

1. Administrators. Except as otherwise provided in chapter 107, before letters are issued to an administrator, temporary administrator or administrator c.t.a., or to a successor, he shall execute and file a bond in accordance with the provisions of this chapter.

2. Executor or trustee; will exception. Unless the will provides otherwise, before letters are issued to an executor, a trustee appointed by the will or by order of the court, or to a successor, he shall execute and file a bond in accordance with provisions of this chapter.

3. Legal life tenant; will exception. Unless a will expressly provides otherwise, whenever a legal life tenant is entitled to the possession or control of property, he shall, if the court so directs, execute and file a bond in accordance with the provisions of this chapter.[5]

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5 *Prior legislation* 1956 Code 9:21, 22; Rev. Stat. § 1057.

§ 108.2. Amount; condition; number of sureties; obligee.

1. Amount. Whenever a fiduciary or life tenant shall be required to file a bond the amount thereof shall be determine in accordance with the following:

(a) Except where the court has reduced the amount of the bond required or dispensed therewith as herein set forth, the amount of the bond shall be fixed at twice the sum of the following assets of the estate, if any:

(i) Value of all personal property receivable by the fiduciary;

(ii) Estimated gross rents of real property receivable by the fiduciary for two years;

(iii) Probable recovery in any cause of action prosecuted or to be prosecuted by the fiduciary.

(b) In fixing the amount of a bond in the case of a successor executor, testamentary trustee, guardian, administrator c.t.a. or administrator d.b.n., the court must take into consideration how much of the estate, if any, has already been administered.

(c) In granting limited and restrictive letters pursuant to the provisions of section 107.2 the court may dispense with a bond altogether or fix the amount at such sum as it may deem sufficient;

(d) In addition to such powers as are conferred under chapter 63 of the Civil Procedure Law the court may at any time increase or decrease the bond of a fiduciary or legal life tenant when good reason therefor appears;

(e) The petition for letters or other application for fixing the amount of a bond shall set forth the assets to be committed to

the fiduciary or legal life tenant and their value and if the valuation is not precisely known, it shall be appraised to the best of the applicant's information and belief;

(f) In fixing the amount of a bond, the court may require evidence as to the character and value of the assets to be committed to the fiduciary or legal life tenant and may examine the applicant or any other person under oath or take such other steps as it deems necessary.

2. Condition. Unless the court directs additional conditions, the condition of the bond shall be that the fiduciary will faithfully discharge his trust, obey all lawful decrees and orders touching the administration of the assets committed to him including but not limited to decrees or orders directing repayment of amounts allowed as advances on commissions and render a verified account of his administration whenever required to do so by the court. In the case of a legal life tenant the condition shall be that the principal account for and deliver to his successors in interest the property held as life tenant.

3. Sureties. The court may authorize or direct the execution and filing of a bond with a sole surety or with two or more sureties or it may dispense with sureties altogether when good reason therefor appears.

4. Obligees of bond. The bond of a fiduciary or legal life tenant shall run to, and for the security and benefit of, the persons then or thereafter interested in the estate.[6]

§ 108.3. Approval and Filing of bonds; filing of surety's address.

1. Approval and filing. All bonds must be approved by the court. Approval of a bond must be endorsed thereon and when so endorsed

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6 *Prior legislation:* 1956 Code 9:21, 22; Rev. Stat. §1057; OBB 113, Judiciary, art. III, § 2.

the bond must be filed in the court.

2. Domiciliary address to stated by sureties. Each surety on a bond shall file an acknowledged instrument stating his domiciliary address.

§ 108.4. Action or proceeding on bond; summary determination in certain cases.

1. When permitted. An action or proceeding on a fiduciary's bond may be brought in either of the following cases if leave of the court by motion on notice to the surety is granted:

(a) By a person having a judgment or decree against the fiduciary which remains unsatisfied after the expiration of ten days from date of entry;

(b) By the fiduciary's successor, or if the fiduciary has died or his letters have been revoked and if no successor is appointed, by any aggrieved person, for the recovery of any money or property received by the fiduciary and not duly administered by him or for an injury to the estate caused by his act or omission.

2. Disposition of proceeds. The decree or judgment in the action or proceeding on the bond shall provide for the disposition of any proceeds that may be recovered in the action or proceeding.

3. Summary determination in certain cases. Where a decree has been made directing payment by a fiduciary and payment has not been made within ten days date of entry, any person in whose favor the decree was rendered may as an alternative to the action or proceeding on the bond as provided in paragraph 1 seek a summary determination of the surety's liability in the court making the decree. Process shall issue to the surety and such other persons as the court may direct. Upon the return of process the court may conduct such

proceedings and make such decree or order as justice shall require.[7]

Chapter 109. GENERAL POWERS AND DUTIES OF FIDUCIARIES IN THE COLLECTION AND MANAGEMENT OF ESTATE PROPERTY

§ 109.1. Possession of estate property; limitation on removal outside Republic.
§ 109.2. Sale of perishable or depreciable property without prior notice or court approval
§ 109.3. Sales of property under court order.
§ 109.4. Completion by fiduciary of decedent's contract to convey or lease land.
§ 109.5. Continuation of decedent's business.
§ 109.6. Authority to compromise.
§ 109.7. Investment of funds of estate.
§ 109.8. Bank deposits of estate funds.
§ 109.9. Payment of expenses of administration.

§ 109.1. Possession of estate property; limitation on removal outside Republic.

1. In general. In the absence of contrary or limiting provisions in a will, or in the court order or decree, appointing a fiduciary or a subsequent order or decree, every fiduciary shall have a right to and shall take possession of and manage the property of the estate except where such property is specifically disposed of by will. He shall collect the rents and earnings from such property and pay the taxes thereon until the estate is settled or until the property is delivered by order of the court to the persons entitled thereto. He is authorized to make expenditures for ordinary repairs to the property of the estate,

7 *Prior legislation:* 1956 Code 9:24; Rev. Stat. § 1059; OBB 113 Judiciary, art. III, §.5.

which shall include the buildings and fixtures under his control, and may effect and keep in force, fire, rent, title, liability, casualty or other insurance to protect such property and to protect the fiduciary.

2. Removal of estate property outside of Republic. No fiduciary shall remove property of the estate outside of the Republic without the prior approval of the court.

§ 109.2. Sale of perishable or depreciable property without prior notice or court approval.

Perishable property and other personal property which will depreciate in value if not disposed of promptly or which will incur loss or expense by being kept, may be sold by a fiduciary without notice or prior court approval and title to such property shall pass without court confirmation; but the fiduciary, however, shall be responsible for the actual value of the property unless, after making a report to the court at the term next succeeding the sale thereof and upon a proper showing of necessity therefor, the court shall approve the sale.[8]

§ 109.3. Sales of property under court order.

1. Purposes. Except as provided in paragraph 2, any property, real or personal, belonging to an estate may be sold, mortgaged, leased or exchanged under court order when necessary for any of the following purposes:

(a) For the payment of expenses of administration;

(b) For the payment of any taxes assessed upon the estate or due from the decedent or his estate;

(c) For the payment of claims allowed against the estate;

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8. *Prior legislation:* 1956 Code 9:13(3); Rev. Stat., § 1058; OBB113, Judiciary, art. III, § 2.

(d) For the payment of any legacy given by the will of a decedent;

(e) For making distribution of the estate or any part thereof, except that the court may order distribution in kind of any property at its fair value at the date of distribution in lieu thereof;

(f) For any purpose in the best interests of the estate.

2. Exception when power given in will. When Power to sell, mortgage, lease or exchange property of the estate without prior court approval has been given to any fiduciary under the provisions of any will, the fiduciary may proceed under such power or may proceed under the provisions of paragraph 1, as he may determine.

3. No priority between real and personal property. In determining what property of the estate will be sold, mortgaged, leased or exchanged for any purpose set forth in paragraph 1, there shall be no priority as between real and personal property except as provided by the will, if any, or by order of the court.

4. Validity of proceedings. No proceedings hereunder, for sale, mortgage, lease, exchange or conveyance by a fiduciary of property belonging to an estate shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered it had jurisdiction of the estate.[9]

§ 109.4. Completion by fiduciary of decedent's contract to convey or lease land.

1. Procedure applicable to cases generally. Except as provided in

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9 *Prior legislation:* 1956 Code 9.23(4); Rev. Stat., § 1058(4); OBB 113, Judiciary, art. III, § 2; 1841 Digest, pt. I, Act to prevent fraud in the management of intestate and other estates, § 2, 2 Hub. 1504; Acts 1839, Bill to prevent fraud in the management of intestate and other estates, art. 4, 2 Hub. 1391.

paragraph 2, when any person legally bound to make a conveyance or lease of real property dies before making the same, the court, with or without notice, may direct a fiduciary to make the conveyance or lease to the person entitled thereto. A petition for this purpose may be made by any person claiming to be entitled to such conveyance or lease, or by the fiduciary, or by any other person interested in the estate or claiming an interest in the real property or contract, and shall set forth the description of the property and the facts upon which such claim for conveyance or lease is based.

Upon satisfactory proof of the claim, the court may order the fiduciary to execute and deliver an instrument of conveyance or lease to the person entitled thereto upon performance of the contract.

2. *When authorized under testamentary power.* If a fiduciary has been given power by will to complete a conveyance or lease of real property without prior court approval, he may in lieu of the procedure set forth in paragraph 1 for the consummation of the decedent's uncompleted contract, without an order of the court, execute a conveyance or lease of the real property involved to the person entitled thereto upon performance of the contract.

§ 109.5. Continuation of decedent's business.

Upon a showing of advantage to the estate, the court may authorize the fiduciary to continue any business of the decedent for the benefit of the estate; however, if the decedent died testate and his estate is solvent, the order of the court shall be subject to the provisions of the will, if any, with reference thereto. The order may be made with or without notice. If notice is not given to all interested persons before the order is made, notice of the order shall be given to those persons not previously notified by publication or otherwise within five days after the entry of the order and any such persons may show cause why the order should be revoked or modified. The order may provide as

follows:

(a) For the conduct of the business solely by the fiduciary or subject to the provisions of any partnership agreement, jointly with one or more of the decedent's surviving partners, or as a corporation to be formed by the fiduciary;

(b) The extent of the liability of the estate or any part thereof, or of the fiduciary, for obligations incurred in the continuation of the business;

(c) As to whether liabilities incurred to the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole;

(d) As to the period of time for which the business may be conducted, and such other conditions, restrictions, regulations and requirements as the court may order.

§ 109.6. Authority to compromise.

When it appears for the best interest of the estate, the fiduciary may on order of the court effect a fair and reasonable compromise with any debtor or other obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. In the absence of prior authorization or subsequent approval of the court, no compromise shall bind the estate.

§ 109.7. Investment of funds of estate.

Subject to his primary duty to preserve the estate for prompt distribution and to the terms of the will, if any, the fiduciary, whenever it is reasonable to do so, shall invest the funds of the estate and make them productive. Such investment, however, shall be restricted

to the kinds of investments prescribed to fiduciaries by law or by order of court.

§ 109.8. Bank deposits of estate funds.

Whenever it is consistent with a proper administration of the estate, the fiduciary shall deposit the funds of the estate as a general deposit in a bank authorized to do business in this Republic in his name as fiduciary for the benefit of the estate, either in a checking account or in a savings account.

§ 109.9. Payment of expenses of administration.

A fiduciary is authorized to pay from the property of the estate in his hands, all reasonable and proper expenses of administration, including the reasonable expense of obtaining and continuing his bond, if any, and any reasonable counsel fees he may necessarily incur.

Chapter 110. TEMPORARY ADMINISTRATION

§ 110.1. When temporary administration may be granted.
§ 110.2. Procedure for appointment of temporary administrator.
§ 110.3. General powers of temporary administrator.
§ 110.4. Power as to real property.
§ 110.5. Actions and proceedings maintainable by or against a temporary administrator.
§ 110.6. Payment of claims by temporary administrator upon petition.
§ 110.7. Settlement of temporary administrator's account of his proceedings.

§ 110.1. When temporary administration may be granted.

Temporary administration may be granted if the court finds it is in the best interests of the estate when, for any cause, delay occurs in the grant of letters on the estate of a decedent or a person alleged to be deceased or in the probate of his will.

§ 110.2. Procedure for appointment of temporary administrator

1. Who may petition. A petition for letters of temporary administration may be presented by any person interested in the estate of a decedent or a person alleged to be deceased, any beneficiary under the last will of a decedent or a person alleged to be deceased on file in the court, a creditor, or by a person interested in an action brought or about to be brought in which the decedent or person alleged to be deceased would be a proper party.

2. Persons upon whom process is to be served. Service of process in proceedings for the appointment of a temporary administrator shall be governed by the following:

(a) Where a proceeding for letters is pending. If a proceeding is pending for probate of a will or for letters of administration, process shall issue to such persons and in such manner as directed by the court, but in all cases adequate notice of the proceeding shall be given to all persons interested;

(b) Where no proceeding for letters of administration is pending. If no proceeding is pending and the alleged delay is in the initiation of a proceeding for letters of administration on the estate of a decedent or a person alleged to be deceased, process shall issue to the persons who would be entitled to receive process on an application for such letters;

(c) Where no proceeding for letters testamentary is pending. If no proceeding is pending and the alleged delay is in the initiation

of a proceeding for the probate of a will and the issuance of letters testamentary thereunder, process shall issue to the executor named in the last will of a decedent or person alleged to be deceased on file in the court and to the beneficiaries named in such will and to such other persons as directed by the court.

§ 110.3. General powers of temporary administrator.

1. Standard administration. Letters of temporary administration shall confer upon the person named therein all the powers and authority with respect to taking into his possession, securing and preserving all the personal property of a decedent and subject him to all the duties and liabilities of an administrator with respect thereto.

2. Additional powers. In addition to the foregoing grant of power and without limitation thereon a temporary administrator is authorized without court order to do the following:

(a) Pay all taxes for which the decedent is liable and all taxes on his property;

(b) Publish a notice requiring creditors of a decedent to present their claims to him in the manner prescribed in section 116.1.

§ 110.4. Power as to real property.

When a temporary administrator is appointed the court may by the order appointing him or by a subsequent order confer upon him authority to take possession of real property in the same or another county and to receive the rents and profits thereof or to do any other act with respect thereto, which is, in the court's opinion, necessary for the preservation or benefit of the real property. For either of these purposes he may maintain or defend any action or special proceeding.

The court may by an order confer upon him authority to lease any or all of the real property for a term not exceeding one year.

§ 110.5. Actions and proceedings maintainable by or against a temporary administrator.

1. As complainant. A temporary administrator may maintain any action or proceeding for the purpose of taking into his possession, securing and preserving all property of a dependent or absentee, or for determining the ownership of his property.

2. As defendant. An action or proceeding may be maintained against a temporary administrator upon a debt of tire decedent if leave of court is granted; or upon any other cause of action to which the decedent would have been a party, in like manner and with like effect as if he were an administrator.

§ 110.6. Payment of claims by temporary administrator upon petition.

At any time after the issuance of letters of temporary administration, process may issue to a temporary administrator requiring him to show cause why he should not pay the petitioner's claim. The court may dismiss the petition or direct payment or satisfaction of the claim in whole or in part and may require a refunding bond.

§ 110.7. Settlement of temporary administrator's account of his proceedings.

1. Time when court may direct. When the time for presentation of claims as fixed by notice duly published has expired, or when seven months have elapsed since the issuance of letters of temporary administration on the estate of a decedent, the court may direct a temporary administrator to account upon the petition of a creditor

who has presented his claim or upon the application of the temporary administrator. The court upon its own initiative, or upon the petition of a person interested, or a creditor, may direct a temporary administrator to account at any time.

2. Distribution of assets upon settlement. Upon the settlement of his account the court may direct the temporary administrator of a decedent's estate to pay the decedent's funeral and administration expenses and direct the ratable distribution of the remaining assets in payment of the claims allowed or established as valid claims against the decedent. The court may direct the payment into court or the retention by the temporary administrator of whatever may remain of the assets of the personal estate of such decedent.

Chapter 111. INTESTATE ADMINISTRATION

§ 111.1. Order of priority for granting letters of administration.
§ 111.2. Letters of administration when purported will probate proceedings are delayed.
§ 111.3. Petition; persons entitled to petition for appointment of an administrator.
§ 111.4. Persons who must be served with process; renunciation and waiver of process; dispensation with service of process.
§ 111.5. Proceedings upon return of process.
§ 111.6. Notice of application for letters of administration to be mailed or otherwise served prior to decree.
§ 111.7. Renunciation upon failure to qualify.
§ 111.8. Vacancy in office; administration de bonis non.

§ 111.1. Order of priority for granting letters of administration.

1. Standard sequence. Letters of administration must be granted to

the persons who are distributees of an intestate and who are eligible and qualify, in the following order:

(a) the surviving spouse;
(b) the children;
(c) the grandchildren;
(d) the father or mother;
(e) the brothers or sisters;
(f) any other persons who are distributees, preference, however, being given to the person entitled to the largest share in the estate.

2. Court's discretion to appoint within each category. Within the priority rank assigned herein to the persons in each category, the court in its discretion may grant letters of administration as follows:

(a) Where there are eligible distributees equally entitled to administer the estate, the court may grant letters of administration to one or more such persons;

(b) Where distributees have died prior to the granting of letters, or they are infants or incompetents, the court may grant letters of administration to a fiduciary or a deceased distributes, or guardian of an infant or incompetent distributes, if he is eligible and qualifies. If the court exercises its discretion, preference shall be given to the fiduciary or guardian of the distributes entitled to the largest share in the estate. However, where all such distributees are equally entitled to share in the estate, the court may grant letters of administration to one or more of their fiduciaries or guardians, if they are eligible and qualify;

(c) Letters of administration may be granted to an eligible distributee or to an eligible person who is not a distributee upon the acknowledged and filed consent of all distributees, provided

all such distributees are themselves eligible.

3. To curator where no person is eligible. When letters are not granted to any of the persons eligible under the provisions of paragraphs 1 and 2, then administration shall be granted to the curator of the probate court having jurisdiction over the estate.

§ 111.2. Letters of administration when purported will probate proceedings are delayed.

Letters of administration may be granted by the court in accordance with the provisions of section 111.1 in any case in which a paper writing purporting to be a will has been filed in the court and proceedings for its probate have not been instituted within a reasonable time or have not been diligently prosecuted.

§ 111.3. Petition; persons entitled to petition for appointment of an administrator.

1. Who may petition. Any person interested in the estate of an intestate, or of a person alleged to be deceased, or any person to whose appointment as administrator all distributees consent pursuant to section 111.1, or a curator, creditor or a person interested in an action brought or about to be brought in which the intestate or the person alleged to be deceased, if living, would be a proper party, may present a petition to the court having jurisdiction praying for a decree granting letters of administration to him or to another person upon the estate of the intestate or the person alleged to be deceased.

2. Contents of petition. The petition must allege the citizenship of the petitioner and of the decedent or person alleged to be deceased, that the decedent or person alleged to be deceased left no will, or that the case is within section 111.2 and must state whether or not the intestate or person alleged to be deceased left any assets which shall

be particularized as follows:

(a) an estimation of the value of personal property, and

(b) a listing of real property, specifying whether it is improved or unimproved and giving a brief description thereof, the estimated value of the real property and improvements, if any, and the estimated gross rents for the period of two years.[10]

§ 111.4. Persons who must be served with process; renunciation and waiver of Process; dispensation with service of process.

1. General rule for service of process. Every eligible distributee who has a right to administration prior or equal to that of the petitioner and who has not renounced must be served with process upon an application for letters of administration. When the petitioner is a creditor or a person interested in an action brought or about to be brought in which the intestate, if living, would be a party, process shall also issue to all incompetents and to infants who are domiciliary distributees and for whom a guardian of the property has been appointed. When the petitioner is a curator, process shall issue only to such incompetent domiciliary distributees whose names and addresses are known to him. The court may dispense with the issuance and service of process upon non-domiciliaries.

2. In an estate of a person alleged to be deceased. In a proceeding for letters of administration upon the estate of a person alleged to be deceased, process shall issue directed to such person and to all his presumptive distributees.

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10 *Prior legislation:* 1956 Code 9:20; Rev. Stat. § 1057; OBB 113, Judiciary, art. III, § 2; 1841 Digest, pt. I, Act to prevent fraud in the management of intestate and other estates, § 2, 2 Hub. 1504; Acts 1839, Bill to prevent fraud in the management of intestate and other estates, art. 4, 2 Hub. 1391, Com. L. (Aug. 19, 1824), 2 Hub. 1344, 1345 (5th).

3. In an estate when purported will probate proceedings are delayed. If an application for letters of administration be made under the circumstances provided in section 111.2, process shall also issue to the persons named in the paper writing referred to in that section, and the persons to whom process would be required to issue in a proceeding for the probate of such paper writing.

4. Renunciation and waiver of process. Any person who has a right to administration prior or equal to that of the petitioner may renounce his right and waive the issuance and service of process by an acknowledged instrument which must be filed in the office of the clerk of the court.

5. When court may dispense with service of process. The court may dispense with service of process upon a person who has a right to administration equal to that of the petitioner, where it appears that the whereabouts of such person is unknown and cannot be ascertained after diligent inquiry, subject to the requirement that the decree granting the letters shall contain a provision directing that in the proceeding for the judicial settlement of the account of the administrator process shall issue and be served upon such person.

§ 111.5. Proceedings upon return of process.

1. When no objections are interposed. Except as provided in paragraph 3, when process has issued and been returned with proof of service and no objections have been interposed to the appointment as administrator of the petitioner or the person nominated, or upon presentation of the petition when the issuance and service of process is not necessary or has been dispensed with, the court may make a decree granting letters of administration as prayed for in the petition or to such other person who may appear entitled thereto.

2. When objections are interposed. When process has issued and

been returned with proof of due service thereof and objections have been interposed to the appointment as administrator of the petitioner or the person nominated, the court shall hear such objections without a jury and make such determination thereof with reference to the issuance of letters of administration as justice requires.

3. When the estate involved is one of a person alleged to be deceased. In a proceeding for letters of administration upon the estate of a person alleged to be deceased upon the return of process therein as well as in a case where the issuance and service of process is not necessary or has been dispensed with, the court must inquire into the facts and take proof thereof and if it appears that he is dead the court may make a decree so determining and directing the issuance of letters of administration upon his estate as prayed for in the petition or to such other person who may appear entitled thereto.

§ 111.6. Notice of application for letters of administration to be mailed or otherwise served prior to decree.

1. Notice to non-process distributees. Before making a decree granting letters of administrate on any application therefor the court may require the petitioner or any other person seeking such letters to serve by mail or otherwise a written notice of the application upon every distributes of the intestate not required to be served with process and who has not appeared in the proceeding or waived service of process therein.

2. Contents of notice. The notice shall be entitled in the proceeding and shall state:

(a) each and every name of the intestate known to the person giving the notice;

(b) the fact that letters of administration on the estate have been

applied for by the petitioner;

(c) that a decree will be made granting letters and to whom;

(d) the names and post-office addresses of petitioner and of each and every distributes set forth in the petition;

(e) that no other distributees are known to exist;

(f) that letters will issue on or after the date fixed in the notice.

3. Filing of notice. The original notice shall be filed with the clerk of court with proof by affidavit of the serving of copies thereof by mail or otherwise.

§ 111.7. Renunciation upon failure to qualify.

The court, upon application of any person interested, or a curator or creditor, must require an administrator designated by it to receive letters to qualify within a time specified and direct that in default thereof he be deemed to have renounced his appointment.

§ 111.8. Vacancy in office; administration de bonis non.

1. Procedure when vacancy occurs. When the office of administrator becomes vacant for any reason the court may grant letters of administration de bonis non to one or more eligible persons in the order of priority provided in section 111.1 and the proceedings to procure such letters shall be the same as upon an application for original letters of administration.

2. Fixation of amount of bond. Where the estate has been partially administered by the former fiduciary the court in a proceeding under paragraph 1, may fix the penalty of the bond in a sum not less than

twice the value of the assets of the estate remaining unadministered.

3. Case for refusal to issue letters. The court may refuse to issue letters of administration de bonis non where distribution of the estate is possible pursuant to the provisions of section 119.15.

Chapter 112. CURATOR OF INTESTATE ESTATES

§ 112.1. Appointment of curator.
§ 112.2. Authority and duties of curator in intestate estates.
§ 112.3. Letters not required for administrator by curator; notice to be filed; authority to obtain assets.
§ 112.4 Notice to consuls.
§ 112.5. Curator's power to inquire.
§ 112.6. Supersedure of curator by eligible beneficiary on timely application.
§ 112.7. Appeals by curators; no bond required.
§ 112.8 Deposit of funds of estates administered by curator.
§ 112.9. Records, reports and inspection thereof.
§ 112.10. Fiduciary commissions to be retained and deposited as general governmental funds.
§112.11. Vacancy in office; delivery of effects to successor; settlement of accounts.

§ 112.1. Appointment of curator.

The President, by and with the advice and consent of the Senate, shall appoint a curator for each county and in addition, for each territory and district in which a probate court is established. He shall be attached as an officer to the court exercising probate jurisdiction in the county, territory or district for which he is appointed and shall

continue in office until removed.[11]

§ 112.2. Authority and duties of curator in intestate estates.

A curator is authorized to and shall perform all the duties of an administrator and shall take possession of, manage and collect the rents of real property and shall take care of, secure and collect the earnings on personal property with respect to the following estates of intestates:

(a) Whenever any person not known to have left him surviving a person eligible to receive letters shall die intestate either within this Republic or elsewhere leaving any real or personal property within the county, territory or district for which the curator is appointed and whenever any personal property of such intestate shall arrive therein after his death; and

(b) Whenever a court having jurisdiction grants administration of the estate of an intestate to the curator upon the application for such administration by the persons eligible to have letters issued to them.[12]

§ 112.3. Letters not required for administration by curator; notice to be filed; authority to obtain assets.

1. Initial procedure. Upon commencing to act pursuant to the provisions of section 112.2, a curator shall file with the court a statement showing the name and domicile of the decedent, the date and place of death and the names, addresses and relationship of any known beneficiaries. The filing of such statement shall have the same effect as the

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11 *Prior legislation:* 1956 Code 9:40; L. 1946-47, ch. II, § 1; L. 1935-36, ch. XXIV, §§ 2, 6.

12 *Prior legislation:* 1956 Code 9:41; L. 1935-36, ch. XXIV, § 3.

issuance of formal letters. In the event the curator shall subsequently ascertain the names and whereabouts of other persons believed to be beneficiaries in the estate, he shall forthwith file a supplemental statement.

2. Certificate evidencing authority. The delivery by a curator to a debtor, transfer agent or person holding personal property of the decedent of a certified copy of the court order evidencing his authority to act under this section, his receipt and the surrender of any evidentiary document shall constitute a complete release and discharge for any payment of money or delivery of property made pursuant to the court order without such person being required to see to the application thereof and with the same effect as if made to any other fiduciary.

§ 112.4. Notice to consuls.

When a curator files a statement under section 112.3 for the administration of the estate of an alien, he shall within five days thereafter give written notice thereof by mail or other means to the consular representative of the nation of which the decedent was a citizen or subject if any there be stationed in the Republic of Liberia, and shall file with the clerk of court proof by affidavit or otherwise of the giving of such notice.

§ 112.5. Curator's power to inquire.

A curator may institute an inquiry in any case in which he is authorized to act as to any matter affecting the estate of the decedent. For that purpose he may apply to the court for a direction to the clerk of court to issue a subpoena or subpoena duces tecum in the name of the court either before or after his application for administration of the estate. Failure to comply with the directions of the subpoena or subpoena duces tecum shall be punishable as a contempt of court.

§ 112.6. Supersedure of curator by eligible beneficiary on timely application.

1. When granted. If any eligible beneficiary of the decedent shall petition to supersede a curator within four months after the curator has become vested with the powers of a fiduciary on the estate, letters shall be granted to him upon proof that the petitioner did not have any knowledge of the application by the curator for administration of the estate and upon the further showing that all persons prior or equal in right have been served with the petition and have defaulted or waived; but the court may refuse to supersede the curator if six months have elapsed since he became vested with the powers of a fiduciary.

2. Delivery of estate assets to new fiduciary; accounting. When a curator has been superseded he shall deliver to the fiduciary who has superseded him all the personal property belonging to the estate which he has in his possession or control after deducting therefrom any outstanding expenses relating to the administration of the estate, court fees and costs, and commissions as provided by law and shall without unnecessary delay institute a proceeding for the judicial settlement of his account.

§ 112.7. Appeals by curators; no bond required.

A curator is authorized to appeal from any decree, order or judgment affecting an estate in his charge or in which he is a party. No bond on his part shall be required to stay execution of the order, decree or judgment from which an appeal is taken or for costs on appeal.

§ 112.8. Deposit of funds of estates administered by curator.

A curator shall, separately for each estate administered by him, deposit to his credit in his official capacity in demand or savings ac-

counts, as requisite, for the benefit of each estate, in one or more banks designated by the Secretary of the Treasury as depositories for public moneys, all moneys collected and received by him in each such estate.

§ 112.9. Records, reports and inspection thereof.

1. Accounts to be maintained and monthly reports filed. Curators shall maintain account books and records of all transactions in connection with each of the estates entrusted to their administration. They shall make monthly reports to the probate courts to which they are attached in such form as the Auditor General shall prescribe and shall transmit a copy of each report with the authenticated vouchers to the Auditor General for audit.

2. Inspection of records by persons interested. The accounts of the curator and the books and records containing them shall be open for inspection by the Auditor General and his duly authorized agents and the separate account records of each estate administered by a curator may be inspected by the distributees, creditors and other persons interested therein.[13]

§ 112.10. Fiduciary commissions to be retained and deposited as general governmental funds.

On the settlement of their accounts in each estate, curators shall retain over and above all necessary expenses upon all moneys and other property which come into their hands the same commissions as are now or may hereafter be allowed by law to fiduciaries, which shall not be used as remuneration for their services but shall be forwarded to the nearest office of the Secretary of the Treasury for deposit in a legal depository, as general governmental funds. The said commissions

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13 *Prior legislation:* 1956 Code 9:43; L. 1935-36, ch. XXIV, § 6 .

may be retained in preference to any debts or claims except funeral expenses.[14]

§ 112.11. Vacancy in office; delivery of effects to successor; settlement of accounts.

1. Delivery of effects on vacancy. Whenever a curator shall resign or be removed from his office, he shall immediately deliver to his successor all books, papers, moneys and other property in his possession in connection with the estates under his administration. In case of the death of a curator, the persons into whose custody or possession any such books, papers, moneys, or other property may come shall deliver them on demand to his successor. If a duly qualified successor has not been appointed, upon the resignation, removal or death of any curator, the clerk of the probate court in which he was attached shall immediately take possession for custodial purposes only of all books, papers, moneys and other property which were in the hands of the curator. Upon the appointment of a duly qualified successor, the clerk shall immediately deliver over to the successor all such books, papers, money and other property so held by him. Delivery in any of the above cases may be enforced in the manner provided by law in relation to public officers.

2. Settlement of accounts. Upon the resignation, removal or death of a curator, he or his legal representative, as the case may be, shall without unnecessary delay institute a proceeding for the judicial settlement of his accounts as curator.[15]

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14 *Prior legislation:* 1956 Code 9:46; L. 1946-47, ch. XXXIX, § 4.

15 *Prior legislation:* 1956 Code 9:44; L. 1935-36, ch. XXIV, § 7.

Chapter 113. PROBATE PROCEEDINGS

§ 113.1. Proceeding to compel production of will.
§ 113.2. Who may propound will; contents of petition.
§ 113.3. Persons to be served with process.
§ 113.4. Examination of attesting Witnesses.
§ 113.5. Proof where will is filed in, or must be returned to another jurisdiction.
§113.6. When court may dispense with testimony of attesting witness.
§ 113.7. Proof of lost or destroyed will.
§ 113.8. Probate standards to be observed by court; incorporation of text in decree.
§ 113.9. Additional standard where petition alleges death of testator as presumptive; effect of finding.
§ 113.10. Notice of probate.
§ 113.11. Who may file objections to probate of alleged will.
§ 113.12. Filing and service of notice to non-appearing parties that objections have been filed.
§ 113.13. Revocation of prior letters upon proof of will.
§ 113.14. When letters testamentary may be issued.
§ 113.15. Renunciation of letters; by nominated executor, by court declaration.
§113.16. Letters of administration with will annexed; when and to whom granted.
§ 113.17. Proceedings for construction of will; when and how presented; effect of decree.
§113.18. Record of wills; evidence.

§ 113.1. Proceeding to compel production of will.

Whenever it shall appear by the petition of a person authorized under section 113.2 to present a petition for the probate of a will, that there is reasonable ground to believe that any person has knowledge of the

whereabouts or of the destruction of a will of a decedent, the court may make an order requiring the person or persons named therein to attend and be examined in the premises. Service of the order must be made by delivery of a certified copy thereof to the person or persons named therein. The court may, either in the order or otherwise in the proceeding, require the production and filing in court of any will of the decedent which it finds is in the possession or under the control of the respondent.

§ 113.2. Who may propound will; contents of petition.

1. Who may petition. A petition for probate of a will may be presented by the following persons:

(a) Any person designated in the will as legatee, devisee, fiduciary or guardian or by the guardian of an infant legatee or devisee, or of an incompetent legatee or devisee;

(b) A creditor or any person interested in the estate;

(c) Any party to an action brought or about to be brought in which action the decedent, if living, would be a party;

(d) A curator on order of the court, where a will has been filed in the court and proceedings for its probate have not been instituted or diligently prosecuted.

2. Contents of petition. The petition for probate shall allege the citizenship of the petitioner and shall describe the will being offered for probate and any other will of the same testator on file in the court and shall set forth the names and post office addresses so far as they can be ascertained with due diligence of all of the persons required to be cited and all of the legatees, devisees and fiduciaries named in the will or in any other will so filed. In addition, it must state whether or

not the testator or person alleged to be deceased left any assets and furnish an estimation of the value of the gross estate passing under the will.[16]

§ 113.3. Persons to be served with process.

In a proceeding for the probate of a will process must issue to the following persons if they are not petitioners:

(a) The distributees of the testator;

(b) The person or persons designated in the will as executor except that a person designated in the will as substitute or successor executor in the event the designated executor cannot act or fails to qualify need not be served where the designated executor is under no disability;

(c)Any person designated in the will as beneficiary, executor, trustee or guardian, whose rights or interests are adversely affected by any other instrument offered for probate that is later in date or execution or which amends or modifies an instrument offered for probate;

(d)Any person designated as beneficiary, executor, trustee or guardian, in any other will of the same testator filed in the same probate court in which the propounded will is filed;

(e)The testator in any case where the petition alleges that the testator is believed to be dead;

(f) The Secretary of the Treasury in the case of a non-domiciliary testator;

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16 *Prior legislation:* 1956 Code 9:20; Rev. Stat., § 1057.

(g)Where any person to whom Process is required to be issued has died, process shall issue to his fiduciary and if none has been appointed, to all persons interested as distributees, nominated fiduciaries or named as legatees or devisees under any will of the deceased filed in the court.

§ 113.4. Examination of attesting witnesses.

Except as otherwise provided in this chapter, two at least of the attesting witnesses to a will must be produced before the court and examined before a written will is admitted to probate if so many of the witnesses are within the Republic of Liberia and competent and able to testify. Any party to the proceedings, before or after filing objections to the probate of the will, may examine any or all of the attesting witnesses. The examination of witnesses hereunder must be reduced to writing.

§ 113.5. Proof where will is filed in, or must be returned to another jurisdiction.

Where the will offered for probate is on file in a court or public office under the laws of which jurisdiction the will cannot be removed, the court may issue a commission to a person authorized to take a commission under the Civil Procedure Law; to take the testimony and may admit the will to probate upon proof of its provisions, of its existence at the time of the death of the testator and of its due execution. Where the will offered for probate is brought to the probate court by a representative of a public office of another jurisdiction, the court may take proof of the will and permit the representative to return the will to such other jurisdiction. In both instances hereunder, the decree admitting the will to probate shall set forth the full text of the will and the proof so taken and the decree shall have the same force and effect as though the will had been filed or had remained in tile court.

§ 113.6. When court may dispense with testimony of attesting witness.

1. The death, absence or incompetency of witness. The death, absence from the Republic or incompetency of an attesting witness required to be examined as prescribed in this section or in sections 113.4 and 113.5, or the fact that the witness cannot with due diligence be found within the Republic or cannot be examined as an attesting witness by reason of his physical or mental condition, may be shown by affidavit or by any competent evidence and when so shown to its satisfaction, the court may by the decree on probate or by order either in writing or entered in the minutes dispense with the testimony of such attesting witness upon proof of the handwriting of such attesting witness. Where the testimony of an attesting witness has been dispensed with as provided in this paragraph and at least one other attesting witness has been examined, the will may be admitted to pro-bate upon the testimony of the attesting witness who has been examined and such other facts as would be sufficient to prove the will.

2. Exception when absent witness testimony obtainable. Where an attesting witness is absent from the Republic and it is shown that his testimony can be obtained with reasonable diligence, the court may and shall upon the demand of any party require his testimony be taken by commission.

3. When one witness forgets execution or testifies against will. Where an attesting witness has forgotten the occurrence or testifies against the execution of the will and at least one other attesting witness has been examined, the will may be admitted to probate upon the testimony of the other witness or witnesses and such other facts as would be sufficient to prove the will.

4. When no testimony of attesting witnesses is available. If all of the attesting witnesses are dead or incompetent or unable to testify by

reason of physical or mental condition or are absent from the Republic and their testimony has been dispensed with as provided in this section the will may nevertheless be admitted to probate upon proof of the handwriting of the testator and of the attesting witnesses and such other facts as would be sufficient to prove the will.

§ 113.7. Proof of lost or destroyed will.

A lost or destroyed will may be admitted to probate only upon the following conditions:

(a) If it is established that the will has not been revoked;

(b) If execution of the will is proved in the manner required for the probate of an existing will; and

(c) If all the provisions of the will are clearly and distinctly proved by each of at least two credible witnesses or by one witness and a copy or draft of the will proved to be true and complete.

§ 113.8. Probate standards to be observed by court: incorporation of text in decree.

Before admitting a will to probate the court must inquire particularly into all the facts and must be satisfied with the genuineness of the will and the validity of its execution. If it appears that the will was duly executed and that the testator at the time of executing it was in all respects competent to make a will and not under restraint it must be admitted to probate as a will valid to pass real and personal property unless otherwise provided by the decree, and the will and decree shall both be recorded. Where necessary, the court shall determine the text or tenor of the will as admitted to probate and may incorporate the will or any part thereof in the decree.

§ 113.9. Additional standard where petition alleges death of testator as presumptive; effect of finding.

Where the petition for probate of a will alleges that the testator has disappeared under circumstances sufficient to justify the belief he is dead the court shall take proof of the facts. If it appears that the testator is dead, the court may make a decree determining such fact and if the standards provided for in section 113.3 have been satisfied, admitting the will to probate. The decree shall be binding in its effect upon the interests in the estate of persons under disability and of future contingent interests of persons not in being as well as the interests of adult competent persons.

§ 113.10. Notice of probate.

1. Contents. Before letters testamentary are issued there shall be filed in the court a notice entitled in the proceeding stating the name of the testator, the name and address of the proponent and that the will of the testator has been offered for probate or has been probated, as the case may be and the names and addresses of the executors named therein. The notice shall further set forth the name and post-office address of each person named or referred to in the petition who has not been served or has not appeared or waived service of process and shall state whether such person is named or referred to in the will as legatee, devisee, trustee, guardian or substitute or successor executor, trustee or guardian.

2. Proof of service; mail or other delivery. There shall be filed with the notice proof by affidavit of the mailing or if mailing is not feasible, of the delivery by other means, of a copy of the notice of probate to each of the persons required to be referred to therein and if any such person is an infant or an incompetent, of the mailing or delivery by other means of a further copy thereof to a person upon whom personal service of process may be made on behalf of the

infant or incompetent. When it appears by the petition for probate that the name or address of any person required to be referred to in the notice of probate is unknown mailing to such person or delivery by other means of the notice herein described shall not be required.

§ 113.11. Who may file objections to probate of alleged will.

Any person whose interest in property or in the estate of the testator would be adversely affected by the admission of a will to probate may file objections to the probate of the will or of any portion thereof. As required by section 103.2, the objections must be served at least one day before the return day of process and filed on or before that day, except that if an examination of the attesting Witnesses to a will be requested pursuant to section 113.4, objections based thereon may be served and filed within ten days after the close of testimony taken at the examination and if such service and filing occurs beyond the return date of process in the probate proceeding involved, a notice specifying the time and place of a hearing thereon, to be fixed by the court, shall be served by the proponent of the will on all parties who have appeared.

§ 113.12. Filing and service of notice to non-appearing parties that objections have been filed.

1. Contents. Whenever objections are filed in the probate of a will, the proponent shall file a notice stating the following:

(a) the name of the testator;

(b) the name and address of :

(i) the proponent,

(ii) each person named or referred to in the will who has not

appeared in the proceeding and

(iii) such other persons as directed by the court to be notified; and

(c) that the will has been offered for probate, that objections have been filed thereto and that such objections will be heard on a date or at a term of court stated or as may thereafter be fixed by the court.

2. Service of notice. The notice shall be served on each of the persons therein named in the manner and within the time directed by the court. Proof of the service of the notice shall be made and filed in the court within such time as the court shall direct.

3. Effect of non-service of notice. No decree entered in the proceeding shall affect the right or interest of any person named in the notice who has not been served therewith as provided in this section.

4. Procedure if proponent fails to file notice. In the event the proponent shall fail to file such notice, the court may authorize any party to the proceeding to do so.

§ 113.13. Revocation of prior letters upon proof of will.

Where temporary letters of administration or letters of administration on the ground of intestacy have been granted and a will is thereafter admitted to probate and letters testamentary issued thereupon or where a subsequent will is admitted to probate and letters testamentary issued thereupon, the decree granting probate must revoke the former letters.

§ 113.14. When letters testamentary may be issued.

Letters testamentary may be issued in the following circumstances:

(a) After a will has been admitted to probate any person entitled to letters thereunder who is eligible and who appears and qualifies is entitled to letters testamentary;

(b) Where a judgment has been rendered in an action in a court of competent jurisdiction establishing a will, the probate court judge having jurisdiction of the decedent's estate must record the will and issue letters as directed by the judgment;

(c) A person entitled to letters upon a contingency may appear and show that the contingency has happened by which he is entitled to such letters.[17]

§ 113.15. Renunciation of letters by nominated executor, by court declaration.

1. At election of nominated executor. A person named as executor in a will may renounce his right to letters testamentary by filing a duly acknowledged instrument of renunciation in the court having jurisdiction over the estate.

2. Exclusion by court. Where a person named as executor in a will does not qualify or renounces his right within 15 days after probate thereof, or where objections are filed to the grant of letters to a person named as executor in a will and such person does not qualify or renounce within 5 days after the objections have been determined in his favor, or in a case specified in section 107.8, within 5 days after an objection thereunder has been established, the court upon application of a fiduciary, a person interested in the estate or a creditor, shall direct an executor named in a will, by written order, to qualify within a time specified by the court or in default of so doing to be deemed to have renounced the appointment. A copy of such

17 *Prior legislation*: 1956 Code 9:20; Rev. Stat. § 1057.

order shall be served personally upon the person therein named but where it appears by affidavit or other written proof to the satisfaction of the court that such an order cannot with due diligence be so served within the Republic of Liberia, the court may prescribe the manner in which it must be served. If the person so designated as executor does not qualify within the time fixed by the court in the order, or within such further time as the court may allow for that purpose, an order shall be made declaring that he has renounced his appointment as executor.

§ 113.16. Letters of administration with will annexed; when and to whom granted.

1. Priorities among beneficiaries and persons interested. If no person is named as executor in the will or selected by virtue of a power contained therein, or if at any time there is no executor or no administrator with will annexed qualified to act because of death or otherwise, subject to the provisions of paragraph 3, upon the application of any person who may petition for the probate of the will under section 113.2, the court must issue letters of administration with will annexed to eligible persons in the following order of priority:

(a) to a sole beneficiary or if he be dead to his fiduciary;

(b) to one or more of the persons interested in the estate or, if any be dead, to his fiduciary;

(c) to the curator, if there is no eligible person entitled to such letters under subdivisions (a) and (b) who will accept.

2. Proceedings and service of process. Every eligible person having a right to letters of administration with the will annexed prior or equal to that of the petitioner and who has not renounced such right, must be served with process. The proceedings upon the application are the

same as upon an application for letters of administration upon the estate of an intestate. The court, however, may dispense with the issuance and service of process on non-domiciliaries.

3. Issuance upon consent of beneficiaries. Letters of administration with will annexed may be granted to an eligible person or persons not entitled as beneficiaries upon the acknowledged and filed consents of all the beneficiaries, provided none of the beneficiaries is under disability. The guardian of the property of an infant beneficiary or of an incompetent beneficiary may so consent.

§ 113.17. Proceedings for construction of will; when and how presented; effect of decree.

1. In general. A fiduciary or a person interested in obtaining a determination as to the validity, construction or effect of any provision of a will may present to the court in which the will was probated a petition showing the interest of petitioner, the names and post office addresses of the other persons interested, the particular portion of the will concerning which petitioner requests the determination of the court and the necessity for construction. If the application be entertained process shall issue to all persons interested in the question to be presented to show cause why the determination should not be made. On the return of process the court shall take such proof and shall make such decree as Justice requires.

2. In proceeding for probate of will. If a party in a proceeding for the probate of a will requests a determination of the validity, construction or effect of any provision contained in the will, process shall issue to all persons interested in the determination who have not appeared in the proceeding and notice shall be given in such manner as directed by the court to all those persons who have so appeared therein. Upon the entry of a decree admitting the will to probate the court may determine the question of construction or in its discretion

may admit the will to probate and reserve the question for future consideration and decree.

3. In proceeding for Judicial settlement of an account. If in any proceeding for the judicial settlement of an account of a fiduciary any question is presented by any party to the proceeding respecting the propriety of any debit or credit in the account, the determination of which involves the validity, construction or effect of any portion of the will which requires such construction the presentation of the question shall have the same effect as if the petition had expressly requested a construction of the particular portion of the will involved in such determination.

4. Effect of construction. A decree in any proceeding authorized in this section or a decree settling an account of a fiduciary or a decree on probate which construes or interprets any portion of a will, unless reversed or modified on appeal, shall thereafter be binding, and conclusive in all courts upon all parties to the proceeding and upon their successors in interest as to all questions of construction or interpretation of the will therein or thereby determined and of all rights and obligations of the parties involved in the construction, depending thereon, or resulting therefrom.

§ 113.18. Record of wills; evidence.

A certified copy of the record of the decree admitting a will to probate and of the record of the will so admitted to probate shall be received in evidence in any court in any action or proceeding with the same force and effect as if the original will had been produced and proved in such action or proceeding. The recording of a will in the court shall be evidence that it was duly admitted to probate.

Chapter 114. TRUSTS AND TRUSTEES

§ 114.1. Application of Code to testamentary trusts.
§ 114.2. Renunciation of appointment of nominated trustee.
§ 114.3. Appointments of testamentary trustees and successors.
§ 114.4. Non-liability for acts of predecessor executor.
§ 114.5. Proceeding when testamentary trustee is also executor or administrator c.t.a.

§ 114.1. Application of Code to testamentary trusts.

The provisions of this Code apply to any of the following testamentary trusts without regard to the domicile of the trustee or to the time of the execution of the will:

(a) A trust created by the will of a domiciliary.

(b) A trust relating to real or personal property without regard to the domicile of the testator, where the will creating the trust was admitted to probate in any probate court of this Republic, or where the situs of the trust or any real property held by the trust is within this Republic and the will creating the trust was duly proved or established or admitted to probate within a foreign country where it was executed or where the testator was domiciled at the time of his death.

§ 114.2. Renunciation of appointment by nominated trustee.

A person named as a testamentary trustee may renounce his appointment by filing a duly acknowledged instrument of renunciation in the court having jurisdiction of the testamentary trust involved.

§ 114.3. Appointments of testamentary and successors.

Appointments by the court of testamentary trustees, substitutes for

testamentary trustees and of successors and co-trustees shall be governed by the following:

(a) The court may appoint a testamentary trustee, a substitute, or successor or successors or co-trustee or co-trustees whenever there is no testamentary trustee able to act or all or one of the trustees is unable to act and a substitute, successor or co-trustee in his or their place is necessary in order to execute the testamentary trust involved or execute any power created by a will, the execution of which has devolved upon the court;

(b) The court shall not appoint a testamentary trustee, substitute, successor or co-trustee or co-trustees if the appointment would contravene the express terms of the will or if a trustee may be or has been named in the will as substitute, successor, or co--trustee and is not disqualified to act;

(c) Until a substitute, successor or co-trustee is appointed by the court the remaining trustee or trustees may execute the trust;

(d) A testamentary trustee, either as a substitute, successor or co-trustee, may be appointed by the court upon the application of any person interested in the trust involved and upon notice to such persons as the court may designate;

(e) The court may appoint a successor testamentary trustee for any purposes deemed necessary to complete administration or distribution of a testamentary trust which has terminated by the occurrence of the event measuring its duration when there is no person in office to execute it.

§ 114.4. Non-liability for acts of predecessor executor.

A testamentary trustee who was not an executor of the estate of the

same decedent shall not be liable for breach of trust committed by the executor in any of the following cases:

(a) Where he received the assets of the trust pursuant to a final decree of the court;

(b) Where he did not know of a situation constituting a breach of trust committed by the executor, and does not improperly permit it to continue;

(c) Where he does not neglect to take proper steps to compel the executor to deliver trust property to him;

(d) Where he does not neglect to take proper steps to redress a breach of trust committed by the executor.

§ 114.5. Proceeding when testamentary trustee is also executor or administrator c.t.a.

Where the same person is a testamentary trustee and also the executor of the will or the administrator c.t.a. upon the same estate, proceedings taken by or against him as trustee, as prescribed in this Code, do not affect him as executor or administrator c.t.a. or persons interested in the general estate, except in one of the following cases:

(a) Where he presents a petition praying for the revocation of his letters, he may in the same petition show that he is entitled to resign as testamentary trustee and may thereupon pray for a decree allowing him to resign and for process accordingly.

(b) Where a person presents a petition praying for the revocation of letters issued to an executor or administrator c.t.a. and any of the facts in the petition are made, by the provisions of this Code, sufficient to entitle the same person to present a petition

praying for the removal of a testamentary trustee, the petitioner may pray for a decree removing the person complained of in both capacities, and for process accordingly;

(c) In either case proceedings upon the petition for resignation or removal, as the case requires, of the testamentary trustee, and for the judicial settlement of his account, may be taken as, prescribed in this Code, in connection with or separately from the like proceedings upon the petition for the revocation of the letters, as directed by the court.

Chapter 115. ANCILLARY ADMINISTRATION OF FOREIGN ESTATES

§ 115.1. Legislative declaration of purpose.
§ 115.2. Ancillary probate based upon domiciliary probate.
§ 115.3. Ancillary letters on admission of foreign will.
§ 115.4. Admission of non-domiciliary will for original probate.
§ 115.5. Manner of proof of will by probate in non-domiciliary jurisdiction.
§ 115.6. Ancillary letters of administration.
§ 115.7. Matters regarding ancillary letters generally; designation by domiciliary fiduciary, qualifying.
§ 115.8. Ancillary petition and process.
§ 115.9. General powers and duties of ancillary fiduciaries.
§ 115.10. Effect on ancillary fiduciary of adjudication for or against domiciliary fiduciary.
§ 115.11. Application of general law to ancillary administration.
§ 115.12. Authentication requirements of foreign wills or letters.

§ 115.1. Legislative declaration of purpose.

This chapter shall apply only to the wills and estates of non-

domiciliaries. It is the intent and purpose of this chapter that ancillary administration shall be granted in this Republic only when there is an actual administration in the domiciliary jurisdiction. If the law of such jurisdiction does not provide for the appointment of a fiduciary but vests the property of a decedent in a person or persons subject to the obligation to pay the decedent's debts and expenses and the legacies bequeathed in his will or the distributive shares provided by law, such a person shall be recognized as the person acting therein to administer the decedent's estate in accordance with the law thereof, but only if such person has complied with all the requirements of such jurisdiction to entitle him to receive the property of the decedent and is acting or will act there to administer the estate.

§ 115.2. Ancillary probate based upon domiciliary probate.

A written will which upon probate may operate upon any property in this Republic shall be admitted to probate by the probate court having jurisdiction over the property upon proof that it has been admitted to probate at the testator's domicile or has been established in accordance with the law of such jurisdiction, and if its probate or establishment remains subject to contest under the law of his domicile, upon proof that it is not being contested thereat. A will so admitted to probate under this section is sufficient to operate on any property within the terms of the will, subject to any limitations upon its operation imposed by the law of the testator's domicile in respect of legal capacity. Rights granted by the law of the domicile to take against the will are not affected by this section. The only grounds upon which a will offered for probate under this section may be contested are that the conditions prescribed herein have not been satisfied or that the will has been denied original probate in this Republic.

§ 115.3. Ancillary letters on admission of foreign will.

Upon admission of a will to probate under section 115.2, the court

shall issue ancillary letters to the following persons in the following order:

(a) The person expressly appointed in the will as executor with respect to property located within this Republic;

(b) The person to whom domiciliary letters have been issued in the domiciliary jurisdiction or if domiciliary letters are not issued, the person appointed in the will to administer all property wherever located;

(c) The person acting in the domiciliary jurisdiction to administer and distribute the testator's estate;

(d) A person entitled under this Code to letters of administration c.t.a.

§ 115.4. Admission of non-domiciliary will for original probate.

1. General rule. A will of a non-domiciliary which upon probate may operate upon any property in this Republic and is deemed by the law of this Republic to have been validly executed for probate in this Republic, may be admitted to original probate in the same manner as any other will may be admitted to probate under this Code except as herein otherwise prescribed.

2. Permitted exception when non-domiciliary will already probated. A will which has been admitted to probate or established in the testator's domicile shall not thereafter be admitted to original probate in this Republic except in the following cases:

(a) In a case where the court is satisfied that ancillary probate would be unduly expensive, inconvenient or impossible under the circumstances;

(b) Where the testator has directed in such will that it shall be offered for probate in this Republic; or

(c) Where the laws of testator's domicile discriminate against domiciliaries of this Republic either as a beneficiary or a fiduciary.

3. Permitted exception when non-domiciliary will denied probate in testator's domicile. A will which by judgment or decree of a competent court in the testator's domicile has been denied probate or establishment shall not be admitted to probate in this Republic except where the denial of probate or establishment is solely for a cause which is not ground for rejection of a will of a domiciliary testator.

§ 115.5. Manner of proof of will by probate in non-domiciliary jurisdiction.

In the case of original probate of the will of a non-domiciliary testator an authenticated copy of the will and of its probate or establishment in the jurisdiction in which the will was executed shall be sufficient proof of its contents and of compliance with the law of the place of execution, if no objection is made thereto. If objection to the probate of such a will is filed, this section shall not relieve proponent from offering competent proof of the contents and legal sufficiency of the will except that the original need not be produced unless directed by a court.

§ 115.6. Ancillary letters of administration.

1. General rule. Upon petition as provided in section 115.8 and upon proof that letters of administration of the estate of a decedent have been issued by a competent court in the decedent's domicile or upon proof that under the law of that jurisdiction letters of administration are not granted but that a person is acting in that jurisdiction to administer the decedent's estate in accordance with the law thereof,

the court may issue ancillary letters of administration. In a case where the court has theretofore issued original or ancillary letters or there is pending an application therefor, the court shall take such proceedings as justice requires.

2. Priorities of persons entitled to letters. The court shall issue ancillary letters of administration to the following persons in the following order:

(a) The person appointed administrator in the domiciliary jurisdiction or the person acting in that jurisdiction to administer the decedent's estate in accordance with the law thereof;

(b) A person entitled to original letters of administration under this Code.

§ 115.7. Matters regarding ancillary letters generally; designation by domiciliary fiduciary, qualifying.

1. Designation of ancillary fiduciary by domiciliary fiduciary. A person acting in the decedent's domicile as executor or administrator or to administer the decedent's estate in accordance with the law thereof may by an acknowledged instrument designate and authorize the appointment of a person eligible under section 107. 5 to receive letters to act as ancillary administrator or ancillary administrator c.t.a. and the court may appoint the person so designated.

2. Manner of qualifying. A person to whom ancillary letters are issued must qualify in the same manner as prescribed in this Code for the qualification of a fiduciary except that the penalty of the bond may be in such sum as to the court seems just, unless, in the event he seeks ancillary letters, the will dispenses with the filing of a bond by the fiduciary named therein, in which case the court may dispense with the filing of a bond by the fiduciary so named. However, if in

any case the court is satisfied that there is no creditor of the decedent who is a domiciliary of this Republic and that no tax is assessable on the property of the estate in this Republic, ancillary letters may issue without bond.

3. Eligibility requirements. All the provisions of this Code relating to eligibility to receive letters shall be applicable to the ancillary appointments made under this chapter.

§ 115.8. Ancillary petition and process.

1. By whom made and contents. A petition for ancillary probate or for ancillary letters of any kind may be made by any creditor curator, or any person interested. The petition shall state all of the decedent's property in this Republic and the value thereof, the amount of the security given on the original appointment, the name and post-office address of each domiciliary creditor or each domiciliary claiming to be a creditor and the amount of each claim so far as it is ascertainable.

2. To whom process shall issue. Process shall issue to the Secretary of the Treasury, to all domiciliary creditors or domiciliaries claiming to be creditors and to such other persons entitled to letters or to designate an appointee as the court by order directs. The court may issue process generally to all creditors or persons claiming to be creditors who reside within Liberia, who shall be served in such manner as directed by the court.

3. Additional requirements in estates of absentees. If it appears that the foreign probate or the grant of foreign administration was based upon the disappearance or absence of the person on whose property ancillary letters are sought under circumstances as to afford reasonable ground to believe that he is dead, process shall also issue to the disappeared or absent person and shall be served upon him by publication. It shall further be served upon the curator of the court

having jurisdiction. If it appears to the satisfaction of the court from the foreign probate or grant of administration or from such other proof as it may require, that such person be dead, it may make a decree determining that fact and granting ancillary administration as prescribed in this chapter.

§ 115.9. General powers and duties of ancillary fiduciaries.

1. General fiduciary provisions to apply. The provisions of law governing the rights, powers, duties and liabilities of a fiduciary apply to a person to whom ancillary letters are granted under this chapter except where a special provision is otherwise made or where a contrary intent is expressed in or plainly to be inferred from the context.

2. Payment of decedent's debts. The court having jurisdiction may direct a person to whom ancillary letters have been issued to pay from the assets received by him in this Republic the debts of the decedent due to creditors who reside in Liberia; but if the amount of all the decedent's debts here and elsewhere exceeds the amount of all the decedent's property applicable thereto, the court may direct the ancillary fiduciary to pay such sum to each resident creditor as equals the creditor's share of all distributable assets.

3. Distribution of remaining assets. The court having jurisdiction may direct the ancillary fiduciary to distribute the remaining assets after the payment of creditors and expenses, to those entitled thereto or to otherwise dispose of the assets as justice requires.

4. Transmittal of balance of assets to testator's domicile. Unless the court shall direct the ancillary fiduciary to distribute the assets as provided in the preceding paragraphs, he is required to transmit the remaining assets to the country where domiciliary letters were granted to be disposed of pursuant to the law thereof.

§ 115.10. Effect on ancillary fiduciary of adjudication for or against domiciliary fiduciary.

A prior adjudication rendered by a court of competent jurisdiction for or against a domiciliary fiduciary shall be as conclusive as to the ancillary fiduciary in this Republic as if he were a party to the adjudication unless it resulted from fraud or collusion of the domiciliary fiduciary to the prejudice of the estate. This section shall not apply to an adjudication in another jurisdiction admitting or refusing to admit a will to probate.

§ 115.11. Application of general law to ancillary administration.

Except where special provision is made otherwise, the law of this Republic relating to wills and to the probate, contest and effect thereof shall apply in the case of a non-domiciliary testator and the law and procedure of this Republic relating generally to administration and to fiduciaries shall apply to ancillary administration and ancillary fiduciaries.

§ 115.12. Authentication requirements of foreign wills or letters.

In any case in which a foreign will or letters are required to be proved under this chapter, the will or letters shall be authenticated in the manner prescribed by the Civil Procedure Law.

Chapter 116. CLAIMS: PAYMENT OF DEBTS AND FUNERAL EXPENSES

§ 116.1. Publishing notice to creditors of estate.
§ 116.2. Effect of failure to present claim pursuant to notice or where none is published within seven months of issue of letters.

§ 116.3. Form and verification of claims; service of notice of claim and effect of failure to do so.
§ 116.4. Contingent or unliquidated claims; reserves for payment thereof.
§ 116.5. Determination of issues arising between fiduciary and the estate; suspension of statute of limitations in certain cases.
§ 116.6. Allowance or rejection of claims.
§ 116.7. Effect of allowance of claim by fiduciary; objections to allowance.
§ 116.8. Effect of rejection of claim by fiduciary.
§ 116.9. Proceeding by fiduciary to determine validity and enforceability of claims.
§ 116.10. Claimant's right to action at law or in equity; limited restriction.
§ 116.11. Payment priorities of funeral and administration expenses and debts.
§116.12. Disputed or unsettled debt or claim may be compromised, compounded or sold.

§ 116.1. Publishing notice to creditors of estate.

A fiduciary may insert a notice once in each week for two consecutive months in such newspaper or newspapers printed in the Republic as the court directs requiring all persons having claims against the deceased to present their claims to him at a place specified in the notice on or before a day therein named which must be at least two months from the day of the first publication of the notice. In the event the fiduciary dies, resigns or is removed from office or the newspaper in which the notice is published suspends publication during the period the notice is required to be published, a new notice may be published as the court directs, for the length of time required to complete the full period of publication.[18]

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18 *Prior legislation:* 1956 Code 9:23(2); Rev. Stat., § 1058(2).

§ 116.2. Effect of failure to present claim pursuant to notice, or where none is published, within seven months of issue of letters.

If any claim is not presented on or before the day fixed in the notice published pursuant to section 116.1 or, if no notice is so published, is not presented within seven months from the date of issue of letters, the fiduciary shall not be chargeable for any assets or moneys that he may have paid in good faith in satisfaction of any lawful claims or of any legacies or distributions to the legatees or distributees of the decedent before such claim was presented.[19]

§ 116.3. Form and verification of claims; service of notice of claim and effect of failure to do so.

1. Contents of claim; additional proof, when required. Every claim against the estate of a decedent other than claims for expenses of administration and claims of the Republic of Liberia must be in writing, contain a statement of the facts upon which it is based and the amount thereof. In addition the fiduciary may require the claimant to present proof by affidavit that the amount of his claim is justly due, that all payments thereon, if any, have been credited, that he knows of no offsets and no evidence of indebtedness and holds no security, except as specifically described in the affidavit.

2. Presentation of claim to fiduciary. The notice of claim required by this section shall be presented by delivering a copy thereof to a fiduciary personally, or by mail if feasible, addressed to him at the place of residence stated in the designation required by section 107.6 or if a notice has been published pursuant to section 116.1, at the place specified therein.

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19 *Prior legislation:* 1956 Code 9:23(2); Rev. Stat., § 1058(2).

3. Effect of failure to present claim. Except as provided in section 116.10, no claimant shall be entitled to enforce payment of his claim in any proceeding in the court unless his claim be presented in accordance with the provisions of this section or unless it shall be based upon a decree or order of the court or a valid judgment rendered by a court of competent jurisdiction.

§ 116.4. Contingent or unliquidated claims; reserves for payment thereof.

1. Reserves for payment. Whenever at the death of any person there shall be a contingent or unliquidated claim against his estate or an outstanding bond, recognizance or undertaking upon which he was principal, surety or indemnitor and on which at the time of his death the liability is still contingent or unliquidated, a claimant or a surety shall have the right to file with the fiduciary an affidavit showing the facts upon which the contingent or unliquidated liability is based and the probable amount thereof, and there shall be no distribution without reservation of such estate assets as the court shall determine to be adequate to pay the contingent or unliquidated claim when the amount thereof shall become due and payable. In fixing the amount to be reserved for payment of the claim the court may determine the value of any security or collateral to which the creditor may resort for payment of the debt and may thereafter direct the reservation if necessary of sufficient estate assets to make up the difference between the value of such security or collateral and the amount necessary to pay the contingent or unliquidated claim.

2. Procedures when unliquidated claims become fixed. If before a final judicial accounting and decree the contingent or unliquidated claim or liability shall have become fixed and liquidated, then evidence thereof shall be filed with the fiduciary in accordance with the provisions of section 116.3. If the contingent or unliquidated claim has not become so fixed and liquidated the decree on a final

accounting shall direct that the assets found sufficient to satisfy the claim or the proportion to which it is entitled be retained in the hands of the accounting party for such period or periods as the court may deem proper for the purpose of being applied to the payment of the claim when fixed and liquidated and that so much of the assets as are not needed for that purpose be afterwards distributed according to law.

§ 116.5. Determination of issues arising between fiduciary and the estate; suspension of statute of limitations in certain cases.

1. Fiduciary claims to be allowed by court on settlement of account. A fiduciary shall not pay out of the property of the decedent any debt alleged to be owing to such fiduciary by the decedent until proved and allowed by the court in the proceeding for the judicial settlement of his account. Where a contest arises between the accounting party and any of the other parties respecting property alleged to belong to the estate which the accounting party claims individually or respecting a debt alleged to be due by the accounting party to the decedent or by the decedent to the accounting party, the contest must be tried and determined in the same manner as any other issue arising in the court.

2. Procedure to obtain earlier payment. Notwithstanding the provisions of paragraph 1, a fiduciary at any time may present a petition for permission to pay a debt alleged to be owing to him by the decedent. The court may authorize such payment by ex parte order upon such protection to the estate as it deems proper or may require notice of the application to be given to such persons and in such manner as it directs.

3. Statute of limitations on fiduciary claims. From the death of the decedent until the first judicial settlement of the account of the

fiduciary, the running of the statute of limitations against a debt owing to him from the decedent or any other cause of action in his favor against the decedent is suspended, unless the fiduciary was appointed on the revocation of former letters issued to another person, in which case the running of the statute is so suspended from the issuance of letters to him until the first judicial settlement of his account. After the first judicial settlement of the account of a fiduciary the statute of limitations begins to run again against a debt due to him from the decedent or any other cause of action in his favor against the decedent.

§ 116.6. Allowance or rejection of claims.

The following shall be applicable to the allowance or rejection by fiduciaries of claims against an estate.

(a) Every fiduciary shall promptly give notice in writing to the claimant of the allowance of the claim or of its rejection or of the rejection of some part thereof which he specifies.

(b) A notice rejecting a claim in whole or in part shall state the reasons therefor.

(c) Unless the fiduciary shall prior to the filing of his account give written notice of the rejection of a claim theretofore presented to him the claim shall be deemed an allowed claim.

§ 116.7. Effect of allowance of claim by fiduciary; objections to allowance.

1. Validity of claim not objected to. Except as provided in paragraph 2, whenever a fiduciary shall allow a claim against the estate he is administering other than his own claim, the validity of the claim shall thereby be established.

2. Procedure for objecting to improper allowance. If it shall appear that claim was improperly allowed or was fraudulently or negligently paid, any party adversely affected thereby may file objections thereto in any proceedings for the judicial settlement of the account of the fiduciary. A copy of the objections shall be served upon all parties who have appeared and if the claimant has not appeared a copy shall be served upon him personally, or where feasible, by mail. If the court sustains the objections the claim shall thereupon be dismissed if it has not been paid or if it has been paid, in whole or in part, a surcharge shall be imposed against the fiduciary in such sum as the estate has been damaged by his fraud or negligence.

§ 116.8. Effect of rejection of claim by fiduciary.

Rejection by fiduciaries of claims against an estate shall be governed by the following provisions:

(a) Except as otherwise provided in section 116.10, whenever a fiduciary rejects a claim in whole or in part, all issues relating to the validity and enforceability of the claim shall be tried and determined upon the judicial settlement of his account;

(b) The account of the fiduciary shall list all claims rejected by him in whole or in part and the reason for their rejection,

(c) Service of the notice required by 116.6 shall be completed prior to the filing of any account reporting a rejected claim;

(d) Any claimant adversely affected may within eight days from the return of process serve and file objections to the account together with a copy of his notice of claim and any supporting affidavit filed with the fiduciary. If the fiduciary shall raise any affirmative defense to the claim that is not set forth in his

account, he shall within five days from the service upon him of a copy of the objections serve and file a reply to the objections setting forth the affirmative defense. Any person whose interests in the estate may be adversely affected by the allowance of the claim may within eight days from the filing of objections by a claimant serve and file a reply to the objections setting forth any defense to the claim not set forth in the account;

(e) Where one whose claim has been rejected by the fiduciary has petitioned for a compulsory judicial settlement of his account the fiduciary may in his answer to the petition show the condition of the estate and all facts relating to the rejection of the claim and pray for a judicial determination of the validity and enforceability of the claim as a preliminary step in the accounting proceeding. The court may thereupon determine the claim and all issues relating thereto and make such direction for its payment as justice shall require;

(f) With respect to any limitation of time within which an action or proceeding may be brought and with respect to examination before trial, bills of particulars and disclosures generally, the presentation of a claim as provided in section 116.3 shall be deemed the institution of a special proceeding for the collection of the claim.

§ 116.9. Proceeding by fiduciary to determine validity and enforceability of claims.

Whenever a fiduciary has knowledge or notice that a claim may be asserted and no written notice of claim has been presented to him or if a fiduciary has reason to question the validity of any claim, whether such notice has been presented to him or not, and no action or proceeding to enforce the claim has been instituted, he may raise objections thereto under the following procedure:

(a) The fiduciary may present a petition to the court showing the facts and praying that the claimant or possible claimant be required to show cause why his claim, if any, should not be disallowed.

(b) If the petition be entertained process shall issue to the claimant or possible claimant and the person cited may serve and file an answer. The answer shall be accompanied by a copy of any notice of claim, supporting affidavit or other evidence of the claim, if any, filed with the fiduciary. If the fiduciary deems it necessary he may, within five days from the service upon him of a copy of the answer, serve and file a reply thereto.

(c) The court may determine the claim and all issues relating thereto as a preliminary step in the accounting proceeding and make such direction as justice shall require.

§ 116.10. Claimant's right to action at law or in equity; limited restriction.

Nothing in this chapter shall prevent a claimant from commencing an action on his claim at law or in equity, provided that where a claim has been presented and rejected in whole or in part the action must be commenced within 60 days after such rejection.

§ 116.11. Payment priorities of funeral and administration expenses and debts.

Payment by fiduciaries of funeral and administration expenses and debts and claims against a decedent's estate shall be governed by the following:

(a) The reasonable funeral expenses of the decedent subject to the payment of expenses of administration shall be preferred to all

debts and claims against his estate and shall be paid out of the first moneys received by his fiduciary;

(b) The expenses of administration shall then be paid;

(c) Every fiduciary must thereafter proceed with diligence to pay the debts of the decedent according to the following order:

(i) Debts entitled to a preference under the laws of the Republic;

(ii) Taxes assessed on property of the deceased previous to his death. Any taxes so paid by a fiduciary on real property which descends to a distributee or passes to a devisee shall be a charge thereon for which the beneficiary must reimburse the estate unless in the case of wills the testator has indicated expressly or by necessary implication that such taxes be otherwise paid;

(iii) Judgments docketed and decrees entered against the decedent according to the priority thereof respectively;

(iv) All recognizance, bonds, sealed instruments, notes, bills and unliquidated demands and accounts.

(d) Preference shall not be given in the payment of a debt over other debts of the same class, except those specified in subdivision (c) (iii). A debt due and payable shall not be entitled to a preference over debt not due. The commencement of a suit for the recovery of a debt or the obtaining of a judgment thereon against the fiduciary shall not entitle this debt to preference over others of the same class. Debts not due may be paid according to the class to which they belong, after deducting a rebate of legal interest on the sum paid for the unexpired term of credit without interest. A debt or claim of the fiduciary shall not have preference over others of the same class, except that if the claim

of the fiduciary is secured by collateral the fiduciary may apply to the court for leave to surrender the collateral and make payment of the claim upon such conditions as directed by the court. Preference may be given to rents due or accruing on leases held by the decedent at the time of his death over other debts specified in subdivision (c) (iv) if it appears to the court's satisfaction that such preference will benefit the estate of the decedent;

(e) Dividends payable to secured creditors in insolvent estates shall be computed only upon the difference between the face amount of the claim without security and the value of the security itself as of the date to be determined by the court for the fixation of the rights of creditors, unless the creditor shall surrender his security to the fiduciary, in which event the dividend upon such claim when established as valid shall be computed on the full face amount thereof.

§ 116.12. Disputed or unsettled debt or claim may be compromised, compounded or sold.

Upon the application of a fiduciary the court may either ex parte or upon notice to such persons and in such manner as it directs for good cause shown authorize the compromising or compounding of any debt, claim or demand, due or to become due, which it is necessary to settle, adjust or liquidate in connection with the judicial settlement of an estate and the selling at public auction on such notice as directed by the court of any uncollectible, stale or doubtful debt or claim belonging to the estate, but any party interested in the judicial settlement who has not received notice may show on the proceeding for settlement that the debt or claim was fraudulently compromised or compounded.

Chapter 117. DISPOSITION OF REAL PROPERTY

§ 117.1. Disposition of real property for particular purposes authorized; "disposition" and "fiduciary" as used in chapter defined.
§ 117.2. Limitations on specific dispositions.
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§ 117.15. Restitution from assets subsequently discovered.
§ 117.16. Conveyance of real property by fiduciary to vendee of contract of sale made by decedent.
§ 117.17. Conclusive presumption of validity of dispositions after 10 years.

§ 117.1. Disposition of real property for particular purposes authorized; "disposition" and "fiduciary" as used in chapter defined.

1. Purposes for which real property is subject to disposition. The court may authorize or direct the disposition of a decedent's real property or any interest therein for any or all of the following purposes; subject to the limitations set forth in section 117.2:

(a) For the payment of funeral expenses;

(b) For the payment of the expenses of administration;.

(c) For the payment of any taxes;

(d) For the payment of the debts of the decedent, including judgments or other liens, excepting mortgage liens, existing thereon at the time of his death;

(e) For the payment of any debt or legacy charged thereupon;

(f) For the payment and distribution of their respective shares to the persons entitled thereto.;

(g) For any other purpose the court deems necessary for the best interests of the estate.

2. "Disposition" defined. Disposition of the real property of a decedent within the meaning of this chapter includes:

(a) Sale;
(b) Mortgage;
(c) Exchange;
(d) Lease;

(e) Confirmation of a prior lease made without court approval;
(f) Release of the right to an award for the taking of real property by eminent domain, and
(g) Transfer to a spouse or other beneficiary in full or partial satisfaction of the interest or share of such person in the decedent's estate.

3. "Fiduciary" exclusions. The term "fiduciary" as used in this chapter does not include a trustee, guardian, donee of a power to manage during minority property vested in an infant or a voluntary administrator.

§ 117.2. Limitations on specific dispositions.

The disposition of real property of a decedent under this chapter for any of the following purposes is limited as set forth herein:

(a) Unless a proceeding under this chapter to satisfy a debt of the decedent is brought within 18 months from the date when letters were issued to the original fiduciary and unless such letters were granted within 2 years after the date of the death of the decedent, the title of a purchaser or the lien of a mortgagee from the distributee or devisee of the decedent which was acquired before the proceeding was instituted cannot be affected in any way by the proceeding;

(b) A proceeding under this chapter to satisfy any debt cannot be maintained when the real property is exempt by law from levy and sale by virtue of an execution;

(c) A proceeding under this chapter to satisfy a legacy expressly or impliedly charged on the real property must be instituted within 5 years from the date of the death of the decedent.

§ 117.3. Petition and process.

The following procedural provisions shall govern with respect to initiating proceedings for the disposition of d decedent's real property:

(a) A proceeding under this chapter may be instituted by filing of a verified petition by a fiduciary or any person interested. The petition shall include facts showing the condition of the estate;

(b) If the petition be entertained, process shall issue to all persons interested and also to the creditors if the court so directs;

(c) Upon judicial settlement of the accounts of a fiduciary any party to the proceeding may show facts which make a disposition of the real property left by the decedent desirable. When such relief is sought upon an accounting notice thereof shall be given in the process;

(d) If any part of the reversion or remainder in the real property or in proceeds of sale thereof is limited in any contingency to the persons who shall compose a certain class upon the termination of any trust or legal life estate, the process shall issue to and be served upon those persons who would be entitled to the reversion, remainder or proceeds if the event upon which the termination of the trust or legal life estate depended had happened immediately before the application was made;

(e) The disposition may be authorized whether any person who may eventually become entitled to the remainders in the real property or to the proceeds of the sale thereof are in being or not, and whether at the time of the disposition the reversion is in the life tenant or in some other person;

(f) The Republic of Liberia may be made a party in the same

manner as a private person where it appears that the property may have escheated or where the Republic has a lien of record on the interest of any beneficiary. The petition in that case shall show the nature of the interest of the Republic and the reason or reasons for making the Republic a party to the proceedings. Upon failure to state such facts the proceeding shall be dismissed as to the Republic.

§ 117.4. When disposition may be refused or delayed.

1. Generally. The court may deny the application upon such terms and conditions as justice shall require.

2. Postponement of disposition for specifically devised real property. If the disposition affects real property specifically devised and it appears that the net income thereof may be sufficient to make the sale unnecessary within a reasonable time, the court may postpone the application from time to time and authorize the fiduciary to enter into possession of the property, to receive the rents thereof and to apply the rents as directed by the court.

§ 117.5. Objections determined despite allowance of claim by fiduciary; statute of limitations.

1. Objections to allowed claims must be heard. If any claim, debt, demand, charge or expense set forth in the petition presented prior to an application for judicial settlement, or set forth in the account or presented on the judicial settlement, is objected to by any party to the proceeding whose interest will be affected by its allowance or disallowance, the claim, debt, demand, charge or expense shall be determined, notwithstanding its admission or allowance by the fiduciary.

2. Special rule for computation of statute of limitations. Where a defense arises under the statute of limitations as to any item so

admitted or allowed it shall be deemed to be rejected by the fiduciary at the time of the objection and the time between its presentation or the commencement of an action where it was not presented and the time of such objection shall not be a part of the time limited in this Code for commencing an action thereon.

§ 117.6. Court's powers in determining disposition of real property.

Upon the return of process the court shall inquire into the facts, the value of the property and the best manner and time of disposition and the order entered thereon may include any of the following forms of relief:

(a) The court may direct the disposition of all or part of the real property, describing it;

(b) The order may determine whether the property shall be sold at public or private sale and may fix the manner, terms and conditions thereof;

(c) where a contract for the disposition of the property accompanies the petition, the order may direct disposition in accordance with its terms or any modification thereof;

(d) If the court finds that it is not necessary to dispose of the real property or of any part thereof it may nevertheless determine the rights and interests of the parties and direct a conveyance to them in confirmation of their title or transferring the property to them in full or partial satisfaction of their distributive share;

(e) If the order is made in the course of an accounting proceeding, the court shall adjourn a judicial settlement to await the proceedings taken under the order.

§ 117.7. Order in which parcels shall be sold then required for administration expenses and decedent's debts.

If the sale of real property is necessary for the purposes set forth in section 117.1, subparagraphs (a), (b), (c) and (d), and the decedent dies seized of more than one distinct parcel, the following rules must be observed in determining the order of sale:

(a) Property of which the decedent died intestate shall be sold before property which the decedent devised;

(b) Property of which the decedent died intestate and which has not been conveyed by the distributees shall be sold before property which has been conveyed by them;

(c) Property devised by the residuary clause in the will shall be sold before property which has been specifically devised;

(d) When two or more parcels have been devised to the same person or group of persons, parcels which have not been conveyed by the devisees shall be sold before property which has been conveyed by them;

(e) When one parcel has been devised to one person or group and another parcel has been devised to another person or group both parcels shall be equally subject to sale notwithstanding that one parcel may have been conveyed.

§ 117.8. Bond of fiduciary when disposition directed.

In any case where the court directs disposition of the property it may direct the fiduciary to furnish such bond as it may require to insure the execution of the order and the accounting by the fiduciary of all moneys received, notwithstanding that the will authorized an executor

to serve without bond. However, the court may dispense with a bond or require a bond in a reduced amount on condition that the proceeds of the disposition be deposited with a specified bank or trust company, subject to the further order of the court.

§ 117.9. Fiduciary to make report on execution of disposition order; further proceedings thereon.

1. Preliminary report. Upon entry of an order directing the disposition of a decedent's real property, the fiduciary shall thereupon execute the order, subject to the approval of the court, and make a report of his proceedings thereunder. Upon the filing of the report, the court may confirm or reject the disposition, extend the order to other parcels or require a re-execution of the order upon such terms and on such conditions as it may direct and it may relieve a purchaser from his purchase or compel specific performance of the agreement by both the purchaser or the fiduciary in any case where such relief might be granted by the circuit court, on such terms as justice shall require. However, if the contract for the disposition of the property was annexed to the petition and approved by the order, the fiduciary may execute a deed without further order and no confirmation of the sale is required.

2. Supplemental account and final decree of judicial settlement. When the order has been fully executed pending an accounting proceeding, the fiduciary shall file, on or before the adjourned day of the judicial settlement, a supplemental account setting forth his proceedings under the order, the amount of the proceeds of the disposition and his expenses incurred thereunder. The court shall thereupon continue and complete the judicial settlement and make such disposition of the funds in the hands of the fiduciary as justice shall require.

§ 117.10. Time of distribution or payment of proceeds of a disposition.

No decree of distribution or payment of the proceeds of a disposition shall be made in a proceeding commenced within six months from the grant of letters until the time for the presentation of claims as fixed by a published notice has expired, or seven months have expired since letters were issued to the original fiduciary and until all known creditors and persons interested who are not parties to the proceeding have been brought in or have appeared.

§ 117.11. Effect of death or disqualification of fiduciary.

The following shall prevail in disposition proceeding in the event of the death, removal or disqualification of all of the fiduciaries:

(a) If such event occurs before the granting of an order directing disposition of the real property their successor must be substituted and the proceeding shall continue by or against the successor;

(b) If such event occurs after the granting of the order but before the complete execution thereof the successor must proceed without further order to complete all unfinished matters as were required of his predecessors;

(c) The successor must give such security for the performance of his duties as the court may require;

(d) If no successor is appointed the court may make an order authorizing the fiduciary of the last surviving fiduciary, on giving such security as the court may require, to continue the proceeding or to complete all unfinished matters as were required of the fiduciary, unless or until a successor is appointed.

§ 117.12. Conclusiveness of mortgage, lease or conveyance executed pursuant to order of disposition.

The mortgage, lease or conveyance made pursuant to an order granted as provided in this chapter shall bind the remainders and reversions as well as the immediate or future or trust interests in the real property and shall be valid and effectual against all persons under disability, absentees, and persons not in being having estates or interests vested or contingent for life or in trust or in reversion or remainder in said real property or in the proceeds of the sale thereof and against all other persons so interested or having such estates or interests who shall by acknowledged instrument consent to such order or who have been made parties to such proceedings or who are not entitled to notice thereof as provided in this chapter.

§ 117.13. Dispositions concerning conveyances of decedent's interest in real property under contract.

A decedent's interest in real property held by him under a contract for the purchase thereof may be conveyed in whole or in part by a fiduciary. Such conveyance, if of the whole thereof, operates as an assignment of the contract to the purchaser and vests in such purchaser, his distributees and assigns, all the right, title and interest of all the persons entitled at the time of sale in and to the decedent's interest in the real property and if of a part only, transfers to such purchaser, his distributees and assigns all the decedent's right, title and interest in and to the part so sold. Upon fully complying with the contract the purchaser, his distributees or assigns has the same right to enforce performance thereof with respect to the part conveyed to him, and the fiduciary or his assignee has the same right to enforce performance with respect to the residue, as the decedent would have had if he were living. Any title acquired by the fiduciary or his assignee, with respect to the part not sold must be held in trust for the use of the persons entitled to the decedent's interest, subject to the

constitutional or statutory dower and curtesy rights, if any, of the spouse, as the case may be.

§ 117.14. Right of life tenant and lesser term tenants to be considered in disposition.

Where any party to the proceeding has an existing or inchoate right of dower or where any party to the proceeding has a tenancy by dower or curtesy or an estate for life or for years in the real property, the court must determine whether the interests of all the parties will be better protected, or a more advantageous disposition can be made of the real property, by including the disposition of such right or interest and if the court shall so determine there may be included in the order a direction that such right or interest be included in the disposition. The provisions of law in relation to the right of dower, curtesy and estates for life or for years, so far as the same may be applicable, shall govern and control the distribution of moneys realized on such disposition which shall belong to the owner of such right of dower or curtesy, or tenant for life, or for years.

§ 117.15. Restitution from assets subsequently discovered.

Where a decree has been made for the application of the proceeds of real property as prescribed in this chapter and assets which should have been applied thereto are afterward discovered or for any other reason money or other personal property of the decedent, which should have been applied thereto, afterward comes to the hands of the fiduciary, legatee or distributes, the devisee or other person aggrieved may maintain a proceeding in the court to procure reimbursement therefrom.

§ 117.16. Conveyance of real property by fiduciary to vendee of contract of sale made by decedent.

Where a decedent dies seized of real property after he has made a

contract for the conveyance thereof remaining unexecuted at his death, his fiduciary or successor may make a deed reciting the contract and conveying the real property. Proceedings thereon shall be governed by the following:

(a) The vendor's fiduciary, distributes, devisees or assigns may file a petition praying for the confirmation of the conveyance, or in the case of a vendee, his fiduciary, distributees, devisees or assigns, for a decree that it be made or delivered, or the vendor's fiduciary may pray for like relief in a petition for the judicial settlement of his account, but no proceeding pursuant to this section shall be required in any case for the sole purpose of perfecting title to real property and any such conveyance heretofore made by a fiduciary of a decedent is ratified and confirmed;

(b) In a proceeding pursuant to this section the court shall have jurisdiction to adjudicate the amount remaining payable under the terms of any such contract and the respective rights of the parties;

(c) In any case process shall issue to all persons interested and the court shall make such decree or order as justice shall require.

§ 117.17. Conclusive presumption of validity of dispositions after 10 years.

An action or proceeding to set aside any disposition of the real property of a decedent pursuant to an order granted under this chapter by reason of lack of jurisdiction over any person interested in the estate or by reason of any other defect in the procedure must be brought within 10 years after the date of the order. After the lapse of such period the presumption that the order was regular in all respects and that the court had jurisdiction of all persons interested in the estate becomes conclusive.

Chapter 118. MISCELLANEOUS PROCEEDINGS

§ 118.1. General provisions.
§ 118.2. Proceedings for relief against a fiduciary.
§ 118.3. Proceeding by fiduciary to discover property withheld or obtain information; petition and process.
§ 118.4. Discovery proceedings; inquiry, trial and decree.
§ 118.5. Proceeding to compel delivery of property by a fiduciary which is claimed by another or others.
§ 118.6. Proceeding for compromise of controversies between claimants to property or estates where interests of persons under disability or not in being are affected.
§ 118.7. Court at request of fiduciary may advise as to propriety of sale of property; release of fiduciary upon compliance.
§ 118.8. Proceeding by fiduciary for continuation of a business.
§ 118.9. Compensation of attorneys.
§ 118.10. Distributee or vendee may apply to establish devolution of real property of intestate.

§ 118.1. General provisions.

Unless otherwise indicated, all miscellaneous proceedings provided for under this chapter shall be governed by the following:

(a) Proceedings shall be commenced by petition stating the jurisdictional facts and the facts applicable to the particular relief sought. They may be commenced by a fiduciary, creditor or person interested and may be entertained by the court or may be reserved for determination in an accounting or other proceeding or the court may decline to entertain the proceeding;

(b) The jurisdiction of the court over the proceeding shall be deemed to continue until a decree or order therein is fully

satisfied;

(c) If the petition be entertained service of process shall be made upon all persons interested in the proceeding and to such other persons as directed by the court;

(d) In any such proceeding the court may grant appropriate relief, grant or deny the relief in whole or in part upon such terms as it deems proper and make such decree or order as justice shall require and may require a refunding bond.

§ 118.2. Proceedings for relief against a fiduciary.

A proceeding may be commenced to require a fiduciary to do one or more of the following:

(a) To supply information concerning the assets or affairs of an estate relevant to the interest of the petitioner when the fiduciary has failed after request made upon him in writing therefor;

(b) To set apart and turn over exempt property to which a spouse or child is entitled or if it has been lost, injured or disposed of, to pay the value thereof or the amount of injury thereto;

(c) To pay the reasonable funeral expenses of a decedent if there are funds available for such payment;

(d) To pay a claim which has been allowed, to deliver specific bequest or property to a person entitled thereto or to pay a legacy, distributive share, interest in a trust or a claim for an administration expense, and when a trustee is unable to deliver personal property to the person entitled, to pay the value thereof;

(e) To pay to any beneficiary of an estate all or part of any testamentary provision or distributive share to which he is entitled when the property of the estate applicable to the payment of debts, legacies and expenses exceeds by at least one-third the amount of all known claims, legacies having priority and legacies or distributive shares of the same class and the beneficiary needs such payment for his support or education;

(f) To admeasure, set apart and turn over the share to which a surviving spouse is entitled under an election made pursuant to section 4.1 of this title;

(g) To comply with such directions as the court may make whenever two or more fiduciaries disagree as to custody of money or other property of the estate committed to them.[20]

§ 118.3. Proceeding by fiduciary to discover property withheld or obtain information; petition and process.

1. Discovery proceedings. A fiduciary may present to the court which granted his letters, a petition which may be accompanied by an affidavit or other written evidence to support it, showing on knowledge or information and belief that any money or other personal property or the proceeds or value thereof which should be paid or delivered to him is situate as follows:

(a) In the possession or control of a person who withholds it from him, whether possession or control was obtained in the lifetime of a decedent or subsequent to his death; or

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20 *Prior legislation:* Par. (f): 1956 Code 29:90-96; 6-1121; Rev. Stat. § 1386; OBB 31, Legal Principles and Rules, t. II, ch. 1, § 13, 2 Hub. 1524.

(b) Within the knowledge or information of a person who refuses to impart knowledge or information he may have concerning it or to disclose any other fact which will aid the petitioner in making discovery of the property; or

(c) He has reason to believe, in the possession or control of a person described in subparagraph (a) or within the knowledge or information of a person described in subparagraph (b) and praying that an inquiry be had respecting it and that the respondent be ordered to attend and be examined accordingly and to deliver the property if in his control.

2. Money or other personal property defined. "Money or other personal property" as used in this section shall include money deposited and all property rights of the depositor consequent on the deposit of money by the decedent or for his account and with authorized banking organization in respect to which the depository claims no beneficial interest other than its proper costs, fees or expenses.

3. Court may make order for examination. If the court be satisfied there are reasonable grounds for the examination, it must make an order accordingly, and if it appears at any time that a person other than the respondent claims any interest in the property or the proceeds or value thereof the court may direct that person to attend and be examined in respect to his claim and to deliver the property if in his control or the proceeds or value thereof.

4. Service of process. Service of any order herein provided must be made by delivery of a certified copy thereof to the person or persons therein named.

§ 118.4. Discovery proceedings; inquiry, trial and decree.

After service of any order in a discovery proceeding as provided for

in section 118.3, the procedure governing the inquiry, any trial required and the decree to be entered shall be as follows:

(a) Upon the return of the order, whether or not the respondent answers, the petitioner may examine him with respect to the allegations of the petition. If it appears thereon that an issue of title to any money or other property or the proceeds of value thereof is raised, if he has not theretofore done so, the respondent shall be directed to serve and file an answer accordingly, but the examination if directed by the court, shall continue. When an issue of title is raised that issue shall be tried as a litigated issue;

(b) Any claim of title to or the right to the possession of any property of the decedent or the estate must be made by verified answer;

(c) If the possession of the property be denied, proof of that issue may be presented by any party. The court may in an appropriate case make an interim decree directing the delivery of property not claimed by verified answer and continue the proceeding for determination of any litigated issue;

(d) If it appears that the petitioner is entitled to the possession of any property the decree shall direct delivery thereof to him or if the property shall have been disposed of or diverted the decree may direct the payment of the proceeds or the value of the property or may impress a trust upon the proceeds or make any determination which the circuit court might decree in following trust property or funds;

(e) If it be determined that the petitioner is not entitled to the property or the proceeds or value thereof the court may determine the respective interests of the other claimants thereto;

(f) If during the proceeding, other than a trial of issues raised by answer, a respondent is examined concerning any personal communication or transaction between himself and the decedent such examination shall not be deemed to be a waiver of any provision of law prohibiting such examination.

§ 118.5. Proceeding to compel delivery of property by a fiduciary which is claimed by another or others.

A person having a claim to specific money or personal property or the proceeds thereof alleged to be in the possession of or under the control of a fiduciary may present to the court from which letters were issued to the fiduciary a petition showing the facts and praying that the fiduciary be required to show cause why he should not be required to deliver the specific money or personal property or the proceeds thereof. Thereafter the procedure shall be as follows:

(a) Process shall issue accordingly to the fiduciary;

(b) Upon return of process the court, must hear the proofs of the parties, determine the issues, and if claim shall have been made to the money, property or the proceeds thereof by a person or persons other than the fiduciary, the court shall determine the respective interests of the parties in the property or the proceeds or value thereof and make a decree accordingly.

§ 118.6. Proceeding for compromise of controversies between claimants to property or estates where interests of persons under disability or not in being are affected.

Where the interests of persons under disability or of persons not in being are or may be affected by a proposed compromise, the following procedures are applicable:

(a) A fiduciary may petition for authorization to compromise any controversy between different claimants to the estate or property or portions thereof under administration in accordance with an agreement to which all parties in being claiming an interest in the estate affected by the agreement shall be parties in person or by guardian;

(b) The proponent or any party to a probate proceeding may petition to adjust by compromise any controversy existing or which may arise between the persons claiming under any will alleged to have been made by the decedent and any persons claiming as distributees or decedent or claiming to be entitled to a right of election or claiming pursuant to an agreement with the decedent or otherwise, in accordance with an agreement to which all such persons as are interested shall be parties, provided that persons named as executors to whom letters have not issued and persons whose interests are not affected by the proposed compromise are not required to be made parties;

(c) A person under disability or a person not in being who has a future contingent interest is a necessary party and shall be represented by a guardian ad litem unless in the case of a person under disability his guardian shall appear in his behalf. The guardian so appearing or the guardian ad litem may execute in behalf of the person for whom he appears all proper instruments necessary to effect any compromise approved by the court;

(d) If by the terms of the compromise, money or property is directed to be held for the benefit of a person under disability or a person not in being it may in a proper case be deposited in a designated depository subject to the order of the court;

(e) An agreement of compromise made as herein provided if found by the court to be just and reasonable shall be valid and

binding upon the interests of persons under disability, persons not in being and all parties to the agreement;

(f) An application for the approval of a compromise hereunder must be made by petition which shall show the provisions of any instruments or documents under which claim is made to the property or estate in controversy and all facts concerning the claims of the parties to the controversy and the possible contingent interests of persons not in being and the necessity for the approval of the compromise.

(g) The court may entertain the application prior to the execution of the proposed compromise agreement by all parties required to execute it and may permit its execution after the commencement of the proceeding by any person interested;

(h) The court shall inquire into the facts and make such order or decree as justice shall require in any proceeding.

§ 118.7. Court at request of fiduciary may advise as to propriety of sale of property; release of fiduciary upon compliance.

Whenever the value of property of an estate is uncertain or dependent upon the time and manner of sale thereof the fiduciary may apply by petition to the court for advice and direction as to the propriety, price, manner and time of sale thereof. A substantial compliance with the authorization so given shall relieve the fiduciary from any objection that the estate suffered a loss on account of the time, manner of sale or the price realized.

§ 118.8. Proceeding by fiduciary for continuation of a business.

A fiduciary may petition for the continuation of a business other than

a profession, of which decedent or the person whose estate is being administered was sole owner and it is desired to continue it for the best interests of the estate. In such proceeding the following shall be applicable:

(a) If the petition be entertained the court may make an intermediate order without notice authorizing continuance of the business pending the return of process and final decree;

(b) Any respondent may serve and file an answer on the return of process or such further time as the court directs. After inquiring into the facts and hearing the parties, if the court is satisfied the best interests of the estate require the continuation of the business, it may make a decree accordingly;

(c) The decree may provide such restrictions, conditions or requirements and such incidental relief, including a direction or permission for incorporation of the business, as the court may order;

(d) Whenever a fiduciary shall be authorized under this section to continue a business in other than corporate form the decree shall provide for the extent of the liability of the assets of the business and the assets of the estate apart from the assets of the business for debts and other liabilities arising out of its continuance. The court may make such directions in this regard as it deems advisable in the circumstances. The decree shall further provide for the period of time for continuance;

(e) If under a decree granted under this section a fiduciary shall continue and carry on a business other than in corporate form he shall file a certificate of doing business under an assumed name pursuant to the provisions of the law applicable thereto. The certificate shall include in addition to the other matters required

a statement showing the fiduciary capacity in which he is conducting and carrying on the business and the extent to which the debts and other liabilities incurred in the continuance are to be chargeable to the assets of the estate as provided in the decree. The fiduciary shall be relieved of personal liability if acting within the authority granted and having filed the certificate above provided, but shall be liable only in a fiduciary capacity. Any person having a claim, demand, or cause of action arising out of or in connection with the conduct of the business after the filing of the certificate above provided, shall thereafter be limited to the payment or satisfaction of such claim, demand or cause of action to such assets as are made available for the payment or satisfaction of debts and liabilities in the decree, provided, however, that nothing herein contained shall relieve the fiduciary from personal liability for the consequences of his own wrongful act or negligence in the continuance of the business and provided further that nothing herein contained shall render ineffectual any provision in a will or other instrument directing or permitting the continuance of a business.

(f) Unless otherwise provided in the decree all funds collected and received in continuing and carrying on the business of a decedent shall at all times be kept separate and apart from the funds in the hands of the fiduciary forming part of the general assets of the estate as a whole.

(g) Notwithstanding the foregoing provisions, any creditor or person interested may at any time apply to the court for an order requiring the fiduciary to discontinue and wind up the business and the court may thereupon make such order as to it appears for the best interests of the estate, the creditors and all persons interested.

§ 118.9. Compensation of attorneys.

At any time during the administration of an estate and irrespective of the pendency of a particular proceeding, the court is authorized to fix and determine the reasonable compensation, charge or expense, for services rendered by an attorney to a fiduciary in connection with his duties as a fiduciary and where there has been an agreement entered into between the fiduciary and his attorney with respect thereto, to inquire into the reasonableness thereof. Where the estate also derived benefits, the court is further authorized to fix and determine the reasonable compensation of an attorney which shall be payable from the estate's general funds for services rendered by him to a devisee, legatee, distributee or any person interested. The compensation so to be fixed and determined shall be based upon the benefit derived by the estate from such services. Such proceedings shall be instituted by petition of a fiduciary of the estate or a person interested or an attorney who has rendered services. The total of the compensation payable for attorney's fees applicable against the general funds of an estate, in all cases, shall be no more than ten percent of the gross estate.

§ 118.10. Distributee or vendee may apply to establish devolution of real property of intestate.

1. Petition and process. Where a person seized in fee of real property within the Republic dies intestate or without devising his real property, his distributees or any of them or any person deriving title from or through such distributees or any of them may present either to the court which has jurisdiction of the estate or to a court of competent jurisdiction of the county where the real property or any part thereof is situated, a petition describing the property and showing the interest or share of the petitioner and of each distributes of the decedent in the property and praying for a decree establishing the right of inheritance thereto and that all the distributees of the decedent be required to show cause why the prayer of the petition should not

be granted. Process must issue accordingly.

2. Proceedings on return; petitioner's burden of proof. Upon the return of process the court must hear the allegations and proofs of the parties and determine the issues raised. The petitioner must establish the following:

(a) The fact of the decedent's death;
(b) His domicile at the time thereof;
(c) His intestacy, either generally or as to the real property;
(d) His distributees entitled to inherit the property;
(e) The name, age, domicile and relationship to the decedent, of each; and
(f) The interest or share of each in the property.

3. Recording of decree in registrar's office. The decree determining the issues shall be recorded by the petitioner in the office of the registrar of each county in which the real property is situate, as prescribed by law for recording a deed.

Chapter 119. ACCOUNTING

Subchapter A. Inventory

§ 119.1. Inventory and appraisement.
§ 119.2. Supplementary inventory and appraisement.
§ 119.3. Inventory and appraisement as evidence.

Subchapter B. Settlement of Fiduciary Accounts

§ 119.11. Recording or filing instrument executed by fiduciaries and beneficiaries settling accounts.
§ 119.12. Decree on filing instruments approving accounts.
§ 119.13. Compulsory account on a court's own initiative or on petition; who may petition.

§ 119.14. Compulsory account; proceedings thereupon.
§ 119.15. Accounting by fiduciary of deceased fiduciary or guardian of incompetent fiduciary.
§ 119.16. Voluntary account, who may petition.
§ 119.17. Affidavit accompanying account.
§ 119.18. Voluntary account; process.
§ 119.19. Voluntary account; proceedings thereupon.
§ 119.20. Rule for accounting for profit and loss.
§ 119.21. Rule for account as to claims for funeral expenses
§ 119.22. Decree for payment and distribution upon settlement of accounts; deferment in certain cases.
§ 119.23. Court may provide for repayment of any excess in prior payments in decree settling accounts.
§ 119.24. Court may authorize distribution in kind.
§ 119.25. When decree may authorize retention of money or property for later application.
§ 119.26. Decree may direct deposit of inheritance in court to protect beneficiary.
§ 119.27. Legacy or distributive share payable to unknown person or whose whereabouts are unknown, procedure.
§ 119.23. Accounting decrees to contain summary statement.

Subchapter A. INVENTORY

§ 119.1. Inventory and appraisement.

1. Requirements as to inventory. Within two months after his appointment, unless a longer time shall be granted by the court, every executor or administrator shall make and return a verified inventory and appraisement in one written instrument, of all the property of the decedent which shall come to his possession or knowl edge, including a statement of all encumbrances, liens and other charges on any item. Such property shall be classified therein as follows:

(a) Real property with plat or survey description;

(b) Furniture, household goods, and wearing apparel;

(c) Corporation stocks described by certificate numbers;

(d) Mortgages, bonds, notes and other written evidences of debt, described by name of debtor, recording data, and other identification;

(e) Bank accounts, insurance policies in which the estate is the beneficiary, and money;

(f) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property will be required.

2. Requirements as to appraisement. At the time letters testamentary or letters of administration are granted, the court shall appoint two suitable, disinterested persons, as appraisers, to whom the executor or administrator shall exhibit the inventory. The appraisers shall determine and state in figures opposite each item contained in the inventory the fair net value thereof, as of the date of decedent's death, after deducting the encumbrances, liens and charges thereon, and forthwith deliver such inventory and appraisement, certified by them under oath, to the personal representative who shall file it with the court. The appraisers shall be allowed such reasonable fees, necessary disbursements and expenses as may be fixed by the court, which shall be paid by the executor or administrator as expenses of administration.

3. Dispensing with appraisers in certain cases. If the inventory shows that the estate consists solely of personal assets of definitely liquidated values, or of property of negligible value, the court may in its

discretion accept the verified appraisal of the executor or administrator in lieu of appraisal by appraisers; and in such case the court need not appoint appraisers, or may revoke their appointment if already made.[21]

§ 119.2. Supplementary inventory and appraisement.

Whenever any property not mentioned in the inventory comes to the knowledge of an executor or administrator, he shall either make a supplemental inventory thereof and cause such property to be appraised, such supplemental inventory and appraisement to be returned within thirty days after the discovery thereof, or include the same in his next accounting unless the court shall order a particular manner of return.[22]

§ 119.3. Inventory and appraisement as evidence.

Inventories and appraisements may be given in evidence in all proceedings, but shall not be conclusive, and other evidence may be introduced to vary the effect thereof.

Subchapter B. SETTLEMENT OF FIDUCIARY ACCOUNTS

§ 119.11. Recording or filing instruments executed by fiduciaries and beneficiaries settling accounts.

There may be recorded or filed in the court any instrument settling an

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21 *Prior legislation:* 1956 Code 9:23 (1); Rev. Stat., Ctrl w4,6 1058(l); OBB 113, Judiciary, ch. III, § 2; 1841 Digest, pt. I, Act to prevent fraud in the management of intestate and other estates, § 2, 2 Hub.1504; Acts 1839. Bill to prevent fraud in the management of intestate and other estates, art. 4, 2 Hub. 1391.

22 *Prior legislation:* 1956 Code 9:23(l); Rev. Stat. § 1053(l).

account in whole or in part executed by one or more fiduciaries and one or more legatees, devisees, distributees, creditors or infants who have attained majority or in the case of an infant or incompetent whose legacy or claim has been paid, by the guardian of his property or the person receiving payment. Every such instrument to be recorded shall be acknowledged and if recorded, the record thereof, or a certified copy of the record or instrument shall be presumptive evidence of the contents of such instrument and its due execution.

§ 119.12. Decree on filing instruments approving accounts.

Fiduciaries may be released and discharged from further liability without a judicial settlement of their accounts in accordance with the following procedure:

(a) A fiduciary may present to the court a petition showing the names and post-office addresses of all persons interested, that all taxes have been paid or that no taxes were due and that the petitioner has fully accounted and made full disclosure in writing of his administration of the estate to all persons interested and praying for a decree releasing and discharging the petitioner;

(b) The petition shall also show the following, whichever applies:

(i) In the case of a fiduciary other than a testamentary trustee or guardian either that his letters have been revoked or that the time for creditors to present claims has expired and that all known debts of the decedent and administration expenses have been paid;

(ii) In the case of a testamentary trustee whether or not the trust has been fully executed;

(iii) In the case of a guardian of an infant either that the infant has reached his majority or has died;

(c) The petitioner shall also file with the petition acknowledged instruments executed by all the persons interested or in the case of an infant or incompetent whose legacy or claim has been paid by the guardian of his property or person receiving payment, approving the account of the petitioner and releasing and discharging the petitioner;

(d) The court may thereupon make a decree releasing and discharging the petitioner and the sureties on his bond, if any, from any further liability to the persons interested.

§ 119.13. Compulsory account on a court's own initiative or on petition; who may petition.

The court at any time, upon it appearing that it is for the best interests of the estate, may by an order require a fiduciary to file an intermediate or final account within such time and in such manner as directed by it. The order may be made either on the court's own initiative or on the petition of any of the following:

(a) a creditor, or

(b) a person interested, or

(c) any person in behalf of an infant or child born after the making of the will when interested in the estate, or

(d) the fiduciary of a deceased person, interested, or

(e) a surety on the bond of the fiduciary required to account, or

(f) a successor fiduciary or remaining fiduciary where letters of the predecessor or co-fiduciary have been revoked, or

(g) a co-fiduciary after he has filed his account and a petition for its judicial settlement, or

(h) the Attorney General where any part of the estate may escheat to the Republic of Liberia.

The proceedings upon a petition shall be as provided in section 119.14.[23]

§ 119.14. Compulsory account; proceedings thereupon.

1. Order directing accounting upon petition. On the presentation of a petition to compel an account or when so directed by the court, process shall issue to the fiduciary accordingly and on the return thereof if he fails to appear or to file his account or to show good cause to the contrary or to present in a proper case a petition as prescribed in section 119.16, the court may by order direct him to account within the time and in the manner directed by the court, to cause process to issue requiring all persons necessary to be served under section 119.18 to show cause why his account should not be judicially settled, cause such process to be served upon such persons and that he attend before the court from time to time for the purpose of the settlement of his account.

2. Proceeding may be consolidated with voluntary accounting. The pendency of a proceeding against a fiduciary to compel him to account does not preclude him from presenting a petition as

23 *Prior legislation:* 1956 Code 9:23 (5); Rev. Stat. § 1053(5); OBB 113, Judiciary, art. III, § 3; 1841 Digest, pt. I, Act to prevent fraud in the management of intestate and other estates, § 2, 2 Hub. 1504; Acts 1839, Bill to prevent fraud in the management of intestate and other estates, art. IV, 2 Hub. 1391.

prescribed in section 119.16. If such petition be presented at or before the return of process in and as prescribed herein, process issued thereon need not be directed to petitioner in such proceeding and the two proceedings must be consolidated.

3. Hearing, statement of account and decree. After hearing the proofs of the parties the court may take and state the account and make such other order or decree as justice shall require, notwithstanding the failure or refusal of the fiduciary to file such account or to procure its settlement.

§ 119.15. Accounting by fiduciary of deceased fiduciary or guardian of incompetent fiduciary.

Upon the death of a fiduciary, or in the event a fiduciary is declared incompetent, the settlement of the accounts of the estates administered by them shall be governed by the following:

(a) Where a fiduciary dies the court has the same jurisdiction upon the petition of any person required to be served upon a voluntary judicial settlement of the account of the deceased fiduciary to compel the fiduciary of the deceased fiduciary to account which it would have against the deceased fiduciary;

(b) A fiduciary of a deceased fiduciary may voluntarily account for the acts and doings of the deceased fiduciary and for the property of the estate which had come into the possession of the latter, whether or not such property has come into the hands of the fiduciary of the deceased fiduciary, provided however, that the fiduciary of the deceased fiduciary shall not be accountable for such property except to the extent that he shall have assets of the estate of the deceased fiduciary;

(c) On the death of a fiduciary while an accounting by or against

him as such is pending before the court, the court may continue the proceeding where his fiduciary or successor has voluntarily made himself a party thereto or has been brought in by process, and proceed with the accounting and determine all questions and grant any relief which the court would have power to determine or grant in case such fiduciary had not died or in case the fiduciary of the deceased fiduciary had voluntarily petitioned for an accounting as provided in this section;

(d) On a petition filed by a fiduciary of a deceased fiduciary there shall be brought in the persons who would be necessary parties to a proceeding commenced by the deceased fiduciary for a judicial settlement of his accounts and also if a successor of the deceased fiduciary has been appointed, such successor or his fiduciary:

(e) If upon the accounting the court finds that there can be a distribution in whole or in part to the parties entitled thereto it may make a decree accordingly and may also therein direct payment and delivery of the balance of the estate by the fiduciary of the deceased fiduciary upon such terms and security as it deems proper. For the purpose of payment and distribution the fiduciary of the deceased fiduciary shall have all the powers and duties of the deceased fiduciary;

(f) Upon the settlement of the account the court may allow to the fiduciary of the deceased fiduciary reasonable compensation for any service rendered by him to the estate accounted for. The compensation so allowed plus any commissions retained by the deceased fiduciary or payable to his estate shall in no event exceed a full commission;

(g) The court may grant to the fiduciary of a deceased fiduciary all of the rights and powers of the deceased fiduciary, subject to all

of the duties and liabilities of such deceased fiduciary;

(h) Every right granted by this section to or against the fiduciary of a deceased fiduciary shall apply to a similar proceeding by or against the guardian of an incompetent fiduciary.

§ 119.16. Voluntary account, who may petition.

In any of the following cases a fiduciary may present to the court his account and a petition praying that his account be judicially settled and that all necessary and proper parties be required to show cause why such settlement should not be had:

(a) By a fiduciary other than a guardian or testamentary trustee:

(i) Where the time for presentation of claims as fixed by a published notice has expired or seven months have expired since letters were issued to the original fiduciary;

(ii) Where his letters have been revoked;

(iii) Where the court at any time within six months after the issuance of letters to the original fiduciary entertains an application by the fiduciary for the judicial settlement of his account and it appears from the petition or account that a disposition of the decedent's real property will be necessary for any of the purposes specified in section 117.1;

(iv) Where his account has not been judicially settled within one year preceding the application therefor and the application is entertained.

(b) By a guardian:

(i) Where a petition for a compulsory judicial settlement of his account may be presented by any other person;

(ii) Where he has expended all of the estate of the infant or incompetent and the court deems it proper that he should be discharged.

(c) By a trustee:

(i) Where one or more distinct and separate trusts created by the will have been or are ready to be executed;

(ii) Where his account has not been judicially settled within one year preceding the application therefor and the court entertains the application.

§ 119.17. Affidavit accompanying account.

To each account filed in the court, as prescribed in this chapter, must be appended the affidavit of the accounting party to the effect that the account contains according to the best of his knowledge and belief a true statement of all his receipts and disbursements on account of the estate and of all money or other property belonging to the estate which have come into his hands or been received by any other person by his order or authority for his use and that he does not know of any error or omission in the account to the prejudice of any creditor of, or person interested in, the estate.

§ 119.18. Voluntary account; process.

Upon a voluntary judicial settlement of the account of a fiduciary process must issue to the following:

(a) All unpaid creditors or persons claiming to be creditors of the

decedent, infant or incompetent, as the case may be;

(b) The surety on his bond, if any;

(c) All co-fiduciaries who do not join the petition;

(d) The successor, if one has been appointed, in a case where the petitioner's letters have been revoked, and if no successor has been appointed, all persons interested who are required to receive process under this section;

(e) The Attorney General where the decedent, infant, incompetent or beneficiary died intestate as to any part of the estate leaving no known distributes;

(f) The distributees where the decedent, infant or beneficiary died intestate as to any property, except those who by acknowledged release appear to have been paid;

(g) All devisees, all trustees of any trust created by the will and all legatees except those who by acknowledged release appear to be paid and if any such be an infant or incompetent whose legacy or claim has been paid, such release shall be executed by the guardian of his property;

(h) In the case of a guardian, process shall also issue to the infant or the incompetent for whom the guardian was appointed;

(i) In the case of a trustee, process shall also issue to all persons who are entitled absolutely or contingently by the terms of the will or by operation of law to share in the estate;

(j) Where an accounting fiduciary accounts to himself in a separate capacity as the fiduciary of a deceased beneficiary of the estate

or as trustee, or as guardian of an infant beneficiary or of an incompetent, it shall not be sufficient to issue process to or obtain the appearance of the accounting party in such separate capacity only nor his co-fiduciary, if any, in such separate capacity, but in addition process shall issue to all persons interested in the estate of the deceased beneficiary, the infant, the incompetent or the trust of which the accounting party is trustee;

(k) Where any person to whom process is required to issue has died process shall issue to his fiduciary and if none has been appointed to all persons interested in the estate of the deceased as distributees, nominated fiduciaries or named as legatees or devisees under any will of the deceased filed in the court;

(l) Where the name or whereabouts of any person to whom process is required to issue cannot be ascertained after the exercise of due diligence the court may dispense with the service of process on such person provided the value of his interest in the estate does not exceed $500. Where service of process upon such person has been dispensed with the decree settling the account shall not be conclusive against him unless he shall before the entry of the decree appear in the proceeding, waive the issuance or service of process or be served therewith.

§ 119.19. Voluntary account; proceedings thereupon.

1. Hearing on return of process and decree. On the return of process issued as prescribed in section 119.18 the court must take the account, hear the proofs of the parties respecting it and make such order or decree as justice shall require.

2. Examination of fiduciary. The fiduciary may be examined under oath by any party to the proceeding either before or after filing

objections, if any, to the account, as to any matter relating to his administration of the estate.

§ 119.20. Rule for accounting for profit and loss.

No profit shall be made by a fiduciary by the increase nor shall he sustain any loss by the decrease or loss without his fault of any part of the estate which he administers, but he shall be charged with the increase and credited for the decrease or loss on the settlement of his accounts.

§ 119.21. Rule for accounting as to claims for funeral expenses.

If upon any accounting it shall appear that a fiduciary has failed to pay a claim for funeral expenses, the amount of which has been fixed by the court as provided in sections 117.1 and 117.2 or upon the accounting, he shall not be credited with the payment of any debt or claim against the decedent until the claim for funeral expenses has been paid. Moreover, in any accounting the claim for funeral expenses shall be separate and apart from the claim for expenses of administration.

§ 119.22. Decree for payment and distribution upon settlement of accounts; deferment in certain cases.

Where an account is judicially settled as prescribed in this chapter and any part of the estate remains and is ready to be distributed the decree must direct the payment and distribution therefrom of the shares of the persons entitled thereto, except that no decree of distribution shall be made in an accounting proceeding in which there has been a disposition of real property pursuant to chapter 117 commenced within six months from the grant of letters until time for the presentation of claims as fixed by a published notice has expired or seven months have expired since letters were first issued and if

there be creditors who were not served with process upon the petition for accounting, until supplemental process shall have issued to them.

§ 119.23. Court may provide for repayment of any excess in prior payments in decree settling accounts.

If any creditor or person interested has received estate assets in excess of the amount determined on the settlement of the account to be due him the court is authorized to direct in the decree repayment by him of the excess to the fiduciary of the estate or otherwise as justice shall require.

§ 1119.24. Court may authorize distribution in kind.

At any time during the administration of an estate or upon an accounting the court may direct the conveyance of any unsold realty or the delivery of any unsold chattel or the assignment of any uncollected demand or any other personal property to a party or parties entitled to payment or distribution, in lieu of the money value of the property at the fair market value at the date of distribution.

§ 119.25. When a decree may authorize retention of money or property for later application.

1. Cases in which retention must be directed. In any of the following cases the decree must direct that a sum sufficient to satisfy a debt or claim or the proportion to which it is entitled, together with the probable amount of the interest and costs, or that any personal property the right to which is in controversy be retained in the hands of the accounting party or be deposited in a bank or trust company, subject to the order of the court, or be paid into the court for the purpose of being applied to the payment of the debt or claim or to the satisfaction of any judgment recovered and that so much thereof as is not needed for such purposes be afterwards distributed:

(a) Where a claim for a debt, ascertainable in amount, but not yet due has been disputed or rejected, or

(b) Where an admitted debt of the decedent ascertainable in amount, is not yet due and the creditor will not presently accept payment with a rebate of interest, or

(c) Where an action is pending between the fiduciary and a person claiming to be a creditor of the decedent, or

(d) Where on the judicial settlement of the account of a trustee a controversy respecting the right of a party to share in the estate or other personal property held by the trustee has not been determined.

2. Directions for later disposition by petition. Upon the determination of the debt or claim or the right to the personal property any party may present a petition to the court praying for directions as to the disposition of the moneys or property retained.

§ 119.26. Decree may direct deposit of inheritance in court to protect beneficiary.

Where it shall appear that a beneficiary would not have the benefit or use or control of the money or other property due him or where other special circumstances make it desirable that such payment should be withheld the decree may direct that such money or property be paid into court and deposited by it in any official depository for the benefit of the beneficiary or the person or persons who may thereafter appear entitled thereto. The money or property so paid into court shall be paid out only upon order of the court or pursuant to the order or judgement of a court of competent jurisdiction.

§ 119.27. Legacy or distributive share payable to unknown person or persons whose whereabouts are unknown; procedure.

Where the person entitled to a legacy or distributive share is unknown, or if the whereabouts of such person is unknown, the following procedure shall govern:

(a) The decree must direct the fiduciary to pay the amount thereof into court to be deposited by it in a special account in an official depository for the benefit of the person or persons who may thereafter appear to be entitled thereto;

(b) The court upon the petition of a person claiming to be so entitled and upon at least 14 days' notice, accompanied with a copy of the petition to the Attorney General and the curator of the court, may by a reference or by directing the trial of an issue by a jury or otherwise, ascertain the rights of the persons interested and grant an order directing the payment of any money which appears to be due to the claimant, but without interest and after deducting all expenses incurred with respect thereto;

(c) At any time prior to the granting of an order therein notice of the claim, accompanied with a copy of the petition, shall be given by the petitioner to such persons and in such manner as directed by the court.

§ 119.28. Accounting decrees to contain summary statement.

Each decree whereby an account is judicially settled must contain in the body thereof a summary statement of the account as settled or must refer to such summary, which must be recorded.

§ 119.29. Rights of alleged decedent upon return.

If letters shall issue upon the estate of an alleged decedent and if thereafter the person alleged to be dead shall return, he shall on demand receive the property then in the hands of the fiduciary after reserve for any unpaid administration charges and shall have only the further rights to compel an accounting on the part of his fiduciary and to enforce the decree made thereon and to recover from any person who shall have received distribution of moneys or other assets from his fiduciary such moneys or assets or the value thereof. His fiduciary shall not be liable for moneys or assets disbursed or delivered by him in good faith and the person alleged to be dead may not, upon his return, review any matter embraced in any account of his fiduciary which may have been finally settled by decree entered prior to the date when his fiduciary shall have had actual notice that he is still living.

Chapter 120. COSTS, ALLOWANCES AND COMMISSIONS

§ 120.1. Costs and allowances in general.
§ 120.2. Schedule of costs and allowances.
§ 120.3. Special rules for costs in contested probate proceedings and for copies of minutes of trial therein.
§ 120.4. Security for costs.
§ 120.5. Costs on appeal.
§ 120.6. Fees of appraisers.
§ 120.7. Expenses, legal fees and commissions of fiduciaries other than testamentary trustees.
§ 120.8. Expenses, legal fees and commissions of testamentary trustees, except in charitable trusts.
§ 120.9. Expenses, legal fees and commissions of testamentary trustees of charitable trusts.

§ 120.10. Provisions of general application in all computations.
§ 120.11. Payment on account of commissions prior to accounting proceedings.

§ 120.1. Costs and allowances in general.

Costs and allowances in probate courts are governed by the following general provisions:

(a) Costs and allowances in the court shall be awarded solely in accordance with this chapter and shall include all disbursements of the party awarded costs which might be taxed in the Circuit Court;

(b) Any award for costs or an allowance is in all instances discretionary with the court. The amount allowed must be fixed by the court and inserted in the decree or order;

(c) All costs taxed and any allowance granted to reimburse a party in part or in whole for counsel fees or other expenses necessarily paid or incurred shall be awarded to the party but the whole or any part thereof may be made payable to an attorney rendering services to the party in the proceeding or on the appeal:

(d) Except where special provision is otherwise made by law costs may be made payable by any party personally or out of the assets of the estate or out of the share or interest of any person or from both in such proportion as directed by the court and justice requires;

(e) In any proceeding the court may direct that the grant of costs or an allowance be reserved for supplemental decree to be entered after the time to appeal has expired or if an appeal be taken,

after final determination of the appeal.

§ 120.2. Schedule of costs and allowances.

The following is a schedule of the costs and allowances which may be awarded in probate court matters and proceedings:

(a) Upon a motion the court may award costs to any party in such amount as it determines not exceeding $10 to each party;

(b) Upon rendering a decree the court may award as costs such sum as it deems reasonable to the petitioner and to any other party who has succeeded in whole or in part, in a contest or whose attorney, in the absence of a contest, has rendered services of substantial benefit to him or to the estate, not exceeding these amounts;

(i) $10 where there has not been a contest, or

(ii) $10 for each day less 1 necessarily occupied in a trial or hearing or in preparing therefore where there has been a contest.

§ 120.3. Special rules for costs in contested probate proceedings and for copies of minutes of trial therein.

In a contested probate proceeding costs payable out of the estate or otherwise may not be awarded to an unsuccessful contestant unless he be a guardian ad litem or guardian of a person under disability or be named as executor in the will propounded by him in good faith as the last will of the decedent. Such nominated executor, guardian ad litem or guardian whether successful or not, may be awarded costs and an allowance for expenses incurred in the contest or attempt to sustain the will. The court may direct that the costs and allowances

in whole or in part be payable by an unsuccessful contestant. Either before or after the decree granting probate the court may order that a copy of the minutes of the trial be furnished to a contestant for the purposes of appeal and charge the expense thereof initially to the estate if satisfied that the contest is in good faith. If the contestant be unsuccessful upon the appeal he shall refund to the estate any amount so paid by the estate for the minutes.

§ 120.4. Security for costs.

Security for costs may be required in the following instances in accordance with this section:

(a) In any proceeding in which an issue is raised by answer or objection by or on behalf of a non-domiciliary against the proponent of a will or a fiduciary or where the probate of a will has been tried before a jury which has disagreed, the court may require the person or persons raising such issue to give security for costs upon motion made by the proponent or fiduciary;

(b) Security for costs may be required from any non-domiciliary who is the petitioner in any proceeding, provided the court finds that security is necessary for the protection of the estate;

(c) If any party fails to comply with an order requiring him to give security for costs the court, upon the application of any interested party who might resort to the security if furnished, may make an order or decree dismissing the objections, answer or petition of the party in default.

§ 120.5. Costs on appeal.

The appellate court may award costs of the appeal as follows:

(a) Upon an appeal in a proceeding to construe a will, to any party to the appeal;

(b) Upon an appeal in any other proceeding, to any party --

(i) Who has succeeded therein in whole or in part, or

(ii) Who has participated therein as a fiduciary, guardian ad litem or guardian of a person under disability, or

(iii) Who is named as an executor in a paper propounded by him in good faith as the will of the decedent;

(c) The court may direct that the costs shall abide the event of a new trial or of the subsequent proceedings in the probate court;

(d) Costs may be made payable out of the estate, or if awarded to a successful party, personally by the unsuccessful party, as directed by the appellate court or if such direction be not given, as directed by the probate court.

The amounts to be awarded as costs on an appeal awarded in court shall be in accordance with the provisions of the Judiciary Law with respect thereto.

§ 120.6. Fees of appraisers.

An appraiser is entitled, in addition to his actual expenses, to a sum to be fixed by the court for his services in making the appraisal. He shall file with the court an affidavit showing the nature and extent of his services, and expenses if any, and the sums payable therefor shall be taxed by the court and paid by the fiduciary.

§ 120.7. Expenses, legal fees and commissions of fiduciaries other than testamentary trustees.

1. Rates allowed sole fiduciaries. On the settlement of the account of any fiduciary other than a testamentary trustee the court must allow to him the reasonable and necessary expenses actually paid by him and if he be an attorney and shall have rendered legal services in connection with his official duties, such compensation for his legal services as appear to the court to be just and reasonable and in addition thereto it must allow to the fiduciary for his services as fiduciary the following commissions, on principal and income:

(a) For receiving and paying out all sums of money or equivalent thereof not exceeding $50,000 at the rate of 5 percent;

(b) For receiving and paying out any additional sum of money or equivalent thereof not exceeding $300,000 at the rate of 2½ percent;

(c) For receiving and paying out all sums of money or equivalent thereof above $300,000 at the rate of 2 percent.

2. Apportionment of commissions among plural fiduciaries. When there is more than one fiduciary, the following commissions shall be allowed to them and, in the absence of an agreement, the court shall apportion the total amount among them according to the services rendered by them respectively:

(a) On that part of the gross value of the principal of the estate accounted for amounting to $150,000 or less, the court shall apportion the compensation for receiving and paying out principal and income allowed herein to a sole fiduciary;

(b) On that part of the gross value of the principal of the estate

accounted for amounting to over $150,000, if any, in addition to the apportionment under subparagraph (a), the full compensation for receiving and paying out such principal and income allowed herein to a sole fiduciary therefor shall be allowed for each such fiduciary for apportionment among them, unless there be more than three, in which case the compensation to which three would be allowed under this subparagraph shall be apportioned among them.

3. Single commissions where successive or different letters issued to same person. Where successive or different letters are issued to the same person on the estate of the same decedent, including a case where letters of administration are issued to a person who has previously been appointed a temporary administrator, he is entitled to a total compensation equal to the compensation allowed for the full administration of the estate by a fiduciary acting in a single capacity only. Such total compensation shall be payable in such proportions and upon such accounting as shall be fixed by the court settling the account of the person holding successive or different letters but no paying out commissions shall be allowed except upon such sums as shall actually have been paid out at the time of the respective decrees for debts, expenses of administration or to beneficiaries.

4. Fiduciary bound by specific compensation in will unless rejected. Where the will provides that a specific compensation or that none at all shall be paid to a fiduciary other than a testamentary trustee, he is not entitled to the statutory commissions for his services unless by an instrument filed with the court within four months from the date of his letters he rejects compensation provisions contained in the will.[24]

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24 *Prior legislation:* 1956 Code 9:26: Rev. Stat. § 1061; OBB 113, Judiciary, art. III, § 2; 1841 Digest, pt. I, Act to prevent fraud in the management of intestate and other estates, § 2, 2 Hub. 1504; Acts 1839, Bill to prevent fraud in the management of intestate and other estates, art. IV, 2 Hub. 1391.

§ 120.8. Expenses, legal fees and commissions of testamentary trustees, except in charitable trusts.

1. Rate allowed to sole trustees for receiving and paying out principal. Subject to the provisions of paragraph 5, on the settlement of the account of any testamentary trustee, other than in a trust governed by the provisions of section 120.9, the court must allow to him the reasonable and necessary expenses actually paid by him and if he be an attorney and shall have rendered legal services in connection with his official duties, such compensation for his legal services as shall appear to the court to be just and reasonable and in addition thereto it must allow to the trustee for his services as trustee a commission from principal for receiving and paying out all sums of money or equivalent thereof constituting principal at the rate of 1 percent.

2. Additional commissions based on annual accounting. In addition to the commission allowed by paragraph 1 hereof such trustee shall be entitled to annual commissions on the value of the principal of the trust at the end of the period for which the commissions are payable at the following rates:

(a) $5 per $1,000 or major fraction thereof on the first $50,000 of principal;

(b) $2.50 per $1,000 or major fraction thereof on the next $450,000 of principal;

(c) $2 per $1,000 or major fraction thereof on all additional principal; provided that the trustee furnishes annually as of a date no more than 30 days prior to the end of the trust year to each beneficiary currently receiving income, and to any other beneficiary interested in the income and to any person interested in the principal of the trust who shall make a demand therefor,

a statement showing the principal assets on hand on that date, and at least annually or more frequently, if the trustee so elects, a statement showing all of his receipts of income and principal during the period with respect to which the statement is rendered including the amount of any commissions retained and the basis upon which the commissions were computed. Unless the will otherwise explicitly provides the annual commissions shall be payable only from the income of the trust.

3. Apportionment of commissions on principal among plural trustees. When there is more than one trustee, the following commissions shall be allowed to them for receiving and paying out all sums of money or equivalent thereof constituting principal and, in the absence of an agreement, the court shall apportion the total amount among them according to the services rendered by them respectively:

(a) On that part of the gross value of the principal of the trust accounted for amounting to $150,000 or less, the court shall apportion the compensation for receiving and paying out principal allowed herein to a sole trustee;

(b) On that part of the gross value of the principal of the trust accounted for amounting to over $150,000, if any, in addition to the apportionment under subparagraph (a), the full compensation for receiving and paying out such principal allowed herein to a sole trustee therefor shall be allowed for each such trustee for apportionment among them, unless there be more than three, in which case the compensation to which three would be allowed under this subparagraph shall be apportioned among them.

4. Apportionment of annual commissions among plural trustees. When there is more than one trustee and the conditions with respect to the rendering of annual statements set forth in paragraph 2 have

been complied with, the following annual commissions shall be allowed them and, in the absence of an agreement, the court shall apportion the total amount among them according to the services rendered by them respectively:

(a) On that part of the value of the principal of the trust to be taken into account for the purpose of computing the annual commissions allowed by paragraph 2 amounting to $150,000 or less, the court shall apportion the annual commission allowed herein to a sole trustee;

(b) On that part of the value of the principal of the trust to be taken into account for the purpose of computing the annual commissions allowed by paragraph 2 amounting to over $150,000, if any, in addition to the apportionment under subparagraph (a), the full annual commission allowed herein to a sole trustee therefor shall be allowed for each such trustee for apportionment among them, unless there be more than three, in which case the compensation to which three would be allowed under this subparagraph shall be apportioned between them.

5. *Trustee bound by specific compensation in will.* Where the will provides a specific compensation to a testamentary trustee he is not entitled to any other allowances for his services.

§ 120.9. Expenses, legal fees and commissions of testamentary trustees of charitable trusts.

On the settlement of the account of any testamentary trustee of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses, the court must allow him his reasonable and necessary expenses actually paid by him and if he be an attorney and shall have rendered legal services in connection with his official duties, such compensation for his legal services as shall appear to be

just and reasonable. Unless the provides a specific compensation, such trustee shall not be entitled to any allowances for his services.

§ 120.10. Provisions of general application in all computations.

The following provisions, when applicable, shall apply in the computation of commissions of all fiduciaries:

(a) The value of any property, to be determined in such manner as directed by the court and the increment thereof, received, distributed or delivered, shall be considered as money in computing commissions. But this shall not apply in case of a specific legacy or devise. Whenever any portion of the dividends, interest or rent payable to a fiduciary is required by any law to be withheld by the person paying it for tax purposes, the amount so withheld shall be deemed to have been received and paid out.

(b) "Receiving commissions" means the compensation due a fiduciary for his services as a fiduciary based upon the gross value of the estate taken into his possession and computed at one-half the rate allowed for full commissions.

(c) "Paying out commissions" means the compensation due a fiduciary for his services as a fiduciary based upon the gross value of the estate paid over by him to those entitled thereto and computed at one-half the rate allowed for full commissions.

§ 120.11. Payment on account of commissions prior to accounting proceedings.

At any time during the administration of an estate and irrespective of the pendency of a particular proceeding a fiduciary may present to the court from which his letters issued a petition praying that he be

permitted to receive a sum on account of the commissions to which he would be entitled if he were then filing his account and it were judicially settled in accordance with the following:

(a) The petition must show the facts upon which the application is founded, and if the application be entertained notice shall issue to all persons whose rights or interests would be affected by the payment applied for, citing them to show cause why the relief requested be not granted;

(b) Upon the return of the show cause notice the court may award a sum on account of commissions or make such other order or decree, if any, as justice shall require. The payment on account shall not exceed the receiving commissions due the fiduciary, except that the court may award a greater sum where all persons whose rights or interests are affected by the payment are persons under no legal disability and by acknowledged instrument consent thereto;

(c) The total expenses of the application shall be borne by the person or persons to whom an award of commissions may be made, or if the application be denied, by the petitioner personally.

Chapter 121. COURT FEES

§ 121.1. General provisions.
§ 121.2. Schedules of fees.

§ 121.1. General provisions.

Fees in the probate court for service, filing and other matters shall be as provided in this chapter to the exclusion of other statutory provisions unless expressly stated to the contrary. The clerk of each

probate court shall charge and receive for the services and matters herein set forth in this chapter the amounts specified in the rate column for the service or matter indicated in the separate schedules. Unless specifically indicated, however, no fee is chargeable for motions made in a pending proceeding or for ex parte applications.

§ 121.2. Schedules of fees.

1. Probate. Upon filing a petition to commence a proceeding for probate of a will the fee shall be as shown by the schedule set forth in paragraph 7 computed initially upon the value of the gross estate passing by will as stated in the petition: provided however that if the value of the estate so passing is shown by any subsequent inventory filed pursuant to section 119.1 exceeds the value originally stated and upon which the fee was paid, then an additional probate fee shall be payable upon filing the inventory which shall be the difference between the fee based on the value shown by the inventory and the fee which was charged, except if probate be contested fees as required for filing objections shall be payable.

2. Administration. Upon filing a petition to commence a proceeding for administration in intestacy the fee shall be as shown by the schedule set forth in paragraph 7 based initially upon the value of the gross estate passing by intestacy as stated in the petition; provided however that if the value of the estate so passing as shown by any subsequent inventory filed pursuant to section 119.1 exceeds the value originally stated and upon which the fee was paid, then an additional fee shall be payable upon filing the inventory which shall be the difference between the fee based on the value shown by the inventory and the fee which was initially paid.

3. Accounting. Upon filing a petition to commence a proceeding for an accounting the fee shall be as shown by the schedule set forth in paragraph 7 based on the gross value of assets accounted for,

including principal and income. Where more than one account is filed under a single petition the fee shall be based separately on the gross value of each separate fund or trust accounted for.

4. Instruments settling accounts. Upon filing an instrument pursuant to section 119.11 the fee shall be as shown by the schedule set forth in paragraph 7 based on the gross value of the assets accounted for, including principal and income. In the event no values are shown in the instrument, the fee shall be as shown by the schedule based on the gross value of the estate of the decedent as shown in the inventory filed pursuant to section 119.1.

5. Decree approving accounts. Upon filing a petition pursuant to section 119.12, the fee shall be as shown by the schedule set forth in paragraph 7 based on the gross value of the assets accounted for, including principal and income. In the event no values are shown in the petition and related instruments the fee shall be as shown by the schedule based on the gross value of the estate of the decedent as shown in the inventory filed pursuant to section 119.1.

6. Unspecified miscellaneous proceedings. In miscellaneous proceedings unless otherwise herein provided the fee shall be according to the schedule set forth in paragraph 7, based on the value of the subject matter.

7. Schedule based on value. The fee schedule for the proceedings described in paragraphs 1 through 6 inclusive is as follows:

Value of Estate of Subject Matter		Fee Rate
Less than	3,000	$ 2.00
$ 3,000 but under	10,000	3.00
$10,000 but under	20,000	5.00

$20,000 but under	50,000	15.00
$50,000 but under	100,000	20.00
$100,000 but under	250,000	25.00
$250,000 but under	500,000	35.00
$500,000 but under	1,000,000	50.00
$1,000,000 and over		100.00

8. Specified miscellaneous proceedings. Upon filing a petition to commence the following proceedings the fee shall be as indicated:

Code Section		Fee Rate
§107.10.	Suspend, modify, revoke letters	$ 1.00
§107.12.	Application of fiduciary to resign	2.00
§113.1.	Compel production of will	1.00
§114.3.	Appointment of trustee	1.00
§118.2.	Proceeding against a fiduciary	2.00
§118.7.	Advice and directions	5.00
§118.8.	Continue business	3.00

9. For filing of other papers. The fees for filing the following papers shall be as indicated:

(a)	Objections to the probate of a will	$5.00
(b)	Objections to an accounting	$5.00
(c)	A bond	$1.00
(d)	A petition to punish a respondent for contempt	$2.00
(e)	A petition for adoption or legitimization, the recording of any decree made by the court in such proceeding which is required by law to be recorded and including the recording of any letters required by law to be recorded	$3.00

10. For recording. The fees for recording the following instruments shall be as indicated.

(a) Any instrument, decree, bond, or other paper which is required by law to be recorded
for first page 1.00
for every additional page ..... $.25
(b) An authenticated copy of a foreign will
per page $1.00
minimum $10.00

11. For services. The fees for performing the following services shall be as indicated:

(a) For taxing bill of costs..... $1.00
(b) For furnishing a transcript of a decree..... $1.00
(c) For certificate of letters evidencing that the appointment of a fiduciary is still in full force and effect..... $.50
(d) For making and certifying or comparing and certifying a copy of a will or any paper on file or recorded in his office for first page..... $1.00
for each additional page or part..... $ .50
(e) For producing papers, documents, books of record on file in his office under a subpoena duces tecum, for use within the county where the office of the court is situated $2.00
For use in any other county, such fee of $2.00
to be paid for each day or part thereof that the messenger is detailed from the office and to be in addition to mileage fee .10 per mile
and the necessary expenses of the messenger.
The clerk of the court shall not be required to make any collection or return of the money

so paid for expenses.

12. Exempt matters. No fees shall be charged in the following matters:

(a) For filing objections of guardian ad litem:

(b) For filing the annual account of a guardian;

(c) To or received from the Republic of Liberia or any sub-division or agency thereof;

(d) For the filing of a petition for an order granting funds for the maintenance or other proper needs of any infant nor for any certificate or any certified copy of the order on such an application.

Chapter 122. SAFEKEEPING AND RECORDING OF WILLS

§ 122.1. Reception of wills for safekeeping.
§ 122.2. Wills to be retained in court after probate; exceptions.
§ 122.3. What papers must be recorded in probate court.
§ 122.4. Recording of wills affecting real property in office of Registrar of Deeds.

§ 122.1. Reception of wills for safekeeping.

A will may be delivered to a probate court for safekeeping in accordance with the following procedure:

(a) The court upon being paid the fees allowed therefor by law shall receive and deposit in the court any will of a domiciliary of the county in which the court is located which any person

shall deliver to it for that purpose and shall give a written receipt therefor to the person depositing it. An attesting witness to any will may make and sign an affidavit before any officer authorized to administer oaths setting forth such facts as he would be required to testify to in order to prove the will. The affidavit may be written upon the will or on some paper securely attached thereto and may be filed for safekeeping with the will to which it relates. There may also be filed with the will affidavits of certified medical examiners certifying that the maker of the will was of sound mind at the time of its execution, together with any facts supporting such opinion.

(b) The will shall be enclosed in a sealed wrapper so that the contents thereof cannot be read and shall have endorsed thereon the name of the testator, his domicile, and the day, month and year when delivered and shall not on any pretext whatever be opened, read or examined until delivered to a person entitled to it as hereinafter directed.

(c) The will shall be delivered only as follows:

(i) To the testator in person, or

(ii) upon his written order duly proved by the oath of subscribing witness, or

(iii) after his death to the persons named in the endorsement on the wrapper of the will, if such endorsement be made thereon, or

(iv) if there be no such endorsement and if it has been deposited with any other officer than the probate court judge, then to the probate court having jurisdiction of the decedent's estate.

§ 122.2. Wills to be retained in court after probate; exceptions.

The following provisions shall govern the disposition of original wills after they have been probated:

(a) A written will which has been admitted to probate must remain in the court, except where the will is on file in a court or public office of another country under the laws of which it cannot be removed.

(b) When it appears that the laws of another jurisdiction require the production of an original will before the provisions thereof become effective in such jurisdiction, the court may cause any original will on file in its office to be sent to any court which, or to any officer of such jurisdiction who, under the laws thereof, is empowered to receive the will for probate, or may deliver the will to any person interested in the probate thereof in such jurisdiction or to his fiduciary in such manner and upon such terms as it deems proper for the preservation of the will and the protection of other parties interested in the estate.

(c) In the case of a joint will which has been admitted to probate the court admitting it may under such terms as it deems proper transmit the original joint will to the probate court of any other county, territory or district of the for probate as the will of any other signer thereof. It shall be the duty of such court to keep a true copy thereof in its office and thereafter to return the original will to the probate court which granted original probate.

§ 122.3. What papers must be recorded in probate court.

The following documents shall be recorded at length in the probate court having jurisdiction:

(a) Every will admitted to probate and the decree thereon;

(b) All letters issued and the instrument, if other than a decree, authorizing issuance;

(c) Every decree settling an account of or discharging a fiduciary;

(d) Every order or decree relating to the disposition of real property of a decedent;

(e) Any other document required by law to be so recorded.

§ 122.4. Recording of wills affecting real property in office of Registrar of Deeds.

1. Upon request of any person. A certified copy of a will of real property admitted to probate in any court of competent jurisdiction must be recorded in the office of the Registrar of Deeds of any county in which real property of the testator is situated, upon the request of any person interested.

2. Duty of fiduciary. The fiduciary under a will of real property admitted to probate must cause a certified copy thereof to be recorded in the office of the Registrar of Deeds of each county where real property of the testator is situated, other than the county of the testator's domicile, within 20 days after letters are issued to him.

Chapter 123. APPEALS

Sub-Section 123.1. Appeals; general applicability of Civil Procedure Law.

Except as otherwise provided in this Code either expressly or by necessary implication, all of those provisions of the Civil Procedure Law which govern appeals generally from judgments and orders of

the Circuit Court, and such other provisions as are relevant in conjunction with such appeals shall be applicable to appeals from decrees and orders of this court. For such purpose the following terms as used in the Civil Procedure Law shall have the meanings ascribed:

(a) "Action" shall mean "proceeding"

(b) "Judgment" shall mean "decree"

(c) "Plaintiff" shall mean "petitioner" or "applicant" and

(d) "Defendant" shall mean "respondent."

Section 2. This Act shall take effect immediately upon publication.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

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