Missouri Law Review

Volume 48
Issue 2 *Spring 1983*

Article 4

Spring 1983

Succession without Administration: Past and Future

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SUCCESSION WITHOUT ADMINISTRATION: PAST AND FUTURE

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I. INTRODUCTION 371
II. INFORMAL ADMINISTRATION AND FAMILY SETTLEMENTS ... 374
III. SMALL ESTATES STATUTES 379
A. *Summary Administration* 379
B. *Collection Without Administration* 382
IV. STATUTES DISPENSING WITH ADMINISTRATION WITHOUT REGARD TO ESTATE SIZE 383
V. POLICY DIRECTIONS FROM PAST EXPERIENCE 386
VI. SUGGESTED SUCCESSION WITHOUT ADMINISTRATION ACT .. 388
A. *General Provisions* 388
B. *Succession Without Administration* 389
C. *Rights and Liabilities of Distributees* 391
VII. CONCLUSION 392
VIII. APPENDIX 393

I. INTRODUCTION

One of the most persistent problems in private law has concerned the process by which private assets pass from their owner on the owner's death to those who, by law, are next entitled to enjoy them. In primitive societies organized around the family, many assets probably were viewed as belonging to the family.[1] However, since social and governmental organizations have become more complex and individual ownership of real and personal property has developed, the law has experienced a continual state of evolution. As commercial activity and demands of the public fisc increased, the law became concerned about assuring that creditors, who had indirectly contributed to the decedent's accumulation of wealth, were paid and that a fair share of the costs of government, which permitted and protected the

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1. *See* T. ATKINSON, HANDBOOK OF THE LAW OF WILLS 6 (2d ed. 1953); H. MAINE, ANCIENT LAW 177 (1861). *Cf.* K. LLEWELLYN & E. HOEBEL, THE CHEYENNE WAY 212, 251 (1941); Adam, *Inheritance Law in Primitive Cultures*, 20 IOWA L. REV. 760 (1935); Beaglehole, *Ownership and Inheritance in an American Indian Tribe*, 20 IOWA L. REV. 304 (1935).

accumulation, were recovered before the assets were distributed to the new owners.[2] Although many of the concepts found in modern laws of succession can be traced to early Roman law, most European countries developed different methods of accommodating the interests of the various parties involved in succession from those developed in England and the United States.[3] Most of the civil law countries, like France and Germany, have utilized the concept of universal succession by which the heirs receive the title to the decedent's assets directly on death and also become obligated to pay any liabilities of the decedent.[4] The heirs, who were viewed as succeeding to the decedent's person and standing in the decedent's shoes, received the benefit of his assets and the burden of his obligations. Third parties, who would have looked to the decedent, looked to the heirs after the decedent's death. In brief, the heirs owned the assets and, upon acceptance of the inheritance, owed the decedent's debts as their own.[5] Consequently, the heirs reduced the decedent's assets to possession, paid the decedent's debts and creditors, paid any taxes due, and also paid the legacies in any will of the decedent. On the other hand, English law interposed a personal representative, the administrator or executor, as an independent responsible person to collect the assets, discharge debts and claims before making distribution of the net balance to the heirs or distributees who were to be the next beneficial owners.[6] Nearly all of the states of the United States adopted and further developed the English system of probate and administration. However, Louisiana, with its background of the French civil law, followed the civil law pattern,[7] as did Quebec and nearly all the Latin American countries.

The objectives of both the civil law and the common law approaches are the same: to collect the decedent's assets with dispatch, to satisfy any

2. *See* L. FRIEDMAN, A HISTORY OF AMERICAN LAW 59, 221, 371 (1973).

3. M. AMOS & F. WALTON, INTRODUCTION TO FRENCH LAW 288 (3d ed. 1967).

4. M. AMOS & F. WALTON, *supra* note 3, at 305; A. BEECHER, WILLS & ESTATES UNDER GERMAN LAW 7 (1958); E. COHN, MANUAL OF GERMAN LAW 257 (2d ed. 1968); P. PELLERIN, THE FRENCH LAW OF WILLS, PROBATE ADMINISTRATION 2 (3d ed. 1933); 2 J. SCHOENBLUM, MULTISTATE & MULTINATIONAL ESTATE PLANNING app. K, at 619 (1982); Brown, *The French Practice of Administration of Estates*, 3 INT'L & COMP. L.Q. 624 (1954); Brown, *Winding Up Decedents' Estates in French and English Law*, 33 TUL. L. REV. 631 (1959); Rheinstein, *European Methods for the Liquidation of the Debts of Deceased Persons*, 20 IOWA L. REV. 431 (1935).

5. C. AUBRY & C. RAU, DROIT CIVIL FRANCAIS § 611 (C. Lazarus trans. 1971); H. DE VRIES, N. GALSTON & R. LOENING, FRENCH LAW 4-50 (1982); M. PLANIOL, CIVIL LAW TREATISE 1953, 2011 (11th ed. 1938).

6. *See* T. ATKINSON, *supra* note 1, at 9; M. RHEINSTEIN, CASES ON DECEDENTS' ESTATES 562 (2d ed. 1955); 1 W. WOERNER, AMERICAN LAW OF ADMINISTRATION §§ 137, 138 (3d ed. 1923); Brown, *Winding Up Decedents' Estates in French and English Law*, 33 TUL. L. REV. 631 (1959); Rheinstein, *supra* note 4.

7. *See* T. ATKINSON, *supra* note 1, at 561.

obligations to creditors, government, or others incident to the termination of the decedent's life, and to complete the transmission of his property to those beneficially entitled with the minimum expense of time and money. In both systems, the process is one of liquidation so the new owners can enjoy the assets free and clear without interruption from the claimants of the past. As both systems developed, modifications were made to accommodate the interests of different parties.[8] In the civil law, the heir could avoid liability to the decedent's creditors in excess of the value of the estate by renouncing, by accepting only to the extent of the value of the assets, i.e., with benefit of inventory, or by instituting a process similar to bankruptcy to separate the assets of the decedent from those of the heir and, in that way, protect the heir's own assets.[9] Under the civil law in most countries, a person could be appointed to intercede as an administrator in an insolvent estate and often this would be the heir himself.[10] In the United States and England, procedures were frequently developed by which formal administration could be shortened or avoided and the decedent's assets distributed or passed directly into the possession and enjoyment of the heirs or devisees.[11] Because land was often not available for creditors except in extreme cases, the law of most states of the United States provided for direct devolution of title and possession of land to the heirs or devisees without administration. As the western United States developed, with some civil law antecedents and a quite general lack of concern for judicial formalities reinforced by great distances from the courthouse, many experiments emerged providing for informal means of satisfying the functions of formal administration. Homestead and exemption laws permitted continued possession and enjoyment of assets with only modest affidavit procedures. Community property was often set off to the surviving spouse with little in the way of formalities. Texas and Washington provided for the independent executor who essentially accounted only to the family, and nearly all states provided for summary administration of small estates. As a consequence, the approaches of the civil law's universal succession and the common law's administration of decedents' estates were frequently different in name only and were often functionally quite similar.[12]

This Article will attempt to demonstrate these common developments as an introduction to the consideration in the United States of a statutory form of succession without administration somewhat similar to civil law universal succession, which, it is submitted, is the result of the normal evolu-

8. *See* Friedman, *The Law of Succession in Social Perspective*, in DEATH, TAXES AND FAMILY PROPERTY 9, 18 (E. Halbach, Jr. ed. 1977).

9. *See* authorities cited note 5 *supra*.

10. M. AMOS & F. WALTON, *supra* note 3, at 308.

11. Basye, *Dispensing with Administration*, 44 MICH. L. REV. 329, 332 (1945).

12. *See* Basye, *supra* note 11, at 330; *see also* Brown, *Winding Up Decedents' Estates in French and English Law*, 33 TUL. L. REV. 631, 631 (1959) ("the differences are more apparent than real"); Rheinstein, *supra* note 4, at 469.

tion in American efforts to transmit assets from generation to generation with maximum economy of time and value.

II. INFORMAL ADMINISTRATION AND FAMILY SETTLEMENTS

The identification of the recipients of an estate usually is not very difficult in most intestate estates. The heirs, as members of the family, are usually known and not questioned. This was particularly true when our population and communities were small. The adult heirs usually could prove their heirship by an affidavit stating their relationship and that of minors to the decedent. Since contests were rare, this was routinely an informal matter, often combined with the appointment of the personal representative whose priority was provided by statute. Because little concern was raised by the family or creditors in the routine cases, informality was the rule. In many states, this informality probably resulted in the practical equivalent of independent administration.[13] This was particularly true when most assets consisted of a farm home, as homestead, and farm implements, as either exempt property or part of the homestead, in which event the administrator's task was primarily to pay off the few creditors and to file a simple account for discharge. Consequently, if creditors were paid by the heirs or an arrangement satisfactory to them was made, there was nothing that called for the appointment of an administrator.

If the decedent left a will, probate in common form, i.e., without notice, was available as an informal appearance process, often permitted upon affidavit or informal deposition of the attesting witnesses. This in turn could be followed in many cases with an administration of little more formality than in the routine intestacy. Since so few deaths resulted in probate proceedings and many estates were never formally closed, informal administration of a decedent's estate was common in the United States until the early 1900's.[14]

This early informality in probate and administration was reinforced by the development of the family settlement doctrine. Many cases recognized, approved, and enforced agreements by the successors not to probate a will[15]

13. *See* Marschall, *Independent Administration of Decedents' Estates*, 33 TEX. L. REV. 95 (1954); *see also* Fratcher, *The English System: Simplified Probate in a Similar Context*, in DEATH, TAXES AND FAMILY PROPERTY 152, 160 (E. Halbach, Jr. ed. 1977); Scoles, *Probate Reform*, in DEATH, TAXES AND FAMILY PROPERTY 136, 145 (E. Halbach, Jr. ed. 1977).

14. *See* Dunham, *The Method, Process and Frequency of Wealth Transmission on Death*, 30 U. CHI. L. REV. 241 (1963); Plager, *Spouse's Nonbarrable Share: A Solution in Search of a Problem*, 33 U. CHI. L. REV. 681 (1966); Powell & Looker, *Decedents' Estates*, 30 COLUM. L. REV. 919 (1930); *see also* M. SUSSMAN, J. CATES & D. SMITH, THE FAMILY AND INHERITANCE (1970).

15. *See, e.g.*, Brakefield v. Baldwin, 249 Ky. 106, 60 S.W.2d 376 (1933); Phillips v. Phillips, 8 La. 195 (1839); Henderson v. Bishop, 250 Pa. 484, 95 A. 663 (1915); Stringfellow v. Early, 15 Tex. Civ. App. 597, 40 S.W. 871 (1897); *see also* Annot., 29

or administer an estate[16] but rather to pay the debts and distribute the decedent's assets among agreeing family members. Because only interested parties can initiate probate or administration proceedings, if all interested parties agree to forego administration, nothing happens to initiate proceedings. As long as creditors and taxes are paid, there may be no one to complain.[17] The courts frequently encouraged family settlements by such observations as:

> Formal proceedings for the settlement of an estate are never necessary if all parties concerned can agree to dispense with them . . . . Family arrangements for this purpose, it is said, are favorites of the law, and when fairly made are never allowed to be disturbed by the parties, or by any others for them.[18]

The parties to an agreement to settle an estate without administration were viewed as bound by their agreement and precluded from later opening administration.[19] Likewise, the executor named in a will frequently lacked

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A.L.R.3d 8 (1970). This earlier view continues to be followed. *See* Love v. Rennie, 254 Ala. 382, 48 So. 2d 458 (1950); *In re* Estates of Thompson, 226 Kan. 437, 601 P.2d 1105 (1979); Henry v. Spurlin, 277 Ky. 114, 125 S.W.2d 992 (1939); Holt v. Holt, 47 N.C. App. 618, 267 S.E.2d 711 (1980); Muller v. Sprenger, 105 N.W.2d 433 (N.D. 1960); *In re* Way's Estate, 379 Pa. 421, 109 A.2d 164 (1954); Salmon v. Salmon, 395 S.W.2d 29 (Tex. 1965).

16. *See, e.g.*, Waterhouse v. Churchill, 30 Colo. 415, 70 P. 678 (1902); Barron v. Burney, 38 Ga. 264 (1868); Gwinn v. Melvin, 9 Idaho 202, 72 P. 961 (1903); Christie v. Chicago, R.I. & P. Ry., 104 Iowa 707, 74 N.W. 697 (1898); Brown v. Baxter, 77 Kan. 97, 94 P. 155 (1908); Foote v. Foote, 61 Mich. 181, 28 N.W. 90 (1886); Walworth v. Abel, 52 Pa. 370 (1866); Taylor v. Phillips, 30 Vt. 238 (1858); *see also In re* Jacob's Estate, 81 Ariz. 288, 305 P.2d 438 (1956); Siedel v. Snider, 241 Iowa 1227, 44 N.W.2d 687 (1950); Holtan v. Fischer, 218 Minn. 81, 15 N.W.2d 206 (1944); Beck v. Beck, 36 N.C. App. 774, 245 S.E.2d 199 (1978); Annot., 29 A.L.R.3d 174 (1970).

17. T. ATKINSON, *supra* note 1, at 572.

18. Browne v. Forsche, 43 Mich. 492, 500, 5 N.W. 1011, 1017 (1880), *quoted with approval in* Basye, *supra* note 11, at 384, 627. *See also* Johnson v. Morawitz, 292 F.2d 341 (10th Cir. 1961); First Nat'l Bank of Birmingham v. Brown, 287 Ala. 240, 251 So. 2d 204 (1971); Swan v. Swan, 308 Minn. 466, 241 N.W.2d 817 (1976); Thomas v. Bailey, 375 So. 2d 1049 (Miss. 1979); St. Louis Union Trust Co. v. Conant, 499 S.W.2d 761 (Mo. 1973); Lenoir Rhyne College v. Thorne, 13 N.C. App. 27, 185 S.E.2d 303 (1971); *In re* Estate of Stancik, 451 Pa. 20, 301 A.2d 612 (1973). *But cf. In re* Strong's Estate, 119 Cal. 663, 51 P. 1078 (1898) (property may not be distributed other than by process of administration).

19. For an early discussion of the authorities, see 1 W. WOERNER, *supra* note 6, § 201. *See also* Hemphill v. Hemphill, 62 Ga. App. 358, 7 S.E.2d 762 (1940); Heinz v. Vawter, 221 Iowa 714, 266 N.W. 486 (1936); *cf.* Turk v. Turk, 3 Ga. 422 (1847); Richards v. Tiernan, 150 Kan. 116, 91 P.2d 22 (1939); Needham v. Gillett, 39 Mich. 574 (1878); George v. Johnson, 45 N.H. 456 (1864). Parties may also be precluded from contesting a will. *See In re* Estate of Garvey, 196 So. 2d 36 (Fla. Dist. Ct. App. 1967); Gay v. Sanders, 101 Ga. 601, 28 S.E. 1019 (1897); Housman v.

standing to require probate and administration if the heirs and legatees had agreed to settle the estate without probate or administration and creditors were not prejudiced.[20] Of course, in many instances, the named executor would be a family member participating in the agreement or, if not, would not attempt probate against the family's self interest. As a consequence, if the family members were in possession of the assets, or if they could acquire possession without litigation, there was no occasion for administration, assuming creditors and taxes were paid and all potential distributees were satisfied. Usually debtors owing sums to the decedent who paid the heirs voluntarily were protected.[21] As the Iowa Supreme Court reasoned:

> [I]f the debtor, acting in good faith, should . . . make payment direct to the person who would be entitled to receive it through the administrator, and the money is not needed . . . for the payment of claims or expenses, the end of the law is accomplished, and it would be little less than ridiculous to hold the debtor liable to pay his debt over again. . . . The law requires no vain

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Measley, 139 Md. 598, 115 A. 855 (1921); Kellner v. Blaschke, 334 S.W.2d 315 (Tex. Civ. App. 1960); Everett v. Everett, 309 S.W.2d 893 (Tex. Civ. App. 1958).

20. *See, e.g.*, Isgrig v. Thomas, 219 Ark. 167, 240 S.W.2d 870 (1951); *In re* Swanson's Estate, 239 Iowa 294, 31 N.W.2d 385 (1948); *In re* Sielcken's Estate, 162 Misc. 54, 293 N.Y.S. 721 (1937); Lenoir Rhyne College v. Thorne, 13 N.C. App. 27, 185 S.E.2d 303 (1971); Dover v. Horger, 225 Or. 492, 358 P.2d 484 (1960); Brown v. Burke, 26 S.W.2d 415 (Tex. Civ. App. 1930); Stringfellow v. Early, 15 Tex. Civ. App. 597, 40 S.W. 871 (1897); *cf.* Hibbard v. Kent, 15 N.H. 516 (1844); Skelly v. Graybill, 109 Ohio App. 277, 165 N.E.2d 218 (1959).

21. *See, e.g.*, Van Meter v. Illinois Merchants Trust Co., 239 Ill. App. 618 (1926); Christie v. Chicago, R.I. & P. Ry., 104 Iowa 707, 74 N.W. 697 (1898); Bell v. Farmers' & Traders' Bank, 188 Mo. App. 383, 174 S.W. 196 (1915); Northern Trust Co. v. Travelers Ins. Co., 329 Pa. 17, 196 A. 497 (1938); McKeigue v. Chicago & Northwestern Ry., 130 Wis. 543, 110 N.W. 384 (1907); *cf.* Wood v. Weimar, 104 U.S. 786 (1881); Clark v. Perrin, 224 Ga. 307, 161 S.E.2d 874 (1968); Hemphill v. Hemphill, 62 Ga. App. 358, 7 S.E.2d 762 (1940); Vail v. Anderson, 61 Minn. 552, 64 N.W. 47 (1895); George v. Johnson, 45 N.H. 456 (1864). In Richardson v. Cole, 160 Mo. 372, 61 S.W. 182 (1901), the court stated:

> We know of no principle of law which forbids such a distribution by the heirs under such circumstances; and if it would not be a mockery of justice for a court of equity to require the defendants to pay over to plaintiff, when there are no debts against the estate to pay, and no legitimate use for it in his capacity as administrator, merely for the purpose of allowing him to obtain it and use it, and then pay it back to them, less his costs and commission, it is difficult to say what would.

Id. at 380, 61 S.W. at 184. If the assets collected were used to pay priority claims, the protection to the estate debtor was, of course, increased. Weingrad v. Lloyd, 56 N.Y.S.2d 484 (Sup. Ct. 1945). Some courts, influenced by uncertainty as to absence of creditors or concepts of title passing to the personal representative, denied that such protection should be given. *Cf. In re* Clary's Estate, 253 P. 778 (Cal. Ct. App. 1927); Weis v. Kundert, 172 Minn. 274, 215 N.W. 176 (1927).

things.[22]

The major difficulty in settling an estate without administration, when the family is in agreement and creditors are paid, is in collecting assets from recalcitrant bailees or debtors. Fearful of possible double liability to a subsequently appointed administrator, they are hesitant to make voluntary payment to the heirs and the courts have been hesitant to permit heirs to sue without appointment of a personal representative. They have tended to require the appointment of a personal representative to enforce collection.[23] The concern has centered primarily on the problem of verifying the allegation of no unpaid creditors with the frequent assertion that "such fact can only be judicially established by due course of administration."[24] This concern over creditors is a significant one which needs to be addressed in any method of avoiding administration. In all states, creditors are protected and can insist on administration. A second reason often advanced for denying the heir standing to sue to collect assets without administration was lack of title. Under the view held in many states, while real property descended to the heirs or devisees, subject to administration if administration was necessary, title to personal property was deemed to be held in abeyance until the appointment of a personal representative, at which time title vested in the personal representative. Consequently, while the heirs and devisees were bound among themselves by their agreement, as to third parties there was no "authority upon their part, they not having the legal title to enforce the payments of debts owing to the estate and unpaid."[25] This view that title to personalty passed to the personal representative rather than the heirs or devisees was quite common in the eastern states.[26] However, many of the western states provided that all assets passed to the heirs or devisees by operation of law, subject to administration should administration occur.[27]

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22. Molendorp v. First National Bank of Sibley, 183 Iowa 174, 176, 166 N.W. 733, 734 (1918).

23. *See, e.g.*, Sowle v. Potter, 223 Ky. 136, 3 S.W.2d 174 (1928); Weis v. Kundert, 172 Minn. 274, 215 N.W. 176 (1927); Champollion v. Corbin, 71 N.H. 78, 51 A. 674 (1901); *see also* 1 W. WOERNER, *supra* note 6, § 200.

24. Mann v. Superior Court, 52 Wash. 149, 152, 100 P. 198, 199 (1909). *See also In re* Collin's Estate, 102 Wash. 697, 173 P. 1016 (1918); *cf.* Broom v. Klein, 309 Ky. 224, 217 S.W.2d 206 (1949).

25. Brobst v. Brobst, 190 Mich. 63, 65, 155 N.W. 734, 736 (1916). *Cf.* Hotchkiss v. Ogle, 153 Kan. 156, 109 P.2d 134 (1941).

26. *See* T. ATKINSON, *supra* note 1, at 567; Atkinson, *The Development of the Massachusetts Probate System*, 42 MICH. L. REV. 425 (1943); *see also In re* Plogstert's Estate, 350 Pa. 474, 39 A.2d 605 (1944).

27. *See, e.g.*, CAL. PROB. CODE § 300 (West 1956); KAN. STAT. ANN. §§ 59-502, -1401 (1976); NEV. REV. STAT. §§ 134.030, 143.020 (1982); TEX. PROB. CODE ANN. § 37 (Vernon 1980); WIS. STAT. ANN. § 312.04 (West 1976); MODEL PROBATE CODE § 87 (1946). *See also* Pitner v. United States, 388 F.2d 651 (5th Cir. 1967); Peterson v. Peterson, 173 Kan. 636, 251 P.2d 221 (1952); Volk v. Stowell, 98 Wis. 385, 74 N.W. 118 (1898).

Equity courts did not view this concept of title passing to the personal representative as being so significant and, after concluding that there were no creditors or need for administration, would decree that equitable title was in the heir or legatee. As the court in an early Alabama case stated:

> When there are no debts, the equity of the distributees or legatees is perfect; the legal title, if there was a personal representative, would be a naked trust, which a court of equity ought not and would not permit to be interposed as a bar to the equitable title of the distributee or legatee.[28]

The fact that real property was quite generally viewed as descending directly to the heirs or devisees demonstrates that this technical concern over who has title can be controlled by a statute providing that title descends directly to the distributee, as has been done in the Uniform Probate Code.[29]

The more efficient and functional approach of permitting interested parties to settle an estate by agreement without administration was early reinforced by statute in some states. A former Arkansas statute provided that no administration should be granted unless necessary to protect the estate from waste or to protect creditors.[30] Other statutes required no administration if the family agreed to settle the estate without administration.[31] Both the case law development of the family settlement doctrine

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28. Fretwell v. McLemore, 52 Ala. 124, 133 (1875). *See* Hancock v. Hancock, 223 Ga. 481, 156 S.E.2d 354 (1967); Anderson v. Anderson, 380 Ill. 488, 44 N.E.2d 43 (1942); Bergman v. Bergman, 247 Iowa 98, 73 N.W.2d 92 (1955); Muller v. Sprenger, 105 N.W.2d 433 (N.D. 1960); Loggins v. Stewart, 218 S.W.2d 1011 (Tex. Civ. App. 1949); *see also* Reynolds v. Bowles, 213 Ga. 534, 100 S.E.2d 198 (1957); Wilson v. Whitmore, 212 Ga. 287, 92 S.E.2d 20 (1956); Galiano v. Galiano, 213 La. 332, 34 So. 2d 881 (1948); McDonald v. Gough, 327 Mass. 739, 101 N.E.2d 124 (1951); *In re* Riley's Estate, 92 N.J. Eq. 567, 113 A. 485 (1921); Muhlhauser v. Becker, 76 N.D. 402, 37 N.W.2d 352 (1948); Murphy v. Murphy, 42 Wash. 142, 84 P. 646 (1906).

29. UNIF. PROBATE CODE § 3-101 (1975) (Devolution of Estate on Death; Restrictions). This section provides:

> The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

30. ARK. STAT. ANN. § 62-2130.1 (1971) (repealed 1975).

31. *See, e.g.*, GA. CODE ANN. § 113-1314 (1936) (current version at *id.* § 113-1232 (1975)); ILL. ANN. STAT. ch. 3, § 227 (Smith-Hurd 1941) (current version at *id.*

and the early statutes are venerable evidence of the practicality of informal settlement of estates. They also illustrate the persistent attractiveness of less formal alternatives to our usual judicial administration of estates when the estate circumstances permit the functions of administration to be accomplished with less time and expense. This has generated continuing and widespread legislative interest in the problem.

III. SMALL ESTATES STATUTES

A. *Summary Administration*

One of the most significant legislative developments providing for informal settlement of estates has concerned small estates in which costs of formal administration are proportionately very high. Every state has some statutory procedure providing for summary administration or for dispensing with administration in modest size estates.[32] At this writing, the size

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ch. 110½, § 6-8 (Supp. 1982-1983)); KY. REV. STAT. ANN. §§ 395.450-.490 (Bobbs-Merrill 1972) (amended 1980).

32. ALA. CODE §§ 43-2-690 to -696 (1975); ALASKA STAT. §§ 13.16.680-.705 (1972 & Supp. 1982); ARIZ. REV. STAT. ANN. §§ 13-3973 to -3974 (1956 & Supp. 1982); ARK. STAT. ANN. §§ 62-2127 to -2130 (1971 & Supp. 1982); CAL. PROB. CODE §§ 630-632 (West 1956 & Supp. 1982); COLO. REV. STAT. §§ 15-12-1201 to -1204 (1973 & Supp. 1982); CONN. GEN. STAT. ANN. §§ 45-266 to -270 (West 1981); DEL. CODE ANN. tit. 12, §§ 2306-2307 (1974); D.C. CODE ANN. §§ 20-351 to -357 (1981); FLA. STAT. ANN. §§ 735.101-.107, .201-.302 (West 1976 & Supp. 1983); GA. CODE ANN. §§ 53-10.1 to .4 (1981); HAWAII REV. STAT. §§ 560-3-1201 to -1213 (1976 & Supp. 1982); IDAHO CODE §§ 15-3-1201 to -1205 (1979); ILL. ANN. STAT. ch. 110½, §§ 9.8-.9, 25.1-.4 (Smith-Hurd 1978 & Supp. 1982-1983); IND. CODE ANN. §§ 29-1-8-1 to -8 (Burns 1972 & Supp. 1982); IOWA CODE ANN. §§ 635.1-.13 (West Supp. 1982); KAN. STAT. ANN. §§ 59-1507, -2287 (1979 & Supp. 1982); KY. REV. STAT. ANN. §§ 395.450-.500 (Bobbs-Merrill 1972 & Supp. 1982); LA. REV. STAT. ANN. §§ 9-1513 to -1515, -1552 (West 1965 & Supp. 1982); LA. CODE CIV. PROC. ANN. art. 3001-3008, 3031-3035, 3421-3443 (West 1961 & Supp. 1982); ME. REV. STAT. ANN. tit. 18A, §§ 3-1201 to -1205 (1981); MD. EST. & TRUSTS CODE ANN. §§ 5-601 to -608 (1974 & Supp. 1982); MASS. ANN. LAWS ch. 195, § a6 (Michie/Law Co-op. 1981); MICH. COMP. LAWS ANN. §§ 700.010-.103, .326 (West 1980 & Supp. 1982); MINN. STAT. ANN. §§ 524.3-1201 to -1204, 524.51 (West 1975 & Supp. 1983); MISS. CODE ANN. §§ 81-12-143, 91-7-322 to -327 (1972 & Supp. 1982); MO. REV. STAT. §§ 473.090-.100 (Supp. 1982); MONT. CODE ANN. §§ 72-3-1103 to -1104 (1981); NEB. REV. STAT. §§ 30-24.125-.128 (1979); NEV. REV. STAT. §§ 145.010-.100, 146.070-.080 (1982); N.H. REV. STAT. ANN. § 553:31 (1974); N.J. STAT. ANN. §§ 3B:10-3 to -5 (West 1982); N.M. STAT. ANN. §§ 45-3-1201 to -1204 (1978 & Supp. 1982); N.Y. SURR. CT. PROC. ACT §§ 1301-1312 (McKinney 1942 & Supp. 1982-1983); N.C. GEN. STAT. §§ 28A-25.1 to .6 (1976 & Supp. 1979); N.D. CENT. CODE §§ 30.1-23-01 to -04 (1976 & Supp. 1982); OHIO REV. CODE ANN. § 2113.03 (Page 1976 & Supp. 1982); OKLA. STAT. ANN. tit. 58, §§ 241, 895, 898 (West 1965 & Supp. 1982-1983); OR. REV. STAT. § 114.515-.545 (1979); 20 PA. CONS. STAT. ANN. § 3102 (Purdon 1975); R.I. GEN. LAWS § 33-24-1 (1969 & Supp. 1982); S.C. CODE ANN. §§ 21-15-1650 to -1680 (1976 & Supp. 1982); S.D. CODIFIED

limitations on small estates range from a low of $500[33] to a high of $60,000.[34] Some form of these statutes has been on the books in most states since early statehood. Even though the limits on size are excessively small in many cases, it is probable that at the time of enactment the size of the qualifying estate was a significant, though modest, collection of assets. Further, it appears that frequently there has been such a lag between inflation and legislative increase in the limits that the size limitations have in some states not kept pace with the original legislative assumptions.[35]

The small estate statutes follow a few distinct patterns. One common approach provides for summary distribution to the surviving spouse or children when the applicable allowances and exemptions exceed the value of the estate assets.[36] In these cases, any creditors are excluded because of the priority of family allowance or exemptions. In some statutes, high priority claims, such as expenses of funeral or last illness, must be stated as paid or provided for[37] while other creditors are simply excluded for want of assets.

LAWS ANN. § 30-11-1 to -23 (1976 & Supp. 1982); TENN. CODE ANN. §§ 30-2001 to -2005 (1977 & Supp. 1982); TEX. PROB. CODE ANN. §§ 137-144, 180 (Vernon 1980); UTAH CODE ANN. §§ 75-3-1201 to -1204 (1978); VT. STAT. ANN. tit. 14, §§ 1901-1903 (1974 & Supp. 1982); VA. CODE §§ 64.1-123 to -124, -132.4 (1950 & Supp. 1982); WASH. REV. CODE ANN. §§ 11.62.005-.030 (1970 & Supp. 1982); W. VA. CODE § 44-1-28 (1982); WIS. STAT. ANN. §§ 867.01-.05 (West 1957 & Supp. 1982-1983); WYO. STAT. §§ 2-1-201 to -203 (1977 & Supp. 1982).

33. N.H. REV. STAT. ANN. § 553:31 (1974). New Hampshire also has a summary proceeding for estates between $500 and $2000. *Id.* § 553:31a.

34. FLA. STAT. ANN. § 735.101 (West 1976 & Supp. 1983); NEV. REV. STAT. § 145.040 (1982); OKLA. STAT. ANN. tit. 58, § 241 (West 1982); S.D. CODIFIED LAWS ANN. § 30-11-1 (1976). *See also* TEX. PROB. CODE ANN. § 137 (Vernon 1980) ($50,000 excluding homestead and exempt property); *cf.* GA. CODE ANN. § 53-10.1 (1981) (no value limit but notice and hearing required); KY. REV. STAT. ANN. § 395.470 (Bobbs-Merrill 1972 & Supp. 1982) (same).

35. Considering the inflationary trend of the last century and the concept of permitting tools of a trade or other productive equipment as well as homestead to be exempt in a reasonable amount, it seems probable that the high limits of the legislation now on the books—$60,000—is quite reasonable and should be available to decedents in all states under small estates legislation.

36. *See, e.g.*, UNIF. PROBATE CODE § 3-1203 (1975); ALASKA STAT. § 13.16.690 (1972 & Supp. 1982); ARIZ. REV. STAT. ANN. § 14-3973 (1956 & Supp. 1982); ARK. STAT. ANN. § 62-2129 (1971 & Supp. 1982); COLO. REV. STAT. § 15-12-1203 (1973 & Supp. 1982); CONN. GEN. STAT. ANN. § 45-230 (West 1981); IDAHO CODE § 15-3-1203 (1979); KAN. STAT. ANN. § 59-1507 (1979 & Supp. 1982); KY. REV. STAT. ANN. § 395.455 (Bobbs-Merrill 1972 & Supp. 1982); ME. REV. STAT. ANN. tit. 18A, § 3-1203 (1981); MICH. COMP. LAWS ANN. § 524.3-1203 (West 1980 & Supp. 1982); MO. REV. STAT. § 473.090 (Supp. 1982); NEB. REV. STAT. § 30-24.127 (1979); NEV. REV. STAT. § 146.070 (1979); N.M. STAT. ANN. § 45-3-1203 (1974); N.D. CENT. CODE § 30.1-23-03 (1976 & Supp. 1982); UTAH CODE ANN. § 75-3-1203 (1978).

37. *See, e.g.*, CONN. GEN. STAT. § 45-266 (West 1981); MICH. COMP. LAWS

A single state may have alternative provisions following more than one pattern.

Not all statutes are limited to estates in which assets do not exceed allowable exemptions from creditors. Some statutes, however, are of sufficient size to include assets subject to the claims of creditors.[38] In these latter statutes, it is typical to require the affiant to assert that all claims have been paid so creditors are protected in this fashion.[39] Nearly all of the small estate statutes proceed on the basis of an affidavit by the successors or the petitioner. In most instances, the affidavit or petition must be filed with the local probate court or probate clerk, whereupon distribution is summarily ordered or approved. The statutes vary, of course, in detail although central themes are similar and some clearly are adaptions of model[40] or uniform acts.[41] Many apply only to personal property, particularly in states where homestead laws provide similar protection for land. Some apply to gross estate size while others apply to the value of the estate in excess of secured claims. Notice may be required to be given to creditors, but many statutes expressly dispense with notice[42] or make it optional.[43] The object

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ANN. § 700.101 (West 1980 & Supp. 1982); MO. REV. STAT. § 473.097 (Supp. 1982); R.I. GEN. LAWS § 33-24-1 (1969 & Supp. 1982).

38. *See, e.g.*, ARK. STAT. ANN. § 62-2127 (1971 & Supp. 1982); CAL. PROB. CODE § 630 (West 1956 & Supp. 1982); CONN. GEN. STAT. ANN. § 45-266 (West 1981); DEL. CODE ANN. tit. 12, § 2306 (1974); FLA. STAT. ANN. § 735.103 (West 1976 & Supp. 1983); GA. CODE ANN. § 53-10-1 (1981); IOWA CODE ANN. § 635.1 (West Supp. 1982); KY. REV. STAT. ANN. § 395.470 (Bobbs-Merrill 1972 & Supp. 1982); MD. EST. & TRUSTS CODE ANN. § 5-601 (1974 & Supp. 1982); MO. REV. STAT. § 473.097 (Supp. 1982); MONT. CODE ANN. § 72-3-1104 (1981); OHIO REV. CODE ANN. § 2113.03 (Page 1976 & Supp. 1982); OR. REV. STAT. § 114.515 (1979); S.D. CODIFIED LAWS ANN. § 30-11-1 (1976); TEX. PROB. CODE ANN. § 137 (Vernon 1980); VT. STAT. ANN. tit. 14, § 1901 (1974 & Supp. 1982); WIS. STAT. ANN. § 867.01 (West 1957 & Supp. 1982-1983).

39. *See, e.g.*, ARK. STAT. ANN. § 62-2127 (1971 & Supp. 1982); CAL. PROB. CODE § 630 (West 1956 & Supp. 1982); DEL. CODE ANN. tit. 12, § 2306 (1974); FLA. STAT. ANN. § 735.103 (West 1976 & Supp. 1983); GA. CODE ANN. § 53-10-1 (1981); MO. REV. STAT. § 473.097 (Supp. 1982).

40. *See, e.g.*, ARK. STAT. ANN. § 62-2127 (1971 & Supp. 1982); CAL. PROB. CODE § 630 (West 1956 & Supp. 1982); DEL. CODE ANN. tit. 12, § 2306 (1974); FLA. STAT. ANN. § 735.103 (West 1976 & Supp. 1983); MO. REV. STAT. § 473.097 (Supp. 1982).

41. *See, e.g.*, ALASKA STAT. § 13.16.690 (1972 & Supp. 1982); COLO. REV. STAT. § 15-12-1203 (1973 & Supp. 1982); IDAHO CODE § 15-3-1203 (1979); ME. REV. STAT. ANN. tit. 18A, § 3-1203 (1981); MINN. STAT. ANN. § 524.3-1201 (West 1975 & Supp. 1983); NEB. REV. STAT. § 30-24.127 (1979); N.M. STAT. ANN. § 45-3-1203 (1978 & Supp. 1982); N.D. CENT. CODE § 30.1-23-03 (1976 & Supp. 1982); UTAH CODE ANN. § 75-3-1203 (1978); UNIF. PROBATE CODE § 3-1203 (1975).

42. *See, e.g.*, MO. REV. STAT. § 473.097 (Supp. 1982); MONT. CODE ANN. § 72-3-1104 (1981); N.D. CENT. CODE § 30.1-23-03 (1976 & Supp. 1982); TEX. PROB. CODE ANN. § 137 (Vernon 1980); VT. STAT. ANN. tit. 14, § 1901 (1974 & Supp.

of each, however, is clearly to avoid needless administration that imposes an unnecessary burden on the transmission of family assets.

Throughout these statutes three significant features are repeated. First, the system relies for proof of the circumstances on the affidavits of the interested parties. These are the decedent's successors who are ultimately entitled to the assets. Second, creditors are either provided for or precluded by applicable exemptions and the distributees are liable to creditors and others who might later appear with a higher priority claim to the assets. The third important element is that the successors or distributees are authorized to protect or pursue their interests by collecting from others, by lawsuit if necessary. As a necessary part of this third factor, parties who are indebted to the estate or who hold estate assets are required to pay or deliver and are protected in that payment or delivery just as they would be had another owner or a regularly appointed personal representative dealt with them. In brief, the statutes rely on the parties to pursue and manage their interests and the assets responsibly in accordance with the law. Transfer agents are frequently required to recognize the rights of the successors to the decedent without a formal court order.

B. *Collection Without Administration*

Protection for third parties is the main feature of another common form of statute which permits even summary administration to be avoided. These are the statutes permitting collection of assets by affidavit, sometimes referred to as facility of payment provisions. Typically, these statutes provide that after a certain time has elapsed since the death of the decedent without administration having been initiated, e.g., ninety days, a successor, usually the surviving spouse or an adult child, may collect and give a good receipt for assets or debts owed the deceased upon presentation of an affidavit showing these facts and stating that the creditors are paid or to be paid from the receipt or are otherwise provided for, that the affiants are entitled by law to the assets, and that upon receipt the successor will account to any person with a higher priority. Upon delivery or transfer of assets pursuant to the affidavit, the person paying or transferring is fully protected and has no obligation to see to the application of the assets in the hands of the affiant. These statutes may be limited in application either to estates of a limited size, e.g., $5,000 to $50,000,[44] or to the amount or nature of the assets to

1982); WIS. STAT. ANN. § 867.01 (West 1957 & Supp. 1982-1983). *See also* KAN. STAT. ANN. § 59-2287 (1979 & Supp. 1982).

43. *See, e.g.*, FLA. STAT. ANN. § 735.103 (West 1976 & Supp. 1983); IOWA CODE ANN. § 635.1 (West Supp. 1982). *See also* HAWAII REV. STAT. § 560-3-1205 (1976 & Supp. 1982).

44. *See, e.g.*, ALASKA STAT. § 13.16.680 (1972 & Supp. 1982) ($6,000); ARIZ. REV. STAT. ANN. § 14-3971 (1956 & Supp. 1982) ($5,000); ARK. STAT. ANN. § 62-2127 (1971 & Supp. 1982) ($15,000 plus homestead and allowance); CAL. PROB. CODE § 630 (West 1956 & Supp. 1982) ($30,000); COLO. REV. STAT. § 14-21-1201

be paid or delivered, e.g., $1,000 to $5,000, wages, or automobiles.[45] The statutes, however, usually do not have both of these limitations. Although limited by the size of the estate or asset, these facility of payment statutes essentially provide for succession without administration, with any creditor's rights against the decedent transferred to or assumed by the affiant to the extent of assets collected.

IV. STATUTES DISPENSING WITH ADMINISTRATION WITHOUT REGARD TO ESTATE SIZE

The small estates statutes which have higher limits, e.g., $50,000 to $60,000, and the facility of payment statutes, as well as the common law family settlement doctrine, suggest procedures for dispensing with administration in uncomplicated estates without regard to size whenever the successors agree and creditors and transferees are adequately protected. Indeed, in the United States there are states in which, since early statehood, statutes have provided for dispensing with administration in estates of any size where no need exists for administration. These statutes supplement the decisional or common law development of the family settlement doctrine discussed earlier, but usually similar circumstances are necessary to demonstrate the lack of necessity for administration; typically, absence of unprovided for creditors and agreement among the successors or absence of dispute as to distribution.

A leading example of statutory recognition that administration should occur only when it serves a necessary purpose is found in the Texas statute which provides:

> [A]dministration of the estate . . . shall be granted, should

(1973 & Supp. 1982) ($20,000); IDAHO CODE § 15-3-1201 (1979) ($5,000); IND. CODE ANN. § 29-1-8-1 (Burns 1972 & Supp. 1982) ($8,500); ME. REV. STAT. ANN. tit. 18A, § 3-1201 (1981) ($10,000); MINN. STAT. ANN. § 524.3-1201 (West 1975 & Supp. 1983) ($5,000); MONT. CODE ANN. § 72-3-1101 (1981) ($7,500); NEB. REV. STAT. § 30-24.125 (1979) ($10,000); N.M. STAT. ANN. § 45-3-1202 (1978 & Supp. 1982) ($5,000); N.C. GEN. STAT. § 28A-25-2 (1976 & Supp. 1979) ($5,000); N.D. CENT. CODE § 30.1-23-02 (1976 & Supp. 1982) ($15,000); OR. REV. STAT. § 114.515 (1979) ($10,000 personalty, $20,000 realty); S.D. CODIFIED LAWS ANN. § 30-11A-1 (1976) ($15,000); TENN. CODE ANN. § 30-2003 (1977 & Supp. 1982) ($10,000); TEX. PROB. CODE ANN. § 137 (Vernon 1980) ($50,000); UTAH CODE ANN. § 75-3-1201 (1978) ($15,000 plus auto); VA. CODE § 64.1-132.2 (1950 & Supp. 1982) ($5,000); WIS. STAT. ANN. § 867.03 (West 1957 & Supp. 1982-1983) ($5,000); WYO. STAT. § 2-1-201 (1977 & Supp. 1982) ($30,000).

45. *See, e.g.*, KAN. STAT. ANN. § 59-1507(b) (1979 & Supp. 1982) ($1,000); MICH. COMP. LAWS ANN. § 257.236 (West 1980 & Supp. 1982) (auto worth $10,000); MISS. CODE ANN. § 81-12-143 (1972 & Supp. 1982) (savings accounts to $2,500); N.Y. SURR. CT. PROC. ACT § 1310 (McKinney 1942 & Supp. 1982-1983) (total not to exceed $5,000); OHIO REV. CODE ANN. § 2113.04 (Page 1976 & Supp. 1982) ($1,000 in wages); 20 PA. CONS. STAT. ANN. § 3101 (Purdon 1975) ($3,500 in wages); W. VA. CODE § 44-1-28 (1982) ($1,000 in wages).

> administration appear to be necessary. No administration of any estate shall be granted unless there exists a necessity therefore . . . .[46]
>
> When application is filed for letters of administration and the court finds that there exists no necessity for administration of the estate, the court shall recite in its order refusing the application that no necessity for administration exists. An order of the court containing such recital shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing or otherwise dealing with the estate, for payment or transfer to the distributees of the decedent, and such distributees shall be entitled to enforce their right to such payment or transfer by suit.[47]

These provisions have been utilized in Texas for essentially all of its history without regard to the size of the estate.[48] In 1849, the Supreme Court of Texas permitted the guardian of an infant heir to sue without prior administration to recover property belonging to the decedent and descending to the heir since, there being no creditors, administration was unnecessary.[49] The statute identifies the existence of creditors and the need to partition assets as examples necessitating administration.[50] Judicial endorsement of dispensing with administration is further reflected in the early case of *Angier v. Jones*:[51]

> We are also of the opinion that the application should have been refused because it fails to show any necessity for an administration. The mere fact that there are debts due the estate of a deceased person does not authorize the appointment of an administrator, and incurring the expense of an administration. If there are no creditors of the estate, and the heirs of the decedent are known and are under no disability, no necessity for an administration is shown. The heirs in such case can sue and recover the debts, if it be necessary to bring suit for that purpose, without the assistance of a probate court; and the appointment of an administrator to represent them is entirely unnecessary.[52]

The Texas statute is available in intestate cases or when the decedent

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46. TEX. PROB. CODE ANN. § 178(b) (Vernon 1980).

47. *Id.* § 180.

48. The statute appeared essentially in its present form in ch. 84, § 9, 1876 Tex. Gen. Laws 93, 96. In addition to this generally applicable statute, Texas also provides for collection on affidavit where the entire estate "not including homestead and exempt property does not exceed $50,000." TEX. PROB. CODE ANN. § 137 (Vernon 1980).

49. McIntyre v. Chappel, 4 Tex. 187, 189 (1849).

50. TEX. PROB. CODE ANN. § 178 (Vernon 1980).

51. 67 S.W. 449 (Tex. Civ. App. 1902).

52. *Id.* at 451.

leaves a will but no executor qualifies. In cases in which the will names an executor who qualifies, the procedure is not available, but the independent executor is available to accomplish nearly the same result.[53]

Another long standing example of a statutory provision dispensing with administration comes from Illinois. Early cases in Illinois recognized that "administration is not necessary in every estate, and the statute [providing for appointment of personal representative] applies only to those cases where it is necessary."[54] The Illinois Probate Code provided that letters of administration would issue unless the court was satisfied that there was no tax due, all claims were paid, and all interested parties were competent and desired to settle the estate without administration.[55] The present form of this statute substitutes "unless the issuance of letters is excused" for the earlier language specifying the detailed findings of the court.[56] This statutory recognition of the long standing procedure for avoiding administration in any estate continues in addition to Illinois's small estate statute and recently enacted procedure for independent administration.[57]

A common fact pattern in which a procedure dispensing with administration is appropriate involves the estate which has not been administered during the several years since the testator's death. This is the usual case in which creditors will have been barred by statutes of limitations and no will has been probated or, if a will has been probated, no personal representative has been appointed but some belated issue arises concerning collection or transfer of an asset. Florida has for many years provided for dispensing with administration not only when the value of the estate, other than exempt property, does not exceed a certain amount, currently $25,000, but also when the decedent has been dead for three years and no administration has occurred.[58] The passage of three years bars creditors' claims so the concern for creditors' protection is absent. After such hearing as the court may require, it may order immediate distribution to the persons entitled. This order provides a certification of interests. In this instance, the statute authorizes a convenient means of cleaning up the unadministered estate without a full scale administration.

The utilization of affidavits under marketable title standards and merchantable title statutes provides a frequently utilized alternative procedure for demonstrating title to real property.[59] Affidavits quite generally are ac-

53. *See* TEX. PROB. CODE ANN. §§ 145, 178 (Vernon 1980); *see also* Marschall, *supra* note 13.

54. Cotterell v. Coen, 246 Ill. 410, 413, 92 N.E. 911, 912 (1910).

55. ILL. ANN. STAT. ch. 110½, § 9-2 (Smith-Hurd 1978) (amended 1980). *See* Fleming, *Summary Administration of Small and Simple Estates*, 60 ILL. B.J. 734 (1972).

56. ILL. ANN. STAT. ch. 110½, § 9-2 (Smith-Hurd Supp. 1982).

57. *Id.* §§ 25-1 to -4, 28-1 to -12.

58. FLA. STAT. ANN. § 735.201 (West 1976).

59. *See* P. BASYE, CLEARING LAND TITLES § 7 (2d ed. 1970); J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 314 (2d ed. 1975); R. PATTON & G. PATTON,

cepted to prove family history, death, heirship, and absence of estate creditors or adverse claimants.[60]

Experience in some of the community property states also suggests the reasonableness of succession of property without formal administration. California provides that in some circumstances community property may pass to the surviving spouse without administration.[61] Washington has for many years provided that the spouses may agree on the disposition of community property in such a way as to avoid administration and formal judicial proceeding. There is evidence that this method is utilized more than any other in that state.[62]

V. Policy Directions From Past Experience

It is generally recognized that the underlying purpose of administering a decedent's estate is to collect the assets, pay those who have claims against the decedent and the assets, and transmit possession with unencumbered title to the next owner as quickly and as inexpensively as possible. The foregoing brief review of experience in the United States with procedures dispensing with some or all of the usual steps in administration demonstrates that the policy concerns really are not with the size of the estate or the nature of its assets, but with the protection usually afforded to the parties by formal administration. If the functional protection of those concerned can reasonably be obtained by less expensive alternatives to administration, those alternatives should be employed.

The functions to which attention should be addressed begin with the collection process. Someone needs to be identified as an appropriate party to initiate the process of collecting the decedent's assets. This is the personal representative in formal administration, but under the statutes and in the cases allowing administration to be avoided, the successors, i.e., heirs and devisees, can and have nearly everywhere been permitted to do this. The size of the estate or the nature of its assets does not affect this problem of identity. Second, in considering collection, the persons from whom the assets or obligations are to be collected need to be protected from the risk of double liability. An efficient transfer system requires the ability to rely on the receipt of the transferee to foreclose further liability. We see that the facility of payment statutes have successfully provided this protection, even

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Patton on Land Titles § 22 (2d ed. 1957); L. Simes & J. Taylor, Improvement of Conveyancing by Legislation 55 (1960); *see also* Fla. Stat. Ann. § 90.804(d) (West Pamph. 1979); Ind. Code Ann. §§ 17-3-4-1 to -10 (Burns 1972) (repealed 1976); Ohio Rev. Code Ann. § 5301.25.2 (Page 1981).

60. *See* P. Basye, *supra* note 59, §§ 33-35; *cf.* Siedel v. Snider, 241 Iowa 1227, 1230, 44 N.W.2d 687, 690 (1950).

61. Cal. Prob. Code § 203 (West 1956 & Supp. 1982).

62. *See* Price, *The Transmission of Wealth at Death in a Community Property Jurisdiction*, 50 Wash. L. Rev. 277, 299 (1975); *see also* Cross, *The Community Property Law in Washington*, 15 La. L. Rev. 640, 645 (1955).

though administration does not occur. Again, it appears that the value of the assets involved does not control the protection of the debtor in making payment or transfer to the successors.

The next function with which we need be concerned is the protection and payment of the decedent's creditors, tax authorities, and others who have prior claim to the assets. If these creditors and claimants are given essentially the same protection by an alternative procedure that they receive by administration, the alternative seems viable. The experience both under statutes in which size limitations on small estates exceed the allowable exemptions and statutes providing for avoiding administration in any estate demonstrate that we can rely upon the successors to pay the debts and taxes, as individuals normally do, under the latent threat of enforcement action from the claimant. If a claimant can trace assets and assert the claim against those assets, the claimant's position is no different than when a family member is a personal representative under obligation to pay debts. Similarly, tax collection relies on the reporting process and that does not depend on the character of the person making the report. If these obligations are imposed on the successors, the lack of formality would not alter the obligations. Furthermore, if it results in lower costs, more assets may be available to the claimants.

Finally, there is a need to identify the distributees who are the new owners of the free and clear assets. We have seen that this is perhaps the easiest task in an informal process since people simply have more knowledge about their close relatives than other information in decedents' estates. And if any unknown or unidentified potential successors are given reasonable opportunity to come forward and prove their identity, the function of administration in that regard is satisfied. Further, to the extent that successors are identified at the outset and given the function of collecting the assets and clearing the assets from claims, costs of transfer are avoided. The economies of owners managing their own assets are thereby achieved.

These considerations seem to identify the requirements of an efficient alternative to formal administration. It is submitted that these requirements are met by the approach of the recent amendment to the Uniform Probate Code providing for succession without administration. In the belief that succession without administration is a normal and timely development of the probate and administration law in all states, enactment of an adaptation of the Uniform Probate Code amendment seems appropriate in states that have not yet enacted the Uniform Probate Code.[63]

63. The succession without administration amendment to the Uniform Probate Code, sections 3-312 to 3-322, was promulgated in August 1982 by the National Conference of Commissioners on Uniform State Laws. The suggested adaptation of that amendment to the free standing form appended here has not received the approval of the National Conference of Commissioners on Uniform State Laws. Consequently, endorsement of this form of free standing act by the Conference should not be assumed. Because the provisions of the appended draft have been drawn

VI. SUGGESTED SUCCESSION WITHOUT ADMINISTRATION ACT

To illustrate the possible utilization of the concept of succession without administration, there is appended an adaptation of the Uniform Probate Code amendment in the form of a suggested free standing act that could be incorporated into the probate law of any state. A brief description of this act follows.

A. *General Provisions*

The proposed act in Part I provides for devolution of title directly to the heirs and devisees.[64] Of course, any will must be probated, i.e., proven,[65] but administration of the estate need not follow unless necessary.[66] If no administration of the estate occurs, the heirs, devisees, or other persons are entitled to their interests in the estate subject to the usual rules of abatement, ademption, and other claims.[67] As in any case, a person injured by the fraud of another may obtain appropriate relief, but in order to provide for ultimate repose against such possible claims, it is required that any assertion of fraud be proceeded on within a limited time.[68]

It is necessary that claims based on unpresented wills be barred by the passage of time. A three year limitation on probate proceedings is therefore provided.[69] Any statute of limitations running against the decedent on causes against others is suspended during the four months after the decedent's death to allow a reasonable time for the successors to proceed.[70] Creditors having claims against the decedent must also present their claims within the period of the statute of limitations, but the statute is suspended during the four months following the decedent's death to provide an opportunity to proceed.[71] A provision for a short non-claim statute initiated by an optional notice to creditors is suggested if a shorter limitation on claims

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largely from the Uniform Probate Code, the comments are also based on the comments to those sections of the Uniform Probate Code which are the source of the draft. However, those comments have been modified to accommodate the functions of succession without administration.

Professor William F. Fratcher has labored long in the effort to improve and simplify the process by which the law provides for transfer of property at death. This makes a proposal like the statute here suggested particularly appropriate for dedication to him.

64. Uniform Succession Without Administration Act § 1-1 (Proposed Draft 1983).

65. *Id.* § 1-2.

66. *Id.* § 1-3.

67. *Id.* § 1-1.

68. *Id.* § 1-4.

69. *Id.* § 1-5.

70. *Id.* § 1-6.

71. *Id.* § 1-7(a).

is desired.[72] Because the statutes of limitations, absent notice to creditors, may vary on different claims, a single period of ultimate repose, three years, is placed on all claims. Consequently, all claims will be barred after three years if not earlier barred by any limitation specifically applicable.

Many of these general provisions or analogous provisions will already exist in the statutes of the enacting state and hence these sections of the act will need to be closely coordinated with any existing statutes.

B. *Succession Without Administration*

Part 2 of the suggested statute is simply an adaptation of the substantive provisions of the recent Uniform Probate Code amendment. It begins with a declaration that the competent heirs of an intestate or residuary devisees under a will may become universal successors to the decedent's estate by assuming personal liability for the obligations of the decedent and the estate. Only competent heirs or residuary devisees may become universal successors, and they are obliged to protect the rights of any minors or other incompetent heirs or devisees.[73] Minors or other incompetents, through their guardians or conservators, may concur or object as under existing law and are afforded time within the limitations subsequently set out to question acts of the universal successors.[74] The requirements for the application to become universal successors are spelled out in detail and include the information necessary to coordinate this alternative to administration with any outstanding or pending applications for administration. The concept of the act is to give the successors power to deal with the assets as owners, subject to the obligations of the law. It is not an in rem proceeding. In view of this, no inventory or description of the assets is required in the application.[75]

The application is to be filed with an administrative officer, such as the clerk or registrar of the appropriate court. The registrar, or the officer designated in the act, is then to review the application to determine if it is complete and to see if any other proceedings in the estate are outstanding. If the application is complete and timely, and if no other proceedings are pending, the application is to be granted as an administrative, non-judicial matter. Universal succession may be sought any time after five days have elapsed from the death of the decedent, except that if interests are asserted under a will, the will must have been probated within three years. Consequently, universal succession is available either for the prompt disposition of a decedent's estate or as a simple way of cleaning up an unadministered intestacy. The procedure is designed for simple estates and if any unprotected creditor or claimant objects, the application will not be granted.[76]

72. *Id.* § 1-7(b).
73. *Id.* § 2-1.
74. *Id.* §§ 3-2, 3-4.
75. *Id.* § 2-2.
76. *Id.* § 2-3.

Upon granting the application, the registrar issues a written statement of universal succession. This document states that the applicants are universal successors to the assets of the estate, have assumed liability for the obligations of the decedent, and have the powers and liabilities of universal successors.[77] This statement can be used to demonstrate to others the universal successors rights to deal with the decedent's assets. The universal successors have full power of ownership and third persons are protected when they engage in transactions with them.[78] As a consequence, universal successors could utilize any available procedure for collecting or transferring assets. The purpose of universal succession is simply to facilitate family settlement of the estate without changing the respective rights and liabilities of the various parties. Pursuant to this purpose, the universal successors are obliged to discharge liabilities and distribute property to others entitled, retaining only that to which the universal successors are beneficially entitled by law. Persons to whom universal successors make distribution are subject to the same liabilities as if they were distributees from a personal representative.[79] This means, for example, that the impact of federal or state taxes is not changed and the universal successors will be subject to the obligation to file returns and pay taxes according to the applicable tax law. These tax consequences should be considered by the heirs or devisees before electing to utilize succession without administration.

By becoming universal successors, the heirs or residuary devisees submit to the jurisdiction of the state court in any proceeding relating to the estate or assumed liabilities. They also waive their right subsequently to seek appointment of a personal representative.[80] The universal successors have the obligation of informing heirs and devisees who did not join in the application of the succession without administration. This information may be hand delivered or mailed by ordinary first class mail. However, it is not jurisdictional and does not affect the validity of the approval of succession without administration. Also suggested is a provision for an optional notice to creditors should the enacting state prefer to shorten the regular statutes of limitations to a four month non-claim period.[81] Should a personal representative subsequently be appointed, such as on the petition of an unpaid creditor or claimant, the universal successors are obliged to restore property to which they are not entitled to the estate.[82] The liability of the universal successors to creditors or other claimants, except for personal fraud, conversion, or other wrongful conduct, may not exceed the proportion of the claim that the universal successor's share bears to the share of all heirs and residuary legatees. This means that, while as a group the univer-

77. *Id.* § 2-4.
78. *Id.* § 2-5.
79. *Id.* § 2-6.
80. *Id.* § 2-7.
81. *Id.* § 2-8.
82. *Id.* § 2-9.

sal successors are liable to creditors in the full amount of a claim, each of them will only bear the share of the claim that is proportionate to that universal successor's share in the estate. This, of course, assumes the usual priorities and abatement procedures are applicable. If greater protection is desired, i.e., liability limited to the value of assets received, the heirs or residuary devisees should not elect succession without administration but should petition for administration of the estate.[83]

Creditors or other persons entitled to the decedent's property may enforce their claims against the universal successors by any remedy provided by law. For example, a creditor could sue the universal successors in the court to whose jurisdiction they have submitted, or the claimant may demand bond. If the demand for bond precedes the granting of the application, it is an effective objection to succession without administration until the claim is withdrawn or satisfied or bond is posted. If demand for bond occurs after the application for succession without administration has been approved, the claim must be satisfied or bond posted within ten days or the claimant can petition for administration of the estate.[84] The multiple remedies available to claimants should assure that universal successors not only perform their obligations but do so with dispatch.

C. *Rights and Liabilities of Distributees*

Part 3 of the suggested act, somewhat like the general provisions of Part 1, includes provisions which may be analogous to existing statutes of an enacting state. However, these suggested sections are directly responsive to the rights and obligations resulting from the provisions of Part 2 and are necessary to implement those rights and obligations. Consequently, the substance of these provisions needs to be included in the law of the enacting state in a rather direct and explicit form.

An instrument of distribution of assets in kind or payment from a universal successor is conclusive evidence of the distributee's title to the assets as against all persons interested in the estate, except that a personal representative or universal successor may recover for an improper distribution.[85] This is the same as the prevailing rule for distributees from a personal representative. If an improper distribution has occurred, the distributee is liable to return the property unless protected by adjudication, estoppel, or time limitation. If the distributee no longer has the property, the distributee is liable for its value.[86]

Persons who deal with the universal successors, distributees, or their transferees are protected in the same fashion as anyone dealing with the owner of property. Specifically, purchasers or lenders are protected. Those

83. *Id.* § 2-10.
84. *Id.* § 2-11.
85. *Id.* § 3-1.
86. *Id.* § 3-2.

holding assets due the estate are authorized to deliver or pay them to the universal successors, their distributees, or assignees. Transfer agents are also protected in transferring securities or other assets. This protection is in addition to any transactional protection afforded by any other law.[87]

To provide for the ultimate repose of interests, the act includes a statute of limitations providing that, unless earlier barred by other law, any claim against a distributee is barred at the later of three years after the decedent's death or one year after the distribution.[88] This section is subject, of course, to the overriding provision regarding fraud in Part 1 of the act.[89] Because universal successors are also distributees, this section provides the ultimate statute of limitations on actions against them for failure to perform their obligations as universal successors, absent fraud. For example, a creditor or a legatee who was not properly paid and had not previously taken action would be barred from proceeding against the universal successors after the limitations in this section had expired. However, failure to pay a known legatee for three years may be difficult to justify as non-fraudulent.

VII. CONCLUSION

This then is the suggested free-standing statute for succession without administration. It is submitted that it provides a worthwhile alternative to otherwise avoidable administration proceedings in the uncomplicated estate in which family members are in agreement and circumstances are such that they can settle the estate without the aid of a personal representative or judicial supervision. Persons interested in the estate are provided a choice of alternative procedures. The protections usually resulting from administration are provided by the statute. When those protections appear to a party to be inadequate, that party is afforded the opportunity of electing the more formal procedures of regular administration. Succession without administration offers an opportunity to avoid the needless interposition of judicial supervision upon competent persons dealing with their property. It provides the lawyer with a means of handling simple estates in an informal yet secure manner without the expenditure of needless time in unnecessary judicial proceedings. This suggests that the burden on probate courts can be reduced, that lawyers can afford to handle simple estates more efficiently, and that competent parties can agree to settle an estate in a simple, easily understood manner. This should result in substantial savings of time and money in many uncomplicated estates as well as improved public regard for the law and our legal system.

87. *Id.* § 3-3.
88. *Id.* § 3-4.
89. *Id.* § 1-5.

VIII. APPENDIX
A SUGGESTED FREE STANDING UNIFORM SUCCESSION WITHOUT ADMINISTRATION ACT

Prefatory Note

This proposed uniform act is an alternative to other methods of administering a decedent's estate. The substance of the provisions herein is drawn from some of the procedures available under the Uniform Probate Code, but this act is proposed as a free standing supplement to the probate procedures in a state which has not enacted the Uniform Probate Code. An amendment to a state's existing probate system must assume and rely upon some of the existing procedures. Because of the variations among the states, some of the provisions suggested herein may partially or completely duplicate existing statutory provisions of an enacting state. The comments following each section attempt to note this possible duplication so accommodation can be made.

Part 1 of the proposed act contains general provisions, usually found in state probate laws, but necessary for effective operation of succession without administration. Part 2 contains the provisions for succession without administration. Part 3 contains desirable but bracketed provisions regarding rights and liabilities of distributees that may already be included in the probate law of the enacting state and which are included as models for legislation if provisions of the enacting state are inadequate to accommodate succession without administration. The concept of succession without administration is drawn from the civil law and is a variation of the method which is largely followed on the Continent in Europe, in Louisiana, and in Quebec.

PART 1. GENERAL PROVISIONS

SECTION 1-1. Devolution of Estate at Death; Restrictions.

The power of an owner to leave property by will and the rights of creditors, devisees, and heirs to the property are subject to the restrictions and limitations contained in the law to facilitate the prompt settlement of estates. Upon the death of an owner, real and personal property devolves without administration to the persons to whom it is devised by will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to the heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to family allowances and exemptions, if any, to rights of surviving spouse and creditors, and to administration.

Comment

Source: Uniform Probate Code section 3-101. The laws of some states

provide that at death the title to all or part of a decedent's assets vests in the decedent's personal representatives or is in abeyance until the personal representative is appointed. This section vests title in the decedent's heirs or devisees, much after the historical view of the descent of title to land. It is important, however, that the provisions of this section, or its counterpart in an enacting state's law, cover all assets, real and personal. As a consequence, no administration is necessary to effect the transmission of title to the heirs or devisees. Proof of that title may be provided by probate, administration, or other alternatives available under the law of the state. All heirs and devisees take their interests subject to the prior rights of creditors, family members, and those resulting from abatement, retainer, advancement, or ademption.

SECTION 1-2. Necessity of Order of Probate for Will.

Except as provided in [Section —, providing for the collection of small estates], to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of probate, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or the devisee's successors and assigns possessed the property devised in accordance with the provisions of the will or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for probate proceedings.

Comment

Source: Uniform Probate Code section 3-102. The basic idea of this section follows section 85 of the Model Probate Code. The exception referring to Section — relates to affidavit procedures which are authorized for collection of estates worth less than a maximum amount. These statutes, similar to Uniform Probate Code section 3-1201, are found in the existing probate law of most states. This provision should be coordinated with these statutes in the enacting state.

Sections 1-1 through 1-3 and the provisions of Part 2 of this act make it clear that a will may be probated without appointment of a personal representative, including one nominated by the will.

The requirement of probate stated here and the limitations on probate provided in section 1-5 of this act mean that questions as to testacy may be eliminated simply by the running of time. Under these sections, a probated will cannot be questioned after the later of three years from the decedent's death or one year from the probate, whether or not an executor was appointed. If the decedent is believed to have died without a will, the running of three years from death bars probate of a late-discovered will and so makes the assumption of intestacy conclusive.

The exceptions to the section (other than the exception relevant to

small estates) are not intended to accommodate cases of late-discovered wills. Rather, they are designed to make the probate requirement inapplicable where circumstances led survivors of a decedent to believe that there was no point to probating a will of which they may have had knowledge. If any will was probated within three years of death, or if letters of administration were issued in this period, the exceptions to the section are inapplicable. If there has been no proceeding in probate, persons seeking to establish title by an unprobated will must show, with reference to the estate they claim, either that title has been possessed by those to whom it was devised or that it has been unknown to the decedent's heirs or devisees and not possessed by any.

It is to be noted, also, that devisees who are able to claim under one of the exceptions to this section may not obtain probate of the will or administration of the estate to assist them in their efforts to obtain the estate in question. The exceptions are to a rule which bars admission of a will into evidence rather than to the section barring late probate and late appointment of personal representatives. Still, the exceptions should serve to prevent two hard cases which can be readily imagined. In one, a surviving spouse fails to seek probate of a will giving her the entire estate of the decedent because she is informed or believes that all of her husband's property was held by them jointly with right of survivorship. Later it is discovered that she was mistaken as to the nature of her husband's title. The other case involves a devisee who sees no point to securing probate of a will in his favor because he is unaware of any estate. Subsequently, valuable rights of the decedent are discovered.

SECTION 1-3. No Administration Unless Sought by Interested Party.

No estate shall be subjected to administration nor a personal representative appointed unless administration is sought by a person having, or by a fiduciary representing a person having, a direct pecuniary interest in the estate and its administration.

Comment

The requirement of interest for standing to initiate or participate in judicial proceedings is expressed or implied in the law of all states. A person nominated as executor does not have an interest in the estate or standing to seek administration solely by reason of being named in the will as executor. This precludes the possibility of an unnecessary administration solely for the purpose of obtaining a fee as personal representative against the wishes of those beneficially interested in the estate. Although implicit in the law of nearly all states, this section explicitly expresses this near universal policy.

SECTION 1-4. Effect of Fraud and Evasion.

Whenever fraud has been perpetrated in connection with any proceed-

ing or in any statement filed under this [Code, Act] or if fraud is used to avoid or circumvent the provisions or purposes of this [Code, Act], any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects succession to the estate.

Comment

Source: Uniform Probate Code section 1-106. This is an overriding provision that permits an exception to the procedures and limitations in the probate code of the state or this act. The remedy of a party wronged by fraud is intended to be supplementary to other protections provided in the law and can be maintained outside the process of settlement of the estate. Thus, if a will which is known to be a forgery is probated informally, and the forgery is not discovered until after the period for contest has run, the defrauded heirs still could bring a fraud action under this section. Or if a will is fraudulently concealed after the testator's death and its existence not discovered until after the basic three year limitation period has elapsed, there still may be an action under this section. If there is fraudulent misrepresentation or concealment in a matter, a suit may be brought under this section against the wrongdoer for damages or restitution may be obtained from those distributees who benefit by the fraud. In any case, innocent purchasers for value are protected.

Any action under this section is subject to usual rules of res judicata; thus, if a forged will has been probated in a formal proceeding of which the heir is given notice, followed by an order of complete settlement of the estate, the heir could not bring a subsequent action under this section but would be bound by the litigation in which the issue could have been raised. However, the usual rules for securing relief for fraud on a court would govern.

The final limitation in this section is designed to protect innocent distributees after a reasonable period of time. There is no time limit (other than the two years from discovery of the fraud) on actions against the wrongdoer. But there ought to be some limit after which innocent persons who have built up expectations in good faith cannot be deprived of the property by a restitution action. These limitations periods should be coordinated with the enacting state's existing statutes of limitations.

The time of discovery of a fraud is a fact question to be determined in the individual case. In some situations, persons may not actually know that a fraud has been perpetrated but have such strong suspicion and evidence that a court may conclude there has been a discovery of the fraud at that

stage. On the other hand, there is no duty to exercise reasonable care to discover fraud; the burden should not be on the heirs and devisees to check on the honesty of the other interested persons or a fiduciary.

SECTION 1-5. Probate, Testacy and Appointment Proceedings; Ultimate Time Limit.

No probate or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or other proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment, or other proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within three years after the conservator becomes able to establish the death of the protected person; [and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.] These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this [Code, Act] which relate to the date of death.

Comment

Source: Uniform Probate Code section 3-108. This section establishes a basic limitation period of three years within which it may be determined whether a decedent left a will and to commence administration of the estate. But, if the enacting state provides for informal probate, the bracketed exception assures that heirs will have at least one year after an informal probate to initiate a contest and to secure administration of the estate as intestate.

If no will is probated within three years of death, the section has the effect of making the assumption of intestacy final. If a will has been informally probated within the period, the bracketed provision has the effect of making the informal probate conclusive after three years or within twelve months from informal probate, if later. Heirs or devisees can protect themselves against change within the three years of the assumption concerning

whether the decedent left a will or died intestate by bringing a formal proceeding.

Distributees who receive an estate distributed before the three year period expires where there has been no formal determination accelerating the time for certainty remain potentially liable to persons determined to be entitled by formal proceedings instituted within the available time limits under sections 3-2 and 3-4. Purchasers from personal representatives and distributees may be protected without regard to whether the three year period has run.

All creditors' claims are barred after three years from death. See section 1-7(b). Because of this, and since any possibility that letters may be issued at any time would be seen as a cloud on the title of heirs or devisees otherwise secure under section 1-1, the three year statute of limitations applies to bar appointment of a personal representative after the basic period has passed.

The basic premise underlying all of these time provisions is that interested persons who want to assume the risks implicit in the three year period of limitations should be provided legitimate means by which they can do so. At the same time, parties should be afforded ample opportunity for earlier protection by administration if they want it.

SECTION 1-6. Statutes of Limitations on Decedent's Causes of Action.

No statute of limitations running on a cause of action belonging to a decedent which had not been barred as of the date of death shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death is barred after four months unless tolled.

Comment

Source: Uniform Probate Code section 3-109. This section suspends the statute of limitations that may run against the decedent or the successors to the asset for a period of four months after the decedent's death to provide opportunity for the personal representative or successors to proceed to collect the asset. After that four months, the statute continues to run unless tolled. The tolling provisions in other statutes of limitations of the enacting state should be coordinated with this provision.

SECTION 1-7. Statutes of Limitations on Claims Against the Decedent; Non-Claim Period.

(a) Unless an estate is insolvent, any defense of limitations available to the estate may be waived with the consent of all successors whose interests would be affected. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured

from some event other than death and advertisement for claims against a decedent is suspended during the four months following the decedent's death but resumes thereafter as to claims not otherwise barred.

(b) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statutes of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless a proceeding for collection is commenced in the appropriate court (1) within [three] years after the decedent's death, if notice to creditors has not been published. [or (2) within four months after the date of the first publication of notice to creditors if notice is given as provided in section 2-8(b).]

Comment

Source: (a) Uniform Probate Code section 3-802; (b) Uniform Probate Code section 3-803. This section provides that four months are added to the normal period of limitations by reason of a debtor's death before a debt is barred. It also implies that after the expiration of four months from death, the normal statute of limitations may run and bar a claim even though any non-claim provisions have not become applicable.

This section also means that any claim against the decedent which is neither presented nor otherwise barred by a non-claim or other statute of limitations would be barred if not proceeded on within three years after the decedent's death. The existence of a statutory bar against all claims after some reasonable period of time is essential in a system of avoiding probate. Coordination of these limitations provisions with existing limitations of the enacting state obviously is very important.

The limitation stated in sub-paragraph (b) dovetails with the three year limitation provided in section 1-5 to eliminate most questions of succession that are controlled by state law after three years from death have elapsed. Questions of interpretation of any will probated within such period or of the identity of heirs in intestacy are not barred, however.

If the bracketed provision (b)(2) is enacted together with the bracketed provision section 2-8(b) and notice to creditors is published, a non-claim period supercedes the otherwise applicable statutes of limitations to bar the claims of creditors after four months.

PART 2. SUCCESSION WITHOUT ADMINISTRATION

SECTION 2-1. Universal Succession; In General.

The heirs of an intestate or the residuary devisees under a will, excluding minors and incapacitated, protected, or unascertained persons, may become universal successors to the decedent's estate by assuming personal liability for (1) taxes, (2) debts of the decedent, (3) claims against the dece-

dent or the estate, and (4) distributions due other heirs, devisees, and persons entitled to property of the decedent as provided in sections 2-2 through 2-10.

Comment

Source: Uniform Probate Code section 3-312 (1982). This section states the general policy of the act to permit heirs or residuary legatees to take possession, control, and title to a decedent's estate by assuming a personal obligation to pay taxes, debts, claims, and distributions due to others entitled to share in the decedent's property by qualifying under the statute. Although the surviving spouse most often will be an heir or residuary devisee, he or she may also be a person otherwise entitled to property of the decedent, as when a forced share is claimed.

This act does not contemplate that assignees of heirs or residuary devisees will have standing to apply for universal succession, since this involves undertaking responsibility for obligations of the decedent. Of course, after the statement of universal succession has been issued, persons may assign their beneficial interests like any other asset.

The act excludes incapacitated and unascertained persons as universal successors because of the need for successors to deal with the property for various purposes. The procedure permits competent heirs and residuary devisees to proceed even where there are some others incompetent or unascertained. The guardian or conservator of any unascertained or incompetent heir or devisee may require bonding or, if unprotected, may force the estate into administration. Subsequent sections permit the conservator, guardian ad litem, or other fiduciary of unascertained or incompetent heirs or devisees to object. The universal successors' obligations may be enforced by appropriate remedy. In Louisiana, the procedure is available even though there are incompetent heirs for whom a tutor or guardian is appointed to act and who joins in the application.

In restricting universal succession to competent heirs and residuary legatees, the act makes them responsible to incompetent heirs and legatees. This restriction is deemed appropriate to avoid problems in dealing with estate assets vested in an incompetent. This is a variation from the Louisiana practice although Louisiana permits universal succession even when a competent heir cannot be located. The procedure also contemplates that all competent heirs and residuary devisees join and does not permit only part of the heirs to petition for succession without administration. This position means that succession without administration is essentially a consent procedure available when family members are in agreement.

This act contemplates that known competent successors may proceed under it. Although all competent heirs are required to join in the informal process, the possibility of an unknown heir is not treated as jurisdictional. An unknown heir who appeared would be able to establish his or her rights,

as in administration, unless barred by adjudication, estoppel, or lapse of time.

SECTION 2-2. Universal Succession; Application; Contents.

(a) An application to become universal successors by the heirs of an intestate or the residuary devisees under a will must be directed to the [registrar], signed by each applicant, and verified to be accurate and complete to the best of the applicant's knowledge and belief as follows:

(1) An application by heirs of an intestate must state that the applicants constitute all the heirs other than minors and incapacitated, protected, or unascertained persons and contain the following:

(i) a statement of the interest of the applicant;

(ii) the name and date of death of the decedent, age, the county and state of domicile at the time of death, the names and addresses of the spouse, children, heirs, and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

(iv) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice, of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere; and

(v) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property in this state or a statement why any such instrument of which the applicant may be aware is not being probated;

(2) An application by residuary devisees under a will must be combined with a petition for probate if the will has not been admitted to probate in this state and must contain the statements required by section 2-2(a)(1)(i)-(v) and

(i) that the original of the decedent's last will is in the possession of the court or accompanies the application or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed;

(iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

If the will has been probated in this state, an application by residuary devisees must contain the statements required by section 2-2(a)(2)(iii). An application by residuary devisees must state that the applicants constitute the residuary devisees of the decedent other than any minors and incapacitated, protected, or unascertained persons. If the estate is partially intestate, all of

the heirs other than minors and incapacitated, protected, or unascertained persons must join as applicants.

(b) The application must state whether letters of administration are outstanding, whether a petition for appointment of a personal representative of the decedent is pending in any court of this state, and that the applicants waive their right to seek appointment of a personal representative.

(c) The application may describe in general terms the assets of the estate and must state that the applicants accept responsibility for the estate and assume personal liability for (1) taxes, (2) debts of the decedent, (3) claims against the decedent or the estate, and (4) distributions due other heirs, devisees, and persons entitled to property of the decedent as provided in sections 2-5 through 2-11.

Comment

Source: Uniform Probate Code section 3-313 (1982). This section details the form and requirements for application to become universal successors. The section requires the applicants to inform the registrar whether the appointment of a personal representative has occurred or is pending in order to assure any administration is terminated before the application can be granted. The section requires applicants to waive their right to seek appointment of a personal representative. The appointment of an executor would preclude or postpone universal succession by application for appointment unless the executor's appointment is avoided because of lack of interest in the estate.

The statements in the application are verified by signing and filing and deemed to be under oath. False statements constitute fraud under section 1-5.

Even though the presence of residuary devisees would seem to preclude partial intestacy, the last sentence of section 2-2(a) regarding partial intestacy warns all parties that if there is a partial intestacy, the heirs must join. It avoids problems of determining whether the residuary takers are in all instances true residuary legatees, e.g., if a testator provides: "Lastly, I give one-half and only one-half of the rest of my estate to A."

Section 2-2(c) provides that a wholly optional general description of the assets may but need not be included to indicate to the parties the nature of the estate involved. The registrar may not require a detailed statement of assets.

In the event an heir or residuary devisee disclaims prior to acceptance of the succession, those who would take in place of the disclaimant could apply to become universal successors. The disclaimant could not become a universal successor to the disclaimed interest and would not be subject to liability as a universal successor.

Trustees of testamentary trusts have standing as devisees. If the trustee is a pecuniary devisee or a specific devisee other than a residuary devisee, he would administer the trust upon receipt of the assets from the universal

successors and as a devisee could enforce distribution from the universal successors.

The trustee who is a residuary legatee has standing to qualify as a universal successor by acceptance of the decedent's assets, then to discharge the obligations of the universal successor, and finally to administer the residue under the trust without appointment of a personal representative. The will would be probated in any event. The residuary trustee could choose to insist on appointment of a personal representative and not seek universal succession. Neither alternative could alter the provisions of the residuary trust.

SECTION 2-3. Universal Succession; Proof and Findings Required.

(a) The [registrar] shall grant the application if:

(1) the application is complete in accordance with section 2-2;

(2) all necessary persons have joined and have verified that the statements contained therein are true, to the best knowledge and belief of each;

(3) venue is proper;

(4) any notice required by filed demand for notice has been given or waived;

(5) the application requests probate of a will, the time limit for original probate or appointment proceedings has not expired;

(6) the applicants claim under a will, the application and findings conform with section 2-2 and the will has been admitted to probate; and

(7) none of the applicants is a minor or an incapacitated or protected person.

(b) The [registrar] shall deny the application if letters of administration are outstanding.

(c) Except as provided in section 2-11, the [registrar] shall deny the application if any creditor, heir, or devisee who is qualified to demand bond files an objection.

Comment

Source: Uniform Probate Code section 3-314 (1982). This section outlines the substantive requirements for universal succession and is the guideline to the registrar for approval of the application. Review of the filed documents is all that is required, with the registrar expected to determine whether to approve on the basis of information available to the registrar. There is very little discretion in the registrar, except that if something appears lacking in the application, the registrar would be able to request additional information. The analogy to Uniform Probate Code section 3-303 is rather direct and the authority of the registrar is somewhat more limited because there is no parallel section to Uniform Probate Code section 3-305 as there is in a probate proceeding.

Section 2-3(a)(5) requires that the probate of any will occur before the

time limit for original probate has expired. Against the background of section 1-5, which limits administration proceedings after three years except for proof of heirship or will construction, the heirs or residuary devisees under a properly previously probated will could in unusual cases seek universal succession after three years.

The review of the application by the registrar essentially is a clerical matter to determine if the application exhibits the appropriate circumstances for succession without administration. Hence, if there are letters of administration outstanding, the application must be denied under section 2-3(b). Even though a disinterested executor under a will should not be able to preclude those interested in the estate from settling the estate without administration, coordination of the registrar's action with process of the probate court is imperative to protect the parties and the public. Consequently, any outstanding letters must be terminated before succession without administration is approved. Those with property interests in the estate are viewed as interested persons and may initiate formal proceedings. It is also assumed that the agreement of those interested in the estate is binding on the personal representative under the law of the enacting state (*cf.* Uniform Probate Code §§ 3-611, 3-612, 3-912, 3-1101). This, together with section 1-3 of this act, appears adequate to preclude the personal representative who has no other interest in the estate from frustrating those interested in utilizing succession without administration.

There is a need for coordination with other process within the probate court when a petition for letters is pending (i.e., not withdrawn) as well as when letters are outstanding. The appropriateness of the appointment of the personal representative (i.e., whether administration was necessary) could be determined on an objection to the appointment or petition to revoke letters under the usual practice of the enacting state. If the appointment of a personal representative is denied, then the application for universal succession without administration could be approved in appropriate cases.

Section 2-3 does not require prior notice unless a prior demand is effective under other provisions of the probate law of the enacting state. Information to other heirs and devisees is provided after approval of the application. See section 2-8.

If, after universal succession is approved, a creditor or devisee is not paid or secured, in addition to suing the successor directly, the creditor or devisee could move for appointment of a personal representative to administer the estate properly. This pressure on the universal successors to perform seems desirable. In view of the availability of administration and other alternatives under the probate law of the enacting state, if any person properly moves for appointment of a personal representative, succession without administration should be foreclosed or terminated.

SECTION 2-4. Universal Succession; Duty of Registrar; Effect of Statement of Universal Succession.

Upon receipt of an application under section 2-2, if at least 120 hours have elapsed since the decedent's death, the [registrar], upon granting the application, shall issue a written statement of universal succession describing the estate as set forth in the application and stating that the applicants (i) are the universal successors to the assets of the estate as provided in section 2-1; (ii) have assumed liability for the obligations of the decedent; and (iii) have acquired the powers and liabilities of universal successors. The statement of universal succession is evidence of the universal successors' title to the assets of the estate. Upon its issuance, the powers and liabilities of universal successors provided in section 2-5 through 2-11 attach and are assumed by the applicants.

Comment

Source: Uniform Probate Code section 3-315 (1982). This section provides for a written statement issued by the registrar evidencing the right and power of the universal successors to deal with the property of the decedent and serves as an instrument of distribution to them. Although the application for universal succession may be filed anytime after death, within the time limit for original probate, the registrar may not act until 120 hours have elapsed since the testator's death. This period is designed to give the family time to consider the circumstances of the estate and avoid races to the courthouse, and it parallels provisions for informal proceedings under the Uniform Probate Code, e.g., §§ 2-601, 3-302, 3-307.

SECTION 2-5. Universal Succession; Universal Successors' Powers.

Upon the [registrar's] issuance of a statement of universal succession:

(1) Universal successors have full power of ownership to deal with the assets of the estate subject to the limitations and liabilities in this [Act]. The universal successors shall proceed expeditiously to settle and distribute the estate without adjudication but if necessary may invoke the jurisdiction of the court to resolve questions concerning the estate.

(2) Universal successors have the same powers as distributees from a personal representative under sections 3-1 and 3-2 and third persons with whom they deal are protected as provided in section 3-3 of this [Act].

(3) For purposes of collecting assets in another state whose law does not provide for universal succession, universal successors have the same standing and power as personal representatives or distributees in this state.

Comment

Source: Uniform Probate Code section 3-316 (1982). This section is the substantive provision declaring the universal successors (1) to be distrib-

utees and (2) to have the powers of owners to deal with the estate assets subject to the obligations to others.

Details concerning the status of distributees are provided in sections 3-1 and 3-2, and the power to deal with property is provided in section 3-3 of this act.

Although one state cannot control the law of another, the universal successor should be recognized in other states as having the standing of either a foreign personal representative or a distributee of the claim to local assets. Paragraph (3) attempts to remove any limitation of this state in such a case.

SECTION 2-6. Universal Succession; Universal Successors' Liability to Creditors, Other Heirs, Devisees, and Persons Entitled to Decedent's Property; Liability of Other Persons Entitled to Property.

(a) In the proportions and subject to the limits expressed in section 2-10, universal successors assume all liabilities of the decedent not discharged by reason of death and liability for all taxes, claims against the decedent or the estate, and charges properly incurred after death for the preservation of the estate, to the extent those items, if duly presented, would be valid claims against the decedent's estate.

(b) In the proportions and subject to the limits expressed in section 2-10, universal successors are personally liable to other heirs, devisees, and persons entitled to property of the decedent for the assets or amounts that would be due those heirs were the estate administered, but no allowance having priority over devisees may be claimed for attorney's fees or charges for preservation of the estate in excess of reasonable amounts properly incurred.

(c) Universal successors are entitled to their interests in the estate as heirs or devisees subject to priority and abatement in the same manner as if the estate were administered and to any binding private agreement among the successors.

(d) Other heirs, devisees, and persons to whom assets have been distributed have the same powers and liabilities as distributees under sections 3-1, 3-2, and 3-3.

(e) Absent breach of fiduciary obligations or express undertaking, a fiduciary's liability is limited to the assets received by the fiduciary.

Comment

Source: Uniform Probate Code section 3-317 (1982). The purpose of succession without administration is not to alter the relative property interests of the parties but to facilitate the family's expeditious settlement of the estate. Consistent with this, the liability arising from the assumption of obligations is stated explicitly here to assist in understanding the coupling of power and liability. Subsection (b) includes an abatement reference that

recognizes the possible adjustment that may be necessary by reason of excess claims under the probate law of the enacting state.

In succession without administration, since there is no notice to creditors, the short non-claim period under the usual probate law does not apply and creditors are subject to both the statutes of limitations and the limitation of three years on decedent's creditors when no notice is published under section 1-7. The general statutes of limitations are suspended for four months following the decedent's death but resume thereafter under section 1-7. The assumption of liability by the universal successors upon the issuance of the statement of universal succession is deemed to be by operation of law and does not operate to extend or renew any statute of limitations that had begun to run against the decedent. The result is that creditors are barred by the general statutes of limitations or three years, whichever is shorter. Should the law of the enacting state make publication to creditors available to universal successors, then the applicable non-claim period could shorten the time within which claims must be presented to the universal successors.

The obligation of the universal successors to other heirs, devisees, and distributees is based on the promise to perform in return for direct distribution of the property, and any limitation or laches begins to run on issuance of the statement of universal succession unless otherwise extended by action or assurance of the universal successor. An exception to the proportionate liability of universal successors, otherwise applicable under the act, is made in subsection (e) to limit a fiduciary's liability to the value of assets received since guardians, conservators, and other fiduciaries have non-beneficial ownership. In addition, this should encourage their participation in universal succession. This does not, of course, limit the liability under subsection (b) of universal successors with beneficial interests in the estate.

It should be noted that this statute does not deal with the consequences or obligations that arise under either federal or state tax laws. The universal successors will be subject to obligations for the return and payment of both income and estate taxes in many situations, depending upon the tax laws and the circumstances of the decedent and the estate. These tax consequences should be determined before electing to utilize succession without administration.

SECTION 2-7. Universal Succession; Universal Successors' Submission to Jurisdiction; When Heirs or Devisees May Not Seek Administration.

(a) Upon issuance of the statement of universal succession, the universal successors become subject to the personal jurisdiction of the courts of this state in any proceeding that may be instituted relating to the estate or to any liability assumed by them.

(b) Any heir or devisee who voluntarily joins in an application under section 2-2 may not subsequently seek appointment of a personal representative.

Comment

Source: Uniform Probate Code section 3-318 (1982). This section imposes jurisdiction over the universal successors and bars them from seeking appointment as personal representatives.

SECTION 2-8. Universal Succession; Duty of Universal Successors; Information to Heirs and Devisees; Optional Notice to Creditors.

(a) Not later than thirty days after issuance of the statement of universal succession, universal successors shall inform the heirs and devisees who did not join in the application for succession without administration. The information must be delivered or sent by ordinary mail to the heirs and devisees whose address is reasonably available to the universal successors. The information must include the names and addresses of the universal successors, indicate that it is being sent to persons who have or may have some interest in the estate, and describe the court where the application and statement of universal succession has been filed. The failure of universal successors to give this information is a breach of duty to the persons concerned but does not affect the validity of the approval of succession without administration or the powers or liabilities of the universal successors. Universal successors may inform other persons of the succession without administration by delivery or by ordinary first class mail.

[(b) Universal successors may publish a notice once a week for [three] successive weeks in a newspaper of general circulation in the county, stating their names and addresses, their assumption of liability for the decedent's obligations as universal successors, and notifying creditors of the decedent to present their claims within four months after date of the first publication of the notice or be forever barred.]

Comment

Source: Uniform Probate Code section 3-319 (1982). The problem of residuary legatees or some of the heirs moving for universal succession without the knowledge of others interested in the estate is similar to that of informal administration. By subsection (a) those devisees and heirs who do not participate in the application are informed of the application and its approval and may move to protect any interest that they perceive. When there are several universal successors, they may join in the information to other heirs and devisees. The provision parallels Uniform Probate Code section 3-705.

The bracketed subsection (b) provides an optional notice to creditors that initiates the running of a non-claim statute if this provision and bracketed section 1-7(b)(2) are enacted. This affords creditors an opportunity for collection while assuring the universal successors that claims of creditors will be known promptly. The otherwise applicable statutes of limitations are superceded by the shorter four-month period if the notice is published.

SECTION 2-9. Universal Succession; Universal Successors' Liability for Restitution to Estate.

If a personal representative is subsequently appointed, universal successors are personally liable for restitution of any property of the estate to which they are not entitled as heirs or devisees of the decedent and their liability is the same as a distributee under section 3-2, subject to the provisions of sections 2-6 and 2-10 and the limitations of section 3-4 of this [Act].

Comment

Source: Uniform Probate Code section 3-320 (1982). The liability of universal successors for restitution in the event a personal representative is appointed is spelled out in this section and keyed to the other sections in the act.

SECTION 2-10. Universal Succession; Liability of Universal Successors for Claims, Expenses, Intestate Shares, and Devises.

The liability of universal successors is subject to any defenses that would have been available to the decedent. Other than liability arising from fraud, conversion, or other wrongful conduct of a universal successor, the personal liability of each universal successor to any creditor, claimant, other heir, devisee, or person entitled to the decedent's property may not exceed the proportion of the claim that the universal successor's share bears to the share of all heirs and residuary devisees.

Comment

Source: Uniform Probate Code section 3-321 (1982). This is the primary provision for the successor's liability to creditors and others. The theory is that the universal successors as a group are liable in full to the creditors, but that none have a greater liability than in proportion to the share of the estate received. Under the usually existing probate law, since administration is available with limited liability for the personal representative, the analogy to the Louisiana system would be to accept full responsibility for debts and claims if succession without administration is desired but to choose administration if protection of the inventory is desired. If the law of the enacting state provides for informal administration as in the Uniform Probate Code, that procedure would be the usually chosen alternative.

This definition of liability assumes (1) that the devisees and heirs are subject to the usual priorities for creditors and devisees and abatement for them in sections 2-5 and 2-6; (2) that if a creditor or a subsequently appointed personal representative were to proceed against the successors, having jurisdiction by submission, section 2-7, the liability would be on a theory of contribution by the successors with the burden on each universal successor to prove his or her own share of the estate and limit of liability against that share; (3) that a creditor who is unprotected or unsecured

under section 2-11 can object to universal succession under section 2-3(c), and if the creditor does not object, payments by the successors, like those by the decedent when alive, will be recognized as good without any theory of preferring creditors. Thus, until a creditor takes action to require administration, that creditor should be bound by the successors' non-fraudulent prior payment to other creditors. If a creditor suspects insolvency, he can put the estate into administration and after the appointment of a personal representative would have the usual priority as to remaining assets. This would be subject to the theory of fraud, i.e., a knowing and conscious design on the part of the successors to ignore the priority of the decedent's creditors to the harm of a creditor. This would constitute fraud that would defeat the limits on successors' liability otherwise available under the statute.

SECTION 2-11. Universal Succession; Remedies of Creditors, Other Heirs, Devisees, or Persons Entitled to Decedent's Property.

In addition to remedies otherwise provided by law, any creditor, heir, devisee, person entitled to decedent's property, or their legal representative may demand bond of universal successors. If the demand for bond precedes the granting of an application for universal succession, it must be treated as an objection under section 2-3(c) unless it is withdrawn, the claim satisfied, or the applicants post bond in an amount sufficient to protect the demandant. If the demand for bond follows the granting of an application for universal succession, the universal successors, within ten days after notice of the demand, upon satisfying the claim or posting bond sufficient to protect the demandant, may disqualify the demandant from seeking administration of the estate.

Comment

Source: Uniform Probate Code section 3-322 (1982). This section provides necessary protection to creditors and other heirs, devisees, or persons entitled to distribution. Any person to whom a universal successor is obligated could pursue any available remedy, e.g., a proceeding to collect a debt or to secure specific performance. By this section, any creditor or other heir, devisee, or person entitled to distribution may also demand protection and, if it is not forthcoming, put the estate into administration. The legal representative of any unascertained or incompetent parties may act on their behalf. This seems adequate to coerce performance from universal successors while assuring creditors their historical preference and other beneficiaries of the estate their rights.

PART 3. RIGHTS AND LIABILITIES OF DISTRIBUTEES

SECTION 3-1. Distribution; Right or Title of Distributee.

Proof that a distributee has received an instrument or deed of distribution of assets in kind or payment in distribution from a personal representa-

tive or universal successor is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets as against all persons interested in the estate, except that the personal representative or universal successor may recover the assets or their value if the distribution was improper.

Comment

Source: Uniform Probate Code section 3-908. The purpose of this section is to channel controversies which may arise among successors of a decedent because of improper distributions through the personal representative who made the distribution, a successor personal representative, or a universal successor as the case may be. Section 1-5 does not bar appointment proceedings initiated to secure appointment of a personal representative to correct an erroneous distribution made by a prior representative. But see section 3-4 of this act.

SECTION 3-2. Improper Distribution; Liability of Distributee.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

Comment

Source: Uniform Probate Code section 3-909. The term "improperly" as used in this section must be read in light of the manifest purpose of this act. When an unadjudicated distribution has occurred, the rights of persons to show that the basis for the distribution is incorrect, or that the basis was improperly applied (erroneous interpretation, for example), is preserved against distributees by this section.

SECTION 3-3. Protection of Parties to Transactions with Personal Representatives, Universal Successors or Distributees.

(a) If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative or universal successor, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative or universal successor was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a

distributee who, as personal representative or universal successor, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative or universal successor acted properly in making the distribution in kind, even if the personal representative or universal successor and the distributee are the same person, or whether the authority of the personal representative or universal successor had terminated before the distribution. [Any recorded instrument described in this section on which a state documentary fee is noted pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was made for value.]

(b) Debtors of the decedent, those holding property of the decedent, and those with whom securities or other assets of the decedent are registered, are authorized and empowered to pay, deliver, or transfer to the universal successors, their distributees or assigns the debts, securities, or other assets of the decedent's estate and the persons so paying, delivering, or transferring shall not otherwise be accountable.

(c) The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters or statement of universal succession, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities.

Comment

Source: (a) Uniform Probate Code section 3-910; (b) Florida Statutes Annotated section 735.206(b); (c) Uniform Probate Code section 3-714. This section makes explicit what is implied in sections 2-4 and 2-5 of the act, which gave full power of ownership to the universal successors subject to the obligations imposed by law. Absent their knowing participation in fraud, those who deal with the universal successors or their distributees, or the assignees of either, are protected in those dealings. As a consequence, others who might have claims against the universal successors are directed to the universal successors for relief.

SECTION 3-4. Limitations on Actions and Proceedings Against Distributees.

Unless previously adjudicated in a formal proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting for any of them, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (1) three years after the decedent's death; or (2) one year after the

time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

Comment

Source: Uniform Probate Code section 3-1006. This section describes an ultimate time limit for recovery by creditors, heirs, and devisees of a decedent from distributees. It is to be noted: (1) Section 1-5 imposes a general limit of three years from death on one who must set aside an informal proceeding in order to establish his rights or who must secure probate of a late-discovered will after an estate has been administered as intestate. Hence the time limit of section 1-5 may bar one who would claim as an heir or devisee sooner than this section, although it would never cause a bar prior to three years from the decedent's death. (2) This section would not bar recovery by a supposed decedent whose estate has been probated. (3) The limitation of this section ends the possibility of appointment of a personal representative to correct an erroneous distribution as mentioned in section 3-4.

The last sentence excepting actions or suits to recover property kept from one by the fraud of another may be unnecessary in view of the blanket provision concerning fraud in section 1-4.

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