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RECENT DEVELOPMENTS IN THE STRUGGLE FOR PROBATE REFORM

*Richard V. Wellman**

The two Als being honored by this issue have honored me with years of precious friendship and many words and acts of support and encouragement. In return, they and their friends and others who may peruse these pages prepared as they near retirement really deserve better reading than can be expected of an article that wallows in the dreadful details of legislation dealing with probate procedure. Conard and Smith are old hands when it comes to efforts at improvement of law and legal institutions. They know better than to immerse themselves deeply in a piece like the one that follows, realizing that what is developed here will make sense, if at all, only to a relatively small audience of lawyers who will play some role in re-shaping a legal institution that has been allowed to become an embarrassment to the nation's legal community. Others less experienced may be forewarned. This Article describes some of the last decade's moments of progress and defeat for a movement, now extended to more than thirty years, to improve probate law. The University of Michigan Law School and the *Michigan Law Review*, with which Alfred F. Conard and Allan F. Smith have had long and distinguished associations, have played large roles in this movement.

INTRODUCTION

Spurred by a surge of citizen complaints about inheritance laws,¹ many states adopted new probate legislation during the 1970s. The complaints arose from excessive costs and delays² — consequences of an American tradition that settlement of estates, somewhat like bankruptcy, normally involves court supervision. The states' re-

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1. See, e.g., N. DACEY, HOW TO AVOID PROBATE (1965); Bloom, *The Mess in Our Probate Courts*, READERS DIG., Oct. 1966, at 102; Nuccio, *How to Avoid a Costly Probate*, N.Y. Times, Nov. 14, 1966, at 65, col. 3; Morgan, *The Probate Fuss*, LOOK, Nov. 29, 1966, at 36; Myers, *Probing the Source of Probate Pains*, Wall St. J., May 14, 1968, at 18, col. 3; *Let's Rewrite the Probate Laws*, CHANGING TIMES, Jan. 1969, at 39.

2. In P. STERN, LAWYERS ON TRIAL 33 (1980), the author, citing Fratcher, *Fiduciary Administration in England*, 40 N.Y.U. L. REV. 12 (1965), states that "probate expenses in the United States are as much as one hundred times what they are in England."

sponse was to change the procedures by which wills are made effective and estates of decedents are opened, administered, and settled. Several legislatures adopted spot corrections for some of the more notorious burdens of court control of estates; for example, some raised the maximum value of estates eligible for distribution without compliance with normal routines, some eliminated or relaxed estate appraisal requirements, others shortened the period during which wills can be contested and claims can be presented, and still others eliminated hearings that were formerly required. Many other legislatures adopted the Uniform Probate Code (UPC)³ and its premise that most estates should be settled without court adjudication or supervision. Finally, many states added optional procedures that purport to offer successors new autonomy from traditional court controls.

In Part I, this Article notes that the bulk of recent probate procedure legislation reduces court control of estates. The Article restates the case in favor of this trend.⁴ It then identifies UPC details that place full control of an estate in the person named by the testator or by the apparent successors to the estate — referred to here as testator-successor control of estates. Because it currently appears to be politically impossible to enact the UPC in some states, the Article identifies and evaluates various issues that confront legislators interested in compromise laws that further the principle of testator-successor control of estates while retaining supervised administration as the norm.

Against this background, Part II analyzes recent statutes in Michigan, Illinois, Wisconsin, Indiana, Missouri, Kansas, and the District of Columbia that offer new, optional estate settlement procedures that purport to reduce traditional court control of estates. This discussion emphasizes the background and content of the District of Columbia Probate Reform Act of 1980, a statute that demonstrates how efforts to move toward testator-successor control of estates may backfire and increase court control. It also notes that three of the other six enactments analyzed — those in Indiana, Missouri, and

3. UNIFORM PROBATE CODE, 5th ed., 1977 (West 1977) [hereinafter cited as UPC without cross-reference].

4. See W. FRATCHER, PROBATE CAN BE QUICK AND CHEAP: TRUSTS AND ESTATES IN ENGLAND (1968); Basye, *Dispensing With Administration*, 44 MICH. L. REV. 329 (1945), reprinted in L. SIMES & P. BASYE, PROBLEMS IN PROBATE LAW 557 (1946); Fletcher, *Washington's Non-Intervention Executor-Starting Point for Probate Simplification*, 41 WASH. L. REV. 33 (1966); Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453 (1970).

Kansas — appear to be devoid of promise of reduced costs for estate beneficiaries.

Finally, in Part III, the Article suggests that the UPC and the probate law reform effort should expand to include an additional, optional procedure for settling decedents' estates that would function without appointment of a conventional probate fiduciary. Universal succession (or succession without administration), the Article suggests, may offer testators and their successors a simpler and less easily sabotaged route than does unsupervised administration to escape conventional court-supervised administration of probate estates.

I. INDEPENDENT ADMINISTRATION: PRINCIPLES AND COMPROMISE

A. *The Testator-Successor Control Principle*

The promulgation of the UPC, with its radical and, to some, threatening elimination of traditional court controls of succession procedure, precipitated a nationwide debate about whether more or less court supervision of decedents' estates would meet the public's criticisms of American probate law.⁵ The result has been a deluge of new laws affecting probate procedure. Most attempt to simplify the procedures or shorten waiting periods found in typical laws that rely on court supervision of estates. Thirteen states have adopted the UPC or its major procedural premise.⁶ In addition, new Texas⁷ and

5. See STATE BAR OF CALIFORNIA, *THE UNIFORM PROBATE CODE: ANALYSIS AND CRITIQUE* (1973); Haviland, *Shall We Rebuild Our House of Probate?*, 19 U. KAN. L. REV. 575 (1971); Kratochvil, *The Uniform Probate Code: Repent at Leisure*, REAL EST. PROB. & TR. L. SECTION, KAN. B.A. NEWSLETTER, (Spring 1973); Laing, *Does Kansas Need the Uniform Probate Code?*, 1973 J. KAN. B.A. 139; Zartman, *AN ILLINOIS CRITIQUE OF THE UNIFORM PROBATE CODE*, 1970 U. ILL. L.F. 413 (1971).

6. The Joint Editorial Board for the Uniform Probate Code counts Alaska, Arizona, Colorado, Idaho, Maine, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, and Utah as states that have adopted the major provisions of the Uniform Probate Code. See JOINT EDITORIAL BOARD FOR THE UNIFORM PROBATE CODE, UPC NOTES No. 8, at 1 (July 1974) (reporting the enactments in Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska and North Dakota) [hereinafter cited as UPC NOTES]; UPC NOTES No. 12, at 1 (June 1975) (reporting enactment in Utah); UPC NOTES No. 13, at 1 (Sept. 1975) (New Mexico); UPC NOTES No. 22, at 1 (1978) (New Jersey); UPC NOTES No. 23, at 1 (March 1979) (Pennsylvania); UPC NOTES No. 24, at 1 (Oct. 1979) (Maine). The New Jersey and Pennsylvania versions of the UPC were built upon prior procedures that already respected the principle of testator-successor control.

7. Section 145 of the Texas Probate Code recognized independent administration only for estates governed by wills directing that the probate court shall not intervene in the affairs of the executor. TEX. PROB. CODE ANN. tit. 6, § 145 (Vernon 1979). An amendment, effective Sept. 1, 1977, extended § 145 to estates governed by wills that do not expressly deal with the question of independent or supervised administration, and to intestate estates. Act of June 15, 1977, ch. 390, 1977 Tex. Gen. Laws 1061 (codified at TEX. PROB. CODE ANN. tit. 6, § 145). The new procedure is available only when the court is satisfied, on the basis of "clear and convincing evidence," that those requesting independent administration as the intestate heirs consti-

Washington⁸ laws permit some form of unsupervised administration for intestate estates, and California,⁹ Florida,¹⁰ Hawaii,¹¹ Iowa,¹²

tute all of the heirs. Section 145(g). The heirs acting collectively must designate a qualified person, firm, or corporation to serve as independent administrator. Section 145(e). The court of probate is empowered to deny an application for independent administration if it determines that it would not be in the best interests of the estate. An independent administrator must file with the probate court an inventory appraisal and list of claims against the estate.

8. Act of Feb. 19, 1974, ch. 117, 1974 Wash. Laws 284 (effective Oct. 1, 1974) (codified at WASH. REV. CODE ANN. § 11.68.010-.120 (1978 Supp.)). The Washington act amended § 11.68.010 and following sections to extend Washington's nonintervention will procedure to intestate estates and to estates governed by wills that do not expressly deal with court supervision of the fiduciary. No notice to heirs is necessary if the personal representative, as qualified or identified by standard priority provisions, is the surviving spouse of the decedent and no issue of the decedent by a prior marriage survive, or if the personal representative is a bank or trust company with authority to do business as a trustee in the state. WASH. REV. CODE ANN. § 11.68.040. The court must determine that the estate is solvent on the basis of the petition, an inventory, or other proof. WASH. REV. CODE ANN. § 11.68.01.

9. Independent Administration of Estates Act, ch. 961, 1974 Cal. Stats. 2001 (codified at CAL. PROB. CODE §§ 591-591.7 (West Supp. 1980)). The enactment, effective July 1, 1975, which does nothing to facilitate opening or closing of California estates, describes a procedure by which a California executor or administrator (where the will does not provide to the contrary) may gain certain listed powers which may be exercised without court order after prescribed warnings of intended exercise have been given to interested persons. See Spittler, *Un-Uniform Probate: The California Version*, UPC NOTES No. 14, at 1 (Dec. 1975) (describing the statute as "mangled by three years of give and take in the legislative process," and predicting that "the California public will continue to use inter vivos trusts, joint tenancies, and other devices to avoid the entire court-supervised probate process.")

10. Florida Probate Code, ch. 74-106, 1974 Fla. Laws 212 (codified as FLA. STAT. §§ 731.01-735 (1975)). The procedural aspects of this enactment have been described as follows:

The 1974 Code offers interested parties four possible ways of proceeding with the settlement of a decedent's estate. Several of these alternatives, however, are severely restricted by limitations on the size or nature of the property within the estate. As a result, the new Code is far from the "flexible system of administration" advocated by the draftsmen of the UPC. The legislative rejection of this system, and the resulting retention of close court supervision over the acts of the personal representative, evidences the paternalistic attitude that has long characterized the probate laws of this country. Because this decision fails to meet the demands for reduced court supervision, it constitutes the greatest weakness in the 1974 Code and almost certainly will promote demand for further reform of our probate laws. Nevertheless, some progress has been made and, hopefully, the foundation laid for greater flexibility in the future.

Fenn & Koren, *The 1974 Florida Probate Code — A Marriage of Convenience*, 27 U. FLA. L. REV. 615, 627-28 (1975).

The new Florida law eliminates court-appointed appraisers but continues to require that an inventory of estate assets be filed with the court in all cases involving a conventional probate administration. FLA. STAT. § 733.605 (1975). Also, the new law gives personal representatives broad statutory powers of administration except as to real property, § 733.613, and includes provisions based on the UPC for protecting persons dealing with personal representatives and their distributees. Sections 733.6211, .813. A final court accounting is still required. Section 733.901.

11. Uniform Probate Code, 1976 Hawaii Sess. Laws 372 (codified at 30A HAWAII REV. STAT. ch. 560 (1976)). Under the Hawaiian version of the UPC, informal probate and appointment proceedings, and unsupervised administration, are available only for estates of \$30,000 or less in value. HAWAII REV. STAT. § 560:3-301 (1976). Formal proceedings and supervised administration are mandatory for all other estates. Section 560:3-501. The degree of court supervision involved in a supervised administration in Hawaii is limited; court orders are required for final distributions only, unless other restrictions on the fiduciary's power are endorsed on the letters of authority. Section 560:3-504. However, an inventory must be filed

Kentucky,¹³ Ohio,¹⁴ Oregon,¹⁵ and South Dakota¹⁶ have new codes

with the appointing court in all estates, including those being administered in informal proceedings, § 560:3-706, and a final accounting to the court and a court order of distribution are required of all estates in supervised administration. See §§ 560:3-505, 3-1001. Statutory powers of administration as recommended by the UPC are granted to all Hawaiian personal representatives, but judicial proceedings to confirm estate sales of real property are required. See §§ 560:3-715, 531-29.

12. Act of July 9, 1977, ch. 145, § 4, 1977 Iowa Acts 459 (codified at IOWA CODE § 633.479 (Supp. 1980)). The amendment became effective on Jan. 1, 1978. An order approving the final report of a personal representative and discharging the personal representative is no longer necessary where all distributees are competent adults who have signed waivers of notice and statements of consent to the final report. Requirements that a full accounting of the administration be filed with the court may be waived. IOWA CODE § 633.477 (1964). The amendment to § 633.470 is the most significant procedural change in Iowa since promulgation of the Uniform Probate Code, but Iowa procedures, as prescribed by a carefully prepared and forward-looking code enacted in 1963, had already left the court with little control of estates other than to determine fees for attorneys' services.

13. Act of March 30, 1976, ch. 218, § 24, 1976 Ky. Acts 482 (codified at KY. REV. STAT. § 395.195 (Supp. 1980)), confers statutory powers (not including a power to sell land) on personal representatives. KY. REV. STAT. § 395.605(2) (Supp. 1980) authorizes informal settlements of testate and intestate estates previously opened for administration. Informal settlements involve a sworn application to the district court by the fiduciary accompanied by verified waivers executed by all beneficiaries. The court is directed to accept an application if all beneficiaries are competent adults and may accept an application if minors or incompetents are involved. Acceptance of an informal settlement, which cannot be filed until the time period for filing claims has passed and all death taxes have been paid, dispenses with court accounting requirements. This act also added most of UPC articles VI (nonprobate transfers) and VII (trust administration) to Kentucky law. See KY. REV. STAT. §§ 386.650-386.845 & 391.355-391.360.

14. Act of Aug. 25, 1975, 136 Ohio Laws 326 (1975) amended the Ohio Probate Code and related sections in many respects. The most important changes to supervised administration are those enabling probate of wills without production of testimony or affidavit of attesting witnesses, OHIO REV. CODE ANN. §§ 22107.14-.18 (Page Supp. 1980), relaxing estate appraisal requirements, § 2115.02, authorizing immediate distribution of estates for which no will contest is pending, subject to personal liability of the fiduciary to the extent that values distributed are not returned as needed to satisfy creditors' claims, § 2113.53, and enabling successors to file consents in court and to confer a power of sale of real estate on an executor or administrator, provided that all the successors are adults, § 2127.011. The power of probate courts to enforce requirements of court accounting for all administered estates appears to be increased by amendments to § 2101.01 that mandate county financial support for "accountants, financial consultants and other agents required for auditing or financial consulting by the probate division whenever the probate judge considers these services and expenditures necessary for the efficient performance of the division's duties."

15. Oregon Probate Code, ch. 591, 1969 Or. Laws 1121 (effective July 1, 1970) (codified at OR. REV. STAT. §§ 111.005-117.095 (1979)) made Oregon law similar to the UPC in many respects. Opening procedures, governed by chapter 113, may be conducted without advance notice to interested persons. Under chapter 114, personal representatives of testate and intestate estates have broad fiduciary powers to manage, encumber, sell or otherwise affect assets, including land, as necessary to accomplish the purposes of administration. Purchasers from personal representatives are relieved of inquiry concerning fiduciary powers and are protected as bona fide purchasers if they are without actual knowledge of breach by the fiduciary. The principal differences between the UPC and Oregon procedures lie in Oregon's court accounting and distribution procedures which are mandatory for all administered estates. See OR. REV. STAT. §§ 116.030, 116.083 (1979). See generally Mapp, *The 1969 Oregon Probate Code and Due Process*, 49 OR. L. REV. 345 (1970).

16. Act of Independent Administration of Estates with Limited Court Supervision, ch. 176, 1976 S.D. Sess. Laws 313 (codified at S.D. CODIFIED LAWS ANN. §§ 30-18A-1 to 30-18A-16). The new South Dakota procedure, enacted in conjunction with repeal of the Uniform Probate

or recent amendments that enlarge the authority of estate fiduciaries, while adhering to the concept of mandatory fiduciary accountability to the probate court. Illinois, Indiana, Kansas, Michigan, Missouri, and Wisconsin have added procedures, discussed in Part II of this Article, that purport to offer new opportunities to select independent administration as an alternative to supervised administration. An important new statute in the District of Columbia, also discussed in Part II, includes some reform provisions but takes back much more than it gives. Several states, including Delaware,¹⁷ Massachusetts,¹⁸ Nevada,¹⁹ and Wyoming,²⁰ have new probate laws that do little to improve probate procedures.

Code, bears a close resemblance to the California legislation described in note 8. See Wellman, *The UPC Defeat in South Dakota*, UPC NOTES No. 17, at 5 (Oct. 1976).

17. Act of June 25, 1974, ch. 384, 59 Del. Laws 1291 (codified in scattered section of 12 DEL. CODE ANN. (1974)). As explained in a report circulated a year prior to enactment, the procedural objectives of the reform proposal were as follows:

- (1) abolition of the practice which now vests both accounting and judicial functions in an elected official;
- (2) vesting all probate jurisdiction in the Court of Chancery;
- (3) delegating administrative functions to an official appointed for that purpose by the Court, subject, when necessary, to judicial supervision;
- (4) a final review of all estate accounts by the Court; notice should be given to parties in interest and, if an exception is taken or if the Court or the personal representative deems it necessary, a hearing should be held in open Court;
- (5) reduction to writing, by statute and by rule, of the significant aspects of probate procedure so they will be known to both the public and the bar;
- (6) providing for a procedure by which determination can be made quickly and inexpensively of judicial or quasi-judicial questions which routinely arise in the administration of the system.

Report of Special Delaware Supreme Court Committee (June 11, 1971), reprinted in SPECIAL SUBCOMMITTEE OF DECEDENTS' TRUSTS AND ESTATES COMMITTEE OF DELAWARE BAR ASSOCIATION, DELAWARE PROBATE CODE REVISION 2 (1973) (on file with the *Michigan Law Review*).

18. Act of Oct. 27, 1976, ch. 515, 1976 Mass. Acts 767 (codified in scattered sections of MASS. ANN. LAWS chs. 65A, 190, 191, 192, 193, 195, 197, 199A, 201, 203, 204, 205 (1979)). This "omnibus probate bill" is discussed in Young, *Probate Change*, BOSTON B.J., Dec. 1976, at 6, and in *Probate Law Reform — Massachusetts Style*, UPC NOTES No. 20, at 6 (June 1977).

19. Act of May 28, 1975, ch. 751, 1975 Nev. Stat. 1765 (codified at NEV. REV. STAT. §§ 143.035-.175 (1977)). This probate reform bill, enacted following study of the Uniform Probate Code, merely accepted UPC standards regarding estate appraisals, increased small estate limitations, and imposed new duties on personal representatives to close estates promptly. See UPC NOTES No. 13, at 7 (Sept. 1976).

20. Following a veto of a UPC bill passed by the Wyoming legislature in 1975, see UPC NOTES No. 13, at 7 (Sept. 1975), and a second veto of a similar bill passed by the legislature in 1977, see UPC NOTES No. 20, at 2 (June 1977), the Wyoming Probate Act, ch. 142, 1979 Wyo. Sess. Laws 256 (codified in scattered sections of 2 WYO. STAT. (Supp. 1980)) — the present Wyoming Probate Code — was finally enacted. In an unpublished memorandum addressed to the "Governor's Probate Statute Study Committee and other interested persons," Professor Lawrence Averill criticized the new code's provisions relating to probate of wills and administration of estates as follows:

Rather than really reducing formality and court involvement, the Code either reenacts it or actually increases it in several places. . . .

. . . .

Although omissions of material provisions are too numerous to list, the absence of an informal, basically courtless, administration procedure for all estates at the election of the

Under the UPC, the probate of wills and administration of testate and intestate estates of decedents do not necessitate use of the court system in a conventional adjudicatory role.²¹ Rather, probate offices, presumably the same ones administering probate laws under prior law, control a public probate registry that may act administratively to assist estate settlements.²² Application can be made to the probate office for probate of a will and appointment of a personal representative.²³ If the applications appear to be in order, the officials can issue a statement of probate²⁴ and appoint the applicant as personal representative.²⁵ The officials then commence administration of the probate estate by issuing letters of authority to the personal representative,²⁶ who then has full control of all the estate assets.²⁷ This completes the procedure for opening the estate.

At this point, the UPC breaks away from traditional patterns of probate procedure that force the personal representative to use lawyers or to account to the probate office for the administration of estate assets.

It does not follow, of course, that persons who are damaged by abuse of the personal representative's authority are without meaningful recourse or that the personal representative's control is unrestrained. The UPC imposes criminal and civil penalties for intentional misrepresentations in applications for probate or in applications for appointment as personal representative.²⁸ There are also serious liabilities attaching to misuse of control, including full fiduciary accountability to the decedent's creditors and successors.²⁹ These penalties and liabilities can compensate a person who is damaged by abuse of the personal representative's authority. They also deter such abuse since would-be personal representatives are likely to be forewarned about them; would-be controllers usually consult with a lawyer before receiving letters of authority either because a probate official withholds or delays applications prepared without a

interested parties, converts this Code into hollow and insignificant reform. The need for such informal, procedures is at the heart of the probate reform movement. (On file with the *Michigan Law Review*.)

21. See UPC art. III, pt. 3.

22. See UPC §§ 1-305, -307, 3-105, & art. III, pt. 3.

23. UPC § 3-301.

24. UPC § 3-302.

25. UPC § 3-307. Appointment of the applicant is subject to his qualification and acceptance.

26. UPC § 3-103.

27. See UPC art. III, at 122-23; Wellman, *supra* note 4, at 488-501.

28. UPC §§ 1-310, 3-301(b).

29. See UPC §§ 3-602, -703, -705, -712, -807(b).

lawyer's help, or because of the applicants' natural concern about taxes, the sanctions for perjury, and other legal complexities.

In addition, the UPC restrains personal representatives indirectly by limiting who may be a personal representative. The only people who automatically qualify to control a testate estate are the executor chosen by the will to handle the decedent's affairs or, if no executor is chosen or the estate is intestate, the surviving spouse who is also an estate beneficiary. If there is no named executor or spouse-beneficiary, or if neither seeks authority to control the estate, controllers must be selected by all the successors, whether the estate is testate or intestate.³⁰ Estate creditors are blocked by the code from reaching estate assets before an estate has been opened by issuance of letters of authority.³¹ Nonetheless, they can force an administration and, forty-five days after the decedent's death, are eligible to gain control if all others mentioned above decline to serve³² and the successors refuse to pay their claims voluntarily.³³

The assurance that only persons close to the decedent or his survivors can control the estate protects against abuse of the authority. Personal representatives are restrained by feelings of kinship or other association with the successors or the testator. Correlatively, creditors and successors know whom they must watch for their own protection. If they become dissatisfied with what they see and seek legal assistance, they will learn that the UPC provides an array of court remedies.³⁴ Family considerations, legal advice, and common sense will lead estate fiduciaries and their beneficiaries to satisfactory, out-of-court resolution of most difficulties.³⁵ If responsibility for an estate proves to have been misplaced, either by a testator or by his successors, the family has only itself to blame. In any event, only an expectancy in the decedent's assets is usually at stake; few suffer out-of-pocket losses.

The UPC's testator-successor control of estate settlements will benefit and satisfy most persons for several reasons. First, indepen-

30. UPC § 3-203.

31. UPC § 3-104.

32. UPC §§ 3-203(a)(6), 1-201(20), 3-308.

33. Except as a possible creditor or heir, the state does not have standing to force estate settlement on successors. *See* UPC § 3-203. *See also* §§ 1-201(20), 3-301, and comment to § 3-203.

34. *See Kelley, Defensive Remedies Under the Uniform Probate Code*, PROBATE NOTES (American College of Probate Counsel), Winter Issue 1974-1975, p. 3, reprinted in UPC NOTES No. 12, at 1 (June 1975).

35. *See Martin, Justice and Efficiency Under a Model of Estate Settlement*, 66 VA. L. REV. 727, 773-74 (1980).

dent probate and administration appropriately minimize the role of the court system in estate settlement. The state has no greater interest in enforcing the substantive rules of inheritance than it has in enforcing the rules governing contracts, trusts and other private arrangements controlling private wealth.³⁶ All of these rules support socially desirable institutions and arrangements. But, the state's interest in these matters of private law is limited to providing mechanisms to resolve disputes and reasonably definite guidelines as to how a court would rule if asked to resolve a dispute. Individuals know that there are such rules and that their legal rights will be vindicated if a dispute forces a matter to court. Once they are so assured, the law properly fades into the background. People deal with other people on their own terms. They often avoid or resolve conflicts by utilizing their private resources, and recourse to court, with attendant costs to those involved and to the public, is avoided.³⁷

Second, most persons believe that succession to the wealth of a spouse, parent, or other close relative or friend should be a private matter, especially where the successors are willing and able to pay all claims against the estate.³⁸ Testator-successor control of estates pro-

36. The state may have a special interest in aiding the discovery and effectuation of decedents' intentions as expressed in wills. But this state interest does not justify conventional court supervision of estates. The most that a court can do under present laws to protect decedents' intentions is to force wills to be publicly filed after death so that the testators' expressions are established. Competent devisees or heirs may defeat decedents' intent by rearranging holdings of inherited assets in any way that pleases them, unless they have been effectively restrained by words of trust or future interest.

37. See Thibaut & Walker, *A Theory of Procedure*, 66 CAL. L. REV. 541 (1978). The authors, using social psychology to probe various procedural systems in legal process, identify disputes concerning "truth" and "justice" as calling for different procedures for resolution. They suggest that an autocratic procedure is most useful to determine truth, but persons whose interests are in direct conflict do not value truth. Their inconsistent claims, such as inconsistent claims to the division of estate assets, are best resolved with the aim of distributive justice. According to Thibaut and Walker, justice requires distribution of values in dispute in proportion to the parties' respective input to the transaction underlying the dispute. Hence, the best procedure to resolve direct conflict is the one that "facilitates the fullest possible reports of inputs prior to determination of distribution." Extending the Thibaut and Walker analysis, Professor Martin found that the U.P.C. provides the best procedure to resolve probate disputes. Martin, *supra* note 35, at 773-75.

By contrast, Professor Alford found Virginia's commissioner of accounts system to serve especially well in deterring rancorous family arguments over inheritance. That system uses skilled specialists who are forced on persons interested in a Virginia probate estate. Alford, *Some Major Problems in Alternatives to Probate*, 32 THE RECORD 53 (1977). Alford fails to demonstrate, however, why persons interested in an estate should not be free to choose a respected private attorney, a corporate executor, or some other person to function in lieu of a state official. In the circumstances of an estate, distributive justice would seem to be best served by the widest possible range of choices by survivors interested in guidance, decisions, and other services.

38. Persons in close or confidential relationships very frequently rely on private understandings and personal integrity in financial arrangements with one another. Consider, for example, the enormous amount of litigation involving claims of constructive or resulting trusts and disputes over joint bank accounts. See 5 A. SCOTT, THE LAW OF TRUSTS 3324 (3d ed.

motes privacy.

Finally, people commonly believe that the inheritance process should occur with a minimum of red tape, cost, and delay. Procedures that permit families to agree about estate settlements should eliminate extended and expensive legal proceedings and reduce probate costs and delays. Also, these procedures transform the role of lawyers, court officials, bondsmen, and appraisers from one that is unnecessary and forced, to one that interested survivors identify as helpful. The UPC encourages fee agreements between survivors and experts to whom they turn for assistance; fee competition should develop. Make-work and excessive fees should be curtailed. In time, and depending largely on how well or badly the legal profession functions, nonlawyers may begin to play a useful role in advising survivors about how they should handle their out-of-court affairs.

Though far from conclusive, two studies of the Uniform Probate Code in Idaho, the first state to enact it, verify that independent probate and independent administration reduce costs and delays.³⁹ In addition, the UPC has reduced the work of probate court officials,⁴⁰ hence reducing the cost of probate administration to the public.

B. *Compromising UPC Standards for Testator-Successor Control of Estates*

In spite of the demonstrations that the UPC responds to consumer demands, many believe that the best legislative strategy to achieve UPC procedural goals is to amend present codes rather than replace them with the new, national recommendation. The effectiveness of the UPC in implementing the general concept of testator-successor control of estates is the result of many specific elements acting together. Anyone considering amendments to existing codes

1967), O. BROWDER, R. CUNNINGHAM, J. JULIN & A. SMITH, *BASIC PROPERTY LAW* 750-81 (3d ed. 1979). The American tendency to disregard legalities in intra-family wealth arrangements may be due to ill-fitting legal forms, or to the dazzling complexity of the law of fifty-one different jurisdictions, each with its own property rules. In any event, there is no apparent reason to assume that family attitudes about the desirability of complying strictly with legal forms suddenly change when a family member dies and survivors confront the business of settling an estate. A serious source of consumer unrest with American probate law and procedure is that the rules often prevent families from handling succession in their own way. This is not to say that the law should not provide procedures to aid families from being torn asunder by arguments over estates. See Alford, *supra* note 37, at 53.

39. See Crapo, *The Uniform Probate Code — It Still Works in Idaho*, 1979 B.Y.U. L. REV. 343; Kinsey, *A Contrast of Trends in Administrative Costs in Decedents' Estates In a Uniform Probate Code State (Idaho) and a Non-Uniform Probate Code State (North Dakota)*, 50 N.D. L. REV. 523 (1974).

40. Schroeder, *The Altered Role of the Court Under the UPC*, UPC NOTES No. 10, at 1 (Nov. 1974).

should try to incorporate all of these elements, which are listed in the following text as a series of fourteen principles. Experience suggests, however, that states are unlikely to adopt amendments that include all of these principles. Instead, they are likely to adopt compromises that loosen, but do not cut, the legal ties that presently bind estates to the court system. Part II of this Article therefore evaluates the utility of some of the compromises that may prove necessary.

The UPC concept of testator-successor control of estates embraces the following principles:

1. The apparent intestate successors to an estate should not be forced to take steps to settle the estate by the threat that a public official will gain control of the estate if they fail to act.⁴¹ Further, they should not be forced to settle the estate by the fear of undiscovered wills and unknown creditors that act as clouds on unadministered estates; instead, such clouds should be eliminated by statutory time limitations for probating wills⁴² or for making claims against the estate.⁴³ It does not follow that creditors of estates, including the state as the beneficiary of inheritance taxes, should be powerless to force administration.
2. Nonadjudicative procedures to establish a filed, original will and to secure appointment of an estate controller should be available to eligible applicants quickly after the testator's death. Public officials should have minimal discretion to interfere. Further, the procedures should be unimpeded by delayed hearings⁴⁴ or by advance notice to interested persons.⁴⁵ They should also be free of unnecessary requirements, such as the production of the witnesses who attested to a will presented for probate.⁴⁶
3. Publicly recognized estate authority should be controlled first by the decedent, then the survivors.⁴⁷ The probate court should only be able to appoint someone not having priority after notice to and default by those with priority, and then only when administration of the estate is necessary.⁴⁸
4. Testator-successor control of estates should not be restricted by imposed residency or co-fiduciary requirements on otherwise qualified persons.⁴⁹ However, long-arm provisions should subject any person

41. See UPC § 3-108 and Comment; § 3-203 and Comment.

42. See UPC §§ 3-102, -108. The exceptions in the UPC to the probate requirement in § 3-102 are narrowly drawn and involve substantial burdens of proof.

43. See UPC § 3-803.

44. See UPC art. III, pt. 3.

45. See UPC §§ 3-306, -310. In the UPC's informal proceedings, notice to interested persons is generally unnecessary. However, in appointment proceedings, persons having priority for appointment are entitled to notice, and, in probate or appointment proceedings, persons who have demanded notice as provided in § 3-204 are entitled to notice. See §§ 3-306, -310.

46. UPC § 3-303(c).

47. See note 30 *supra* and accompanying text.

48. UPC § 3-203(e).

49. UPC § 3-203(f), which contains the entire text of the code concerning qualifications for personal representatives, makes no mention of residency or co-fiduciary requirements.

accepting estate authority to the continuing jurisdiction of the court that issued the letters of authority.⁵⁰

5. No surety bond should be required of estate fiduciaries unless demanded by certain interested persons.⁵¹

6. The fiduciary's control of an estate should include broad administrative powers including the power to sell land without court order or approval. Also, purchasers and others dealing in good faith with an estate fiduciary should be explicitly protected against contentions that the fiduciary lacked authority to execute the transaction.⁵²

7. Estate fiduciaries should not be compelled to make estate inventories and appraisals public, except to the extent that nonprobate successors would be required to do so for tax purposes.⁵³

8. When necessary at all, estate appraisals should be made by whomsoever estate fiduciaries select rather than by publicly designated appraisers.⁵⁴

9. Reasonable procedures for identifying, satisfying, or barring estate creditors without the aid of the court system should be provided.⁵⁵ The court system should maintain a public file for claims and should remain a source of decision in disputed cases.

10. Estate fiduciaries should be permitted to make distributions of estate assets at any time they deem satisfactory, subject to the fiduciary's liability for erroneous distributions.⁵⁶ Distributees should be able to transfer good title to good faith purchasers, even though the distributees are subject, for a limited period of time, to restitution of assets or values they receive erroneously.⁵⁷

11. Estate fiduciaries should be protected from liability when they make distributions in good faith before notice of efforts to establish or contest a will that might change the testacy status of the estate.⁵⁸

12. The resolution of whether and when an estate fiduciary ceases to hold any legal authority over estate assets as against estate beneficiaries should be left to the controllers and their beneficiaries; no court filing marking the end of an administration should be required.⁵⁹

13. Estate fiduciaries should be afforded reasonable opportunities, through judicial order or limitations, to gain relief from unending risks of liability for their handling of estates.⁶⁰

50. See UPC § 3-602.

51. UPC §§ 3-603, -605.

52. See U.P.C. §§ 3-703, -711 to -715. The provisions apply equally to intestate and testate estates.

53. See UPC § 3-706.

54. See UPC § 3-707.

55. See UPC art. III, pt. 8.

56. See UPC §§ 3-703, -715(27), -807, -1005.

57. UPC §§ 3-909, -910, -1004.

58. UPC § 3-703(b).

59. See UPC §§ 3-1001 to -1003.

60. UPC §§ 3-1003, -1005. Also, § 3-1001 describes an optional adjudicated closing procedure that includes adjudication of 'will or no will' and a determination of heirs. Section 3-1002 describes an optional adjudicated closing that may be useful to settle the meaning of a will where the interested parties have no interest in finally settling the question of will or no will.

14. As discussed above,⁶¹ the statute should not give public officials a role in the determination of undisputed fiduciary or attorney fees. Full testator-survivor control requires freedom to bargain for fiduciary or attorney assistance without interference by price-fixing statutes or court procedures.⁶²

Obviously, some of these principles contribute less to the goal of full testator-survivor control of estates than others. For instance, UPC procedural objectives are not greatly compromised by the possibility that some state agency may gain control (contrary to principle 1⁶³) if no one who is eligible for control takes any action within a reasonable period after the decedent's death. So long as survivors need only file applications with the local probate office to secure appointment of an unsupervised fiduciary of their own choosing, no great disruption results from laws that threaten them with loss of control if they do not act seasonably.

Other principles could also be compromised. The UPC assumes survivor competence and assent to lack of court involvement unless an interested person commences a formal testacy or appointment proceeding (or a supervised administration) by filing a petition with the probate court.⁶⁴ Therefore, a system that makes UPC procedural advantages available only when all apparent successors are competent adults who file waivers with the probate office falls short of UPC standards. However, it is preferable to a system that forces court involvement upon successors who do not desire it.

A requirement that an attesting witness testify before an uncontested will may be probated (contrary to principle 2⁶⁵) is less damaging than requirements in opening proceedings of advance notice, hearing and final adjudication. This is because problems caused by unknown or unavailable witnesses can be avoided by testators who use holographic wills or wills prepared by law offices that use care in selecting witnesses.

A system that defers testator-successor control until a formal judicial proceeding confirms the probate of a will or produces a ruling of intestacy identifying the heirs (contrary to principles 1 and 2⁶⁶) is preferable to one that subjects the management and distribution of an estate to mandatory court supervision or review (contrary to prin-

61. See text following note 38 *supra*.

62. UPC § 3-719. Section 3-721 allows interested persons to seek court review of fees and refund of excessive fees.

63. See text at note 41 *supra*.

64. See UPC §§ 3-401, -502.

65. See text at note 46 *supra*.

66. See text at notes 41 & 44 *supra*.

principles 5-10, 12⁶⁷). Survivors gain more from a forced adjudication establishing whether a will or intestate-succession statute controls an estate than from a forced adjudication at the conclusion of an administration. The former proceeding identifies the successors and provides a sound basis for permitting them to assume responsibility for the details of their sharing. By contrast, a blanket requirement of court adjudications or filings at all closings, if rigorously enforced by the court system, imposes court supervision on every detail of an administration. Such a requirement accomplishes nothing that cannot be accomplished more satisfactorily by beneficiary agreement, and can easily nullify other principles of testator-successor control, such as excusing the filing of bond or inventories or conferring broad administrative power on estate fiduciaries.

Compromise of some of the other UPC principles for administering estates can also seriously threaten testator-successor control. For example, a minimum package must relieve distributees, after a time, of the risk that they may have to return distributed assets or equivalent values to meet an undiscovered claim of some kind (principle 10⁶⁸). If this feature is omitted, the threat of interminable personal liability will drive many successors to court for protective judicial orders. Also, estate fiduciaries and successors, acting without court approval, must be able to sell titles that are as marketable as they were when held by the decedent (principles 6 and 10⁶⁹), and titles under deeds of sales from a fiduciary or a distributee must be secure even though the sale may have been improper or the distribution may have been erroneous and subject to recall. Procedural reforms that fail to provide noncourt methods of clearing succession questions from land titles offer little of consequence to survivors of deceased landowners, since the presence of land in an estate is frequently the only reason estates need to be administered.⁷⁰ The UPC protects purchasers without relieving a fiduciary or distributees of liability to those injured by an improper sale or distribution. The relevant provisions apply to sales made after letters have been issued.⁷¹ Similar provisions that apply only to sales occurring after a delay period following the issuance of letters is an acceptable compromise, provided that the delay period is relatively short, such as

67. See text at notes 51-57, 59 *supra*.

68. See text at note 57 *supra*.

69. See text at notes 52 & 57 *supra*.

70. See Dunham, *The Method, Process, and Frequency of Wealth Transmission at Death*, 30 U. CHI. L. REV. 241 (1963).

71. See UPC §§ 3-714, -910; text at note 57 *supra*.

sixty or ninety days. However, an additional requirement that there be no objection filed during the delay period would force purchasers to check probate court records. Such a requirement is inconsistent with the UPC, which relieves purchasers of constructive notice of the content of probate court files in order to minimize title problems.⁷²

Some elements of administration can be compromised without so seriously undermining testator-successor control. A law that compels estate inventories to be filed in public probate offices obviously contradicts both the seventh principle of testator-successor control of estates⁷³ and efforts to keep details of family holdings private. Still, a filed inventory requirement may be a tolerable compromise if the filing has little effect on subsequent events, only involves appraisals that are clearly necessary, and does not require the appraisers to be court appointed (principle 8⁷⁴). Similarly, since disputed claims are relatively infrequent, a rule that requires a court filing or court approval to bar a disputed claim (contrary to principle 9⁷⁵) need not be seriously intrusive. This assumes that the fiduciary is permitted to pay an unfiled or unapproved claim (principle 9), and to sell or distribute a marketable title to estate assets despite the possibility of unbarred claims (principles 6 and 11⁷⁶).

Reformers may also be asked to compromise the UPC's procedures for closings, including the UPC's omission of any required court filing to mark the end of an administration (principle 12⁷⁷). The UPC permits the personal representative to make such a filing as a means of terminating his fiduciary responsibilities; his appointment terminates one year after the filing if no proceedings are pending in court.⁷⁸ A compromise making this filing mandatory would introduce only a slight burden. However, a complete accounting of all receipts and disbursements obviously is more onerous. This is so even if an accounting that is not objected to by a party in interest becomes final without a hearing. Complete accounting for the purposes of a public probate record violates beneficiaries' interests in privacy. If the accounting is complicated, it may serve principally to

72. This purpose appears most clearly from UPC § 3-714, and Comment. Under the UPC, purchasers do bear the risk of the genuineness and current validity of letters upon which they rely.

73. See text at note 53 *supra*.

74. See text at note 54 *supra*.

75. See text at note 55 *supra*.

76. See text at notes 52 & 56 *supra*.

77. See text at note 59 *supra*.

78. UPC § 3-1003. The UPC view is that untermi-nated authority in a personal representative is harmless and potentially useful in cases involving later discovered assets.

force the personal representative to obtain expensive technical assistance. Also, court accounting requirements invite abuse by court personnel who have typically made compliance unnecessarily difficult for persons unfamiliar with local practice. Finally, accounting requirements may lead beneficiaries to believe that the handling of an estate has been reviewed with care even though court personnel have merely checked the account of the fiduciary for superficial accuracy.

Legislators should not support a bill that requires the probate fiduciary to file a detailed accounting in court unless it also provides a hearing — with prior notice to all interested parties — that concludes with a binding order settling the estate. If fiduciaries and successors are to be harassed by an accounting requirement, the proceeding should be as useful as possible. The binding settlement would prevent later claims among successors based upon some error of will interpretation or distribution. Moreover, if law-trained judges review final and distributive accounts and interrogate the accountants, beneficiaries may gain some useful protection, including protection against the tendency of less qualified court personnel to add unnecessarily to the accounting burden.

Overall, a statutory system with an option for testator-successor control of estates should comply, as much as is politically possible, with all fourteen principles underlying the UPC. In general, the statute should offer persons who want to distribute and close an estate privately reasonable prospects of achieving their objectives. Ideally, it would provide opening procedures that meet UPC standards for nonadjudicated probate and appointment proceedings. In addition, the testator-successor group would have the power to sell or distribute marketable title without delay, and some assurance against endless liability to unknown claimants or successors. They would also be spared the need to report to courts and to obtain court orders approving accounts and distributions, and discharging the fiduciary — in other words, they would be free from official intermeddling aimed only at protecting the controlling group from a fiduciary whom they or the testator had selected. Finally, the legislation would not control the amount of fiduciary and attorney fees; it would not set statutory percentage scales or authorize court personnel to review and approve uncontested fees. The combination of compromises of these principles that will satisfy political opponents while preserving the essence of testator-successor control must be identified pragmatically in each state.

II. FROM THEORY TO REALITY: A LOOK AT SEVEN LEGISLATIVE ATTEMPTS AT TESTATOR-SUCCESSOR CONTROL OF ESTATES VIA UNSUPERVISED FIDUCIARIES

The seven non-UPC statutes selected here for detailed examination are not the only recent probate law amendments that have tended to deregulate probate estates.⁷⁹ Further, the laws discussed here are not, as a group, the most successful non-UPC probate reform laws that have been enacted since promulgation of the UPC. The common denominator of the legislation analyzed here is that each offers a new, optional mode of settling estates as an alternative to some of the requirements of traditional, court-supervised probate administration.⁸⁰

Unfortunately, the statutes also share a common failure: none achieves UPC standards. The new District of Columbia law, which is discussed in a separate subdivision of this Part, is a step backward that will increase probate costs for survivors. The enactments in Indiana, Missouri and Kansas, respectively fourth, fifth, and sixth in quality among the six state laws discussed in the first subdivision of this Part, provide no relief for consumers. The new Michigan system, which practically matches the UPC, is the best of the lot; it should greatly reduce the work in many estate settlements and should result in significant economies for survivors. The Illinois and Wisconsin statutes are useful, but less so than Michigan's. All offer some object lessons for legislative draftsmen and citizens who seek better inheritance procedures.

A. *Six Midwestern Laws*

Michigan. Michigan's revised probate code, enacted in 1978,⁸¹ offers an optional, out-of-court alternative to supervised proceedings for the settlement of both intestate and testate estates known as "independent probate."⁸² The new procedure contains many of the elements of the UPC and provides many of the same advantages. For

79. The state laws mentioned in the text at notes 7-16 *supra* illustrate other recent changes.

80. The judgment that the California and South Dakota statutes, *see* text at notes 9 & 16 *supra*, should not be classified with the seven states discussed here may be arbitrary. Both involve options to pursue an independent administration procedure, and so can be compared with those selected for discussion. However, neither involves any relief from standard court accounting procedures or from adjudicated opening procedures. Hence, they seem closer to the Hawaiian system, *supra* note 11, which involves no options but provides broad statutory powers to all personal representatives who remain subject to full court accounting requirements.

81. Revised Probate Code, ch. 642, 1978 MICH. PUB. ACTS 2542 (codified at MICH. COMP. LAWS ANN. §§ 700.1-993 (West 1980)).

82. Revised Probate Code, ch. 642, art. 3, MICH. COMP. LAWS ANN. §§ 700.301-361 (West

example, it closely tracks the UPC's informal probate and appointment proceedings,⁸³ and eliminates the costs and delays of Michigan's conventional, formal proceedings.⁸⁴

The new system also follows the most important elements of the UPC for the administration of estates.⁸⁵ One difference between the two systems is the relationship between openings and administration. In Michigan, "informal probate" embraces openings and adminis-

1980). See generally J. FOSTER & E. ZACK, INDEPENDENT PROBATE ADMINISTRATION IN MICHIGAN (1980).

83. Under Michigan's unsupervised probate procedures, as under the UPC, openings can be handled by a register rather than a judge. Compare MICH. COMP. LAWS ANN. §§ 700.303, .306 (West 1980) with U.P.C. §§ 1-307, 3-301(a) (UPC uses the name "Registrar" rather than "register"). Like the UPC's informal proceedings, Michigan's unsupervised procedures do not involve an adjudication. Compare MICH. COMP. LAWS ANN. §§ 700.308(1), .309(5), .312 (West 1980) with UPC §§ 3-303(c), -305, -307. However, during unsupervised procedures under either the Michigan code or the UPC, if any interested persons object to the probate of a will or to the appointment of an independent personal representative, they can file a petition and obtain formal adjudication of their objection. Compare MICH. COMP. LAWS ANN. §§ 700.318, .351 (West 1980) with UPC §§ 3-401, -402. Where probate is uncontested, neither the Michigan nor the UPC procedures require testimony or affidavits from attesting witnesses to prove due execution of a will that contains a standard attestation clause and the required signatures. Compare MICH. COMP. LAWS ANN. § 700.308(1) (West 1980) with note 46 and accompanying text *supra*. Priority for appointment under the Michigan code is similar to priority under the UPC. Compare MICH. COMP. LAWS ANN. § 700.311 (West 1980) with UPC § 3-203, discussed in text at notes 30, 47-48 *supra*. As under the UPC, see note 45 and accompanying text *supra*, the Michigan procedure permits the probate of a will and issuance of letters of authority to the named executor without advance notice to heirs or devisees. The only requirement of advance notice applies where several persons share priority to be appointed personal representative. As in the UPC, if several persons share priority, as where an unmarried intestate is survived by several children, an applicant must give notice to the other heirs unless they have nominated him or declined nominations themselves. See MICH. COMP. LAWS ANN. § 700.311(4) (West 1980); UPC § 3-203(e).

84. Persons who select supervised proceedings cannot gain control of an estate until the presentation of proofs or waivers of notice to interested persons and proof of due execution of a proffered will. Alternatively, they may seek appointment of a temporary administrator, but that entails an additional set of procedural requirements. MICH. COMP. LAWS ANN. §§ 700.115, .172 (West 1980) describe procedures applicable to intestate estates; sections 700.145 to .147, .172 control proceedings to probate a will and secure appointment of a personal representative. Proof of heirship may be required in either setting to satisfy the court that proper notice of the proceeding has been given. Cf. sections 700.183, .184.

85. The independent probate system excuses the personal representative from posting bond unless required by the will or demanded by an interested person. MICH. COMP. LAWS ANN. § 700.313 (West 1980). Independent probate also excuses the personal representative from court filing of inventories, § 700.322, or accounts, §§ 700.301(3)(h)-(i) (making §§ 700.563, .564, which require all probate fiduciaries to file periodic and final accounts, inapplicable to independent probate fiduciaries). These provisions are analogous to provisions of the UPC. See, respectively, notes 51 & 53, and text at notes 73-74 and following note 76 *supra*. In addition, personal representatives in the Michigan system, like those governed by the UPC, may proceed with estate settlement and distribution without court orders, see § 700.341, and are given broad and explicit fiduciary powers to do so. Sections 700.331, .332, .334. For analogous UPC provisions, see notes 52, 55, 56 & 59 and accompanying text *supra*. Like the UPC, the Michigan procedures also include protection for fiduciaries acting in good faith, § 700.343, and for persons dealing with fiduciaries, § 700.349, or with their distributees. Section 700.216. It also imposes a statute of limitations to end any dangling questions among distributees. Section 700.358. For analogous provisions of the UPC, see notes 52, 57 & 58 *supra* and accompanying text.

trations; informal administration is not available for estates opened by a conventional proceeding.⁸⁶ By contrast, under the UPC, informal openings and informal administration are independently available; whether or not an estate was opened informally, the personal representative administers the estate informally unless supervised administration is ordered at the petition of an interested party.⁸⁷ In many cases, however, this difference between the Michigan code and the UPC will not be important. Since informal opening procedures and unsupervised administration generally promote the same purposes, many persons in Michigan would have chosen both anyway. Unification of the two will result in the advantages of each promoting the use of the other. Furthermore, there is no good reason not to use the new informal proceedings where no contest among successors or creditors is anticipated at the outset. Interested persons involved in an estate that is being handled in "independent probate" can still readily turn to the probate court for rulings concerning the validity of any will or any other aspect of an estate settlement.⁸⁸ Accordingly, it seems inevitable that independent probate will be widely used and the traditional supervised proceedings in uncontested cases will become rare.

There may be a catch or two, however. "Independent probate" is described by only one of the six articles in the Michigan probate code that govern intestate and testate succession. The five other articles remain fully and intricately bound to the theory of court supervision of fiduciaries.⁸⁹ It is not easy to insert independent procedures into a probate code in which supervised proceedings continue to provide the organizing rationale.⁹⁰ The result in Michigan has been some statutory gaps and inconsistencies that could cause difficulty. For example, creditors' claims are barred by different formulae depending on whether independent or supervised proceedings are em-

86. MICH. COMP. LAWS ANN. §§ 700.301 to .306 (West 1980) (Revised Probate Code art. 3, Independent Probate).

87. See UPC §§ 3-107, -307(b), -501 to -505, -602.

88. MICH. COMP. LAWS ANN. § 700.351 (West 1980).

89. The five articles are: Article 1, General Provisions; Article 2, Administration and Probate of Decedents' Estates; Article 5, Fiduciaries; Article 6, Management of Property or Assets of Estate; and Article 7, Claims Against Estates. See MICH. COMP. LAWS ANN. §§ 700.1 to .35, .101 to .291, .501 to .598, .601 to .688, .701 to .767 (West 1980).

90. In addition to the thirty-nine new sections added by the new Michigan article on independent probate, many changes or additions in other sections of the revised code were necessary to accommodate the new procedure. A recent memorandum prepared for the Joint Editorial Board for the Uniform Probate Code and interested persons in Iowa contains preliminary suggestions regarding language that should be added to the Iowa Probate Code if an independent administration option were added there. The recommendation describes thirty-nine complete new sections and about fifty other changes and additions.

ployed. Creditors who are barred in independent probate may be able to revive their claims by moving the estate into supervised status.⁹¹ Also, the Code lacks a provision clearly applicable to independent probate that limits the time within which estates may be opened and wills may be admitted to probate or contested.⁹² In addition, a section that is designed to prevent tardy reshuffling of assets distributed through an independent probate proceeding is garbled.⁹³

However, other sections appear to protect purchasers in sales

91. Compare MICH. COMP. LAWS ANN. §§ 700.701, .732 (West 1980) (controlling the barring of claims in a supervised administration) with § 700.328(2) (controlling claims against estates in independent probate). Section 700.328(2)(b), containing an exception to the bar of claims that have not been presented within a four-month period, refers to "final settlement and distribution of the assets of the estate." This might be held to refer to the filing of the closing statement described in § 700.357, or to the end of limitations periods described in § 700.358. Neither point in time is the same as the deadline for claims in supervised administrations.

92. See J. FOSTER & E. ZACK, *supra* note 82, at § 15.05.

93. MICH. COMP. LAWS ANN. § 700.358(3) (West 1980) provides:

Unless previously determined in a supervised proceeding settling the accounts of an independent personal representative or otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value of the property from any distributee is forever barred at the later of 3 years after the decedent's death or 1 year after the time of distribution. When fraud is perpetrated in connection with any probate court proceeding or filing relating to a decedent's estate is induced by fraud to refrain from initiating or participating in a probate court proceeding or from disclosing facts of relevance to a succession, a person who is deprived of an opportunity to establish his interest in a succession, may recover damages or obtain any other appropriate relief in an action against the perpetrator of the fraud or may obtain restitution from any person other than a bona fide purchaser benefiting from the fraud whether innocent or not, by an action commenced within 2 years from the discovery of the fraud but an action may not be brought against any innocent party later than 5 years from the time of commission of the fraud or the death of the decedent whose estate is in question, whichever occurs later.

The language in the second sentence following "relating to a decedent's estate" does not make sense. A phrase, such as "or a person," should be inserted as a subject of the language "is induced by fraud" and following. However, even if so read, the provision is unclear. Has property been "improperly distributed" if the distribution was proper under the assumption regarding testacy then prevailing, and that assumption is subsequently changed by proof of a later-executed will, or proof that a will previously assumed to be genuine is a forgery? The answer must be no if estates are to be able to be finally settled through independent probate, since the Michigan code omits any time limit on will contests or on probate of late-discovered wills, other than time limits on appeals from formal adjudications of will or no will. See note 92 and accompanying text *supra*. Also, the language was borrowed from UPC § 3-1006, where it is employed to bar claims arising from a distribution that is improper for any reason, including a later change of assumption regarding testacy. For example, a late-discovered will may be probated at any time within three years of death where there has been no prior adjudication of testacy. If a will is probated before the three-year limitation has run, the devisees under the late-probated will have superior rights under § 3-101 to assets previously distributed. These rights must be barred by § 3-1006 at the later of three years from death or one year from the date of distribution if the widely recognized purpose of the Code to permit estates to be settled without adjudication is to be accomplished. Both the UPC and the Michigan code contain provisions that "authorize" a personal representative to rely upon the testacy status as of the time of a distribution, even though that status has not been established by binding adjudication. See UPC § 3-703(b); MICH. COMP. LAWS ANN. § 700.343(1) & (2) (West 1980). Hence, both codes should be construed to mean that a distribution that is "authorized" by one section is nonetheless "improper" for purposes of another section.

made by independent personal representatives or by distributees.⁹⁴ Hence, even if courts hold that estates settled without adjudication remain subject for indefinite periods to changes in testacy status, marketability of estate assets should not be adversely affected, and the independent procedure will offer practical advantages in most cases.

These technical defects are likely to cause only minor problems because independent probate is so strongly supported by leading Michigan probate practitioners. Michigan lawyers have become convinced that the long-range interests of practitioners are best served by a probate system as free of unnecessary red-tape, delay and cost as possible.⁹⁵ The new Michigan approach is the result of thirteen tempestuous years of discussion that placed most of Michigan's probate judiciary in head-on conflict with practicing attorneys.⁹⁶ It appears that the struggle was worth the effort.

Illinois. Illinois amended its probate code in 1979.⁹⁷ As in Michigan, the new enactment added independent procedures to a complex, traditional probate code that had required court supervision of executors and administrators in all cases.⁹⁸ Like the Michigan statute, the Illinois enactment accomplished the UPC goals of permitting unadjudicated openings and independent administration.

The new Illinois procedure, however, is considerably simpler than the Michigan procedure. The Illinois draftsmen did not insert both independent probate and independent administration as an alternative to standard, court-supervised procedures, as did their counterparts in Michigan. Instead, they added independent administration as an alternative to standard administration, while amending the standard opening procedures for all estates.⁹⁹ The new opening procedures lower proof requirements and permit probate of wills and appointment of estate fiduciaries to occur quickly

94. See MICH. COMP. LAWS ANN. §§ 700.216, .349 (West 1980).

95. See 59 MICH. ST. B.J., 528 (Aug. 1980); *Michigan Lawyers Promote Use of Independent Administration*, UPC NOTES No. 24, at 10-12 (Oct. 1979).

96. See UPC NOTES No. 21, at 5 (Dec. 1977); UPC NOTES No. 18, at 2 (Dec. 1976); UPC NOTES No. 13, at 6 (Sept. 1975); UPC NOTES No. 5, at 8 (June 1973); UPC NOTES No. 3, at 7 (Dec. 1972).

97. Act of Aug. 22, 1979, Pub. Act 81-213, 1979 Ill. Laws 1142. The Illinois enactment became effective on January 1, 1980. It is described in *Illinois Enacts Independent Administration Procedure*, UPC NOTES No. 24, at 13 (Oct. 1979).

98. The principles of the Illinois Probate Act were directly opposed to those of the UPC. In addition to court supervision, the executor or administrator was required to make a formal accounting and was not discharged until final orders were issued by the court.

99. ILL. ANN. STAT. ch. 110½, §§ 6-2, 6-10 and related sections (Smith-Hurd Supp. 1980).

and before a final adjudication. Notice to heirs, devisees and creditors now comes after probate rather than before;¹⁰⁰ once notified, interested persons have the opportunity to insist on more stringent proof of due execution and to contest the admission or denial of admission of the will to probate. By thus permitting unadjudicated openings for all estates, the new opening procedures are consistent with the policies of the UPC that underlie both informal openings and independent administration. By simplifying standard opening procedures for all estates rather than creating an entirely new procedure of openings and administration, Illinois avoided the gaps and inconsistencies that exist in the new Michigan code.

The statutory powers given to independent personal representatives and the protection afforded persons purchasing from independent representatives and their distributees approximate UPC standards.¹⁰¹ But other provisions were compromised by the Illinois legislature. For example, a late amendment limited appointment of an independent fiduciary to estates having a gross value of not more than \$150,000.¹⁰² The limitation invites court personnel hostile to independent administration to insist on strict proof of assets and values in assessing compliance with the ceiling. Depending on the circumstances, strict proof requirements could lead many survivor groups to conclude that the costs of establishing the conditions for independent administration exceed all the advantages of the procedure.

This ability of court personnel to sabotage the legislation may be offset by the narrow limits imposed on court discretion. The Illinois statute directs the court to grant independent administration unless the value ceiling is exceeded or unless a minor or disabled person is interested in the estate.¹⁰³ In contrast, the UPC, Michigan, Indiana, and Wisconsin procedures all give the court official who must approve the commencement of independent administration authority to decline a petition.¹⁰⁴

If court personnel do not try to sabotage the legislation and rely instead on the petitioners' estimates of estate values for purposes of policing the \$150,000 ceiling, the Illinois threshold requirements are less onerous for estates of modest size than comparable features of

100. ILL. ANN. STAT. ch. 110½ § 6-10 (Smith-Hurd Supp. 1980).

101. ILL. ANN. STAT. ch. 110½, §§ 6-21, 8-1, § 8-2 (Smith-Hurd Supp. 1980).

102. ILL. ANN. STA. ch. 110½, § 28-1 (Smith-Hurd Supp. 1980).

103. ILL. ANN. STAT. ch. 110½, § 28-2(a) (Smith-Hurd Supp. 1980).

104. See UPC § 3-309; MICH. COMP. LAWS ANN. § 700.309(2); IND. CODE § 29-1-7.5-2(a) (Cum. Supp. 1979); WIS. STAT. ANN. § 865.08(3) (West Supp. 1980).

the Wisconsin and Indiana statutes. For example, the Illinois procedure, like the UPC, contains an implicit presumption that interested persons assent to independent administration until they dissent, and includes effective mechanisms for objection.¹⁰⁵ By contrast, the new Wisconsin and Indiana procedures require signed and filed consents of all interested persons as a precondition to independent administration.¹⁰⁶

Draftsmen of the Illinois amendments were also frustrated by representatives of corporate sureties who persuaded the legislature to drop provisions from the bill that would have eliminated bond requirements for independent fiduciaries.¹⁰⁷ The existing Illinois Probate Code had generally enforced provisions of wills that excused bonds, and lawyer-drawn wills routinely excused bond provisions. Probate court personnel who believed that a bond nonetheless should be required were forced to resort to tightly drawn exceptions to the Code. However, nothing in the new independent administration can relieve successors to an intestate decedent of the expense of a probate bond. The Michigan statute stands ahead of its Illinois, Wisconsin, and Indiana counterparts on this point.¹⁰⁸

The Illinois legislature also compromised the originally proposed closing procedures for estates in independent administration.¹⁰⁹ The bar associations that sponsored the original proposal had followed the UPC and recommended that filing of closing statements be op-

105. ILL. ANN. STAT. ch. 110½, §§ 28-2, 28-4 (Smith-Hurd Supp. 1980).

106. See WIS. STAT. ANN. § 865.02 (West Supp. 1980) (consent of all interested persons is required unless the will names a personal representative who accepts appointment and furnishes bond); IND. CODE § 29-1-7.5-2(a) (Cum. Supp. 1979).

107. Recommendations of the joint committee of the Chicago Bar Association and Illinois State Bar Association, as well as a draft of legislation proposed to effectuate the recommendations, were circulated in a report of the joint committee dated June 25, 1976 [hereinafter cited as *Joint Committee Report*]. A copy of this report, and of the bill as it appeared in a draft of October 14, 1976, are on file with the *Michigan Law Review*. The joint committee recommended that:

No bond would be required of the independent representative, even in an intestate estate. However, any interested person could require the usual bond at any time by securing a termination of independent administration.

108. Compare MICH. COMP. LAWS ANN. § 700.313 with ILL. ANN. STAT. ch. 110½, §§ 28-1 to 28-12, WIS. STAT. ANN. § 865.07(1)(f) (West Supp. 1980), and IND. CODE § 29-1-7.5-1 to 29-1-7.5-8 (1976 & Supp. 1979).

109. The recommendation of the joint committee of the Chicago Bar Association and Illinois State Bar Association regarding closing papers had been as follows:

When the estate was fully administered, the representative would be accountable to all interested persons for his administration and distribution of the estate, but he would not be required to present an account to the court. If the independent representative wanted a court order of discharge he would be entitled to one upon filing applicable receipts and approvals from the interested persons, but would not be required to file a detailed accounting of his receipts and disbursements in the court.

Joint Committee Report, *supra* note 107, at 4-5.

tional. The legislation added notice and accounting requirements to closing statements and made filing of closing statements mandatory.¹¹⁰ Since closing procedure for independent fiduciaries involves paperwork and special requirements, many fiduciaries may exercise an option to close independent administrations by conventional procedures involving an accounting to the court and distributive order.¹¹¹

Still, Illinois independent administration plainly offers significant opportunities to trim red tape. It eliminates requirements for orders of sale, orders fixing family allowances, orders approving compromises of claims, and other court orders or filings that previously applied to administration of all intestate estates and some estates governed by wills. In addition, the new procedure permits facts and figures regarding estate settlements to be kept off the public record, an advantage for many successors. Independent administration also frees successors and their assistants from inquiries and nitpicking requirements that court personnel can erect when court accountings are unavoidable. Thus, the statute should enable fiduciaries and attorneys to discharge their responsibilities more efficiently; whether fee reductions in fact result remains to be seen.¹¹²

110. ILL. ANN. STAT. ch. 110½, § 28-11 (Smith-Hurd Supp. 1980). The legislation added a requirement that statements from distributees be attached to the closing statement showing that each received copies of an estate inventory and an accounting by the fiduciary. It also requires the fiduciary to state whether fees paid or payable to the fiduciary and to the attorney have been approved by all interested persons. Section 28-11(7), (8).

If the filed closing statement is accompanied by statements from all creditors and interested persons showing either that they have received all sums due from the fiduciary, or that they fully approve of the closing statement, the court must discharge the fiduciary immediately. In other cases, the court must notify interested persons who have not waived their right that they have ninety days to file objections to the closing statement. If no objections are filed, the fiduciary is discharged after the waiting period. If an objection is pending at the end of the period, the court must notify all interested persons and may order the fiduciary to submit a verified account of his administration to the court. Section 28-11.

111. Independent fiduciaries are especially likely to choose conventional closing procedures if the successors are numerous and widely scattered. The requirement of the special procedures that independent fiduciaries attach statements from distributees to the closing statement, for example, causes the burden of the special closing procedures to become especially onerous as the number of successors grows. See note 110 *supra*. Infrequent use of the special procedures will also result if the unavoidable bondsmen insist upon adjudicated closings and discharge orders.

112. One final technical note: Illinois stands alone in accepting a theory of unsupervised administration and distribution without providing a limitations section to settle distributions made without adjudication. The omission is not surprising, for Illinois probate law has never included a statutory time limit on proceedings to probate wills and administer estates, and the probate of a late-discovered will is not considered to be a contest of a previously probated will even though the later will revokes the earlier one. It is unfortunate, however, that the Illinois lawyers who prepared the recent legislation did not see fit to arrange independent administration so that distributions from an independent fiduciary would become more secure than distributions ordered in a supervised proceeding.

Wisconsin. Wisconsin's "informal administration" procedure was enacted in 1973¹¹³ in response to a citizens' petition signed by more than 300,000 voters demanding probate reform.¹¹⁴ The procedure is designed to be invoked either as a part of a proceeding to secure both probate of a will and an appointment of a fiduciary or after an estate has been opened by conventional procedures.¹¹⁵ When used in the first setting, the procedure follows standard estate opening procedures of the adjudicative variety.¹¹⁶

In either setting, threshold requirements are inconsistent with the UPC. Estates of all sizes may use independent probate, but all interested persons must consent to the proceeding and to the person who will serve as fiduciary unless priority to administer is held by a named executor who elects the unsupervised procedure.¹¹⁷ Advance notice to all interested persons, a feature of Wisconsin's standard adjudicated opening, is required, but may be waived; a published notice to creditors is also required.¹¹⁸

Persons eligible to serve as fiduciaries under the new procedure must exhibit the same qualifications that apply in standard proceedings. If there is no named and qualified executor, only a qualified person who is chosen by all heirs or all will beneficiaries may serve. Contrary to the principles of the UPC,¹¹⁹ the standard qualifications discourage use of nonresidents who may be preferred by the successors. This discrimination seems unnecessary since the new procedure includes a long-arm statute that subjects anyone accepting letters to the continuing personal jurisdiction of the court.¹²⁰

Some elements of independent administration and closings are

113. Act of June 22, 1973, ch. 39, § 9, 1973 Wis. Laws 102 (codified at WIS. STAT. ANN. §§ 865.01-.19 (West Supp. 1980)).

114. Comment, *Informal Administration of Decedents' Estates in Wisconsin*, 1974 WIS. L. REV. 581, 581; *On, Wisconsin: UPC's "Flexible System" Is Near*, UPC NOTES No. 5, at 1 (June 1973).

115. WIS. STAT. ANN. § 865.04 (West Supp. 1980).

116. Consistent with the UPC, *see* text at note 46 *supra*, both the standard and informal procedures permit probate of a will on the strength of an attestation clause reciting that the elements of due execution have occurred; it is unnecessary to produce an attesting witness in person or by affidavit. WIS. STAT. ANN. § 856.15 (West Supp. 1980). Under the informal procedure, the moving document is an "application" to the "probate registrar," rather than a "petition" to the court. *See* §§ 865.03, .04.

117. WIS. STAT. ANN. § 865.02 (West Supp. 1980). Under the UPC, unanimous consent to independent procedures is not required, and the decedent's spouse can act as independent fiduciary without unanimous consent in the absence of a named executor. *See* text at notes 44-48 *supra*.

118. WIS. STAT. ANN. § 865.05(1) (West Supp. 1980). The UPC requires notice only to interested persons who have demanded it. U.P.C. §§ 3-306, -310. *See* text at note 45 *supra*.

119. *See* text at note 49 *supra*.

120. WIS. STAT. ANN. §§ 865.07, -.08 (West Supp. 1980).

consistent with the UPC, but several are not. On one hand, contrary to the UPC,¹²¹ the registrar has discretionary power to require bond even where a will excuses bond.¹²² Inventories must be prepared and copies furnished to all interested persons, although court filing of the inventory is optional.¹²³ On the other hand, procedures for ascertaining and eliminating creditors claims are the same as in court supervised administrations¹²⁴ and appear to meet UPC standards. Fiduciaries governed by the new law enjoy full administrative powers like those available to supervised probate fiduciaries in Wisconsin. Purchaser protection for persons dealing with the estate fiduciary or with distributees of the estate is also provided and may be, but should not be, construed to apply only to fiduciaries appointed under the new procedure.¹²⁵ Contrary to the UPC, closing is by a sworn filed document. However, the document need state only that various statutory requirements have been met; details are not required. Also unlike the UPC, the registrar is empowered to determine whether attorneys' fees charged are just and reasonable and to refer excessive fee problems to the court for resolution.¹²⁶ Liabilities left dangling by the absence of an adjudicated closing are barred by limitations that follow UPC standards.¹²⁷

The 1973 Wisconsin legislation was heavily publicized as permitting "do-it-yourself" probate of estates. Apprehensions about this

121. Both the UPC and Wisconsin enable a registrar to decline an application for any or no reason. See WIS. STAT. ANN. § 865.08(3) (West Supp. 1980); U.P.C. §§ 3-305, -309.

122. WIS. STAT. ANN. § 865.07(1)(f) (West Supp. 1980). This provision is inconsistent with UPC principle 5 at note 51 *supra*.

123. WIS. STAT. ANN. § 865.11 (West Supp. 1980). This principle is inconsistent with UPC principle 7 at note 53 *supra*.

124. As originally enacted, the relevant section of the Wisconsin Probate Code, Act of June 22, 1973, ch. 39, sec. 9, § 865.135, 1973 Wis. Laws 102 (repealed 1976), described a slightly different mode of presenting claims in an informal administration. The section was repealed in 1976, Act of June 10, 1976, ch. 331, § 36, 1976 Wis. Laws 955, and § 865.01 was amended to redescribe informal administration as court proceedings, presumably to clarify that standard claims-presentment statutes governed claims in independent administration. Act of June 10, 1976, ch. 331, § 26, 1975 Wis. Laws 955 (1976) (codified at WIS. STAT. § 865.01 (1977)).

125. The Wisconsin Probate Code, WIS. STAT. ANN. §§ 857.01-.03 (West Supp. 1980), confers title to estate assets on Wisconsin personal representatives and directs them to manage estates; § 860.01 expressly confers the power "to sell, mortgage or lease any property in the estate without notice, hearing or court order" on personal representatives and relieves purchasers of a duty to inquire regarding the propriety of a personal representative's exercise of the power. Section 865.09 gives an independent personal representative all powers of a personal representative holding letters issued by the court. A special statute protecting purchasers from distributees of a personal representative, which is necessary in independent administration because of the absence of any court order settling questions regarding the validity of his distribution, is included in the chapter describing independent probate. See WIS. STAT. ANN. § 865.15 (West Supp. 1980).

126. WIS. STAT. ANN. § 865.16 (West Supp. 1980).

127. WIS. STAT. ANN. §§ 865.17, .19 (West Supp. 1980).

development on the part of probate court personnel probably inspired a provision in the legislation as first enacted ordering that

The probate registrar, the deputy, or members of the staff of the probate registrar, or other persons designated to perform the duties of the probate registrar, under this chapter, shall *not* be obligated to prepare, assist or advise in the preparation of any of the documents required to be prepared and filed by the personal representative under this chapter.¹²⁸

In 1978, the word "not" was deleted, and the words "within their competence" were inserted in its place, completely reversing the thrust of the statement.¹²⁹

Wisconsin's opening ceremony, featuring a requirement of advance notice to interested persons and other trappings of an adjudicatory procedure, is an unnecessary complication by UPC standards. The discretionary powers of the registrar to decline applications, to compel independent fiduciaries to post bond, and to review attorneys' fees that have not been protested are understandable vestiges of the notion that probate courts guard estates. But they are unfortunate and unnecessary contradictions of the principle of testator-successor control of estates. The closing statement requirement is unnecessary but not very burdensome.

In other respects, the Wisconsin version of independent administration appears to meet UPC standards¹³⁰ and to offer a clear and practical procedure for administering and distributing estates, once opened, with minimum court contact. The flaws mentioned lend the procedure to abuse by courts or registrars interested in enforcing the law for its own sake or for their own importance. Since the independent administration procedure offers no relief from overly formal opening procedures for probate of wills and appointment of fiduciaries, and gives wide discretion to the Registrar, it is not surprising that the new procedure is rarely used in some areas of the state, or that it accounted for only seventeen percent of all Wisconsin

128. Act of June 22, 1973, ch. 39, sec. 9, § 865.065, 1973 Wis. Laws 102 (repealed 1978) (emphasis added).

129. Act of May 16, 1978, ch. 343, sec. 1, § 865.065(2), 1977 Wis. Laws 1350 (1978) (codified at WIS. STAT. ANN. § 865.065(2) (West Supp. 1980)).

130. Procedures for ascertaining and eliminating creditors' claims are the same as in court supervised administrations, WIS. STAT. ANN. § 865.01 (West Supp. 1980), and appear to meet UPC standards. Independent fiduciaries have full administrative powers. Purchaser protection for persons dealing with the estate fiduciary or with distributees of the estate is also provided; these may, but should not, be construed to apply only to fiduciaries emerging from the new procedure. Compare WIS. STAT. ANN. §§ 857.01, 857.03, 860.01, 865.09, 865.15 (West Supp. 1980) with U.P.C. §§ 3-714, 3-910. Liabilities left dangling by the absence of an adjudicated closing are barred by limitations that follow UPC standards. Compare WIS. STAT. ANN. §§ 865.17-.19 (West Supp. 1980) with UPC §§ 3-1005, 3-1006.

estates in 1978. Nor is it surprising that it usually involves a lawyer.¹³¹

Still, the new procedure appears to have lowered legal costs, and it is being used enough to become a fixture of Wisconsin law that may be expanded upon in the future.¹³² Perhaps it will be used more frequently now that the registrars have been directed to give more assistance to persons in preparing forms required for informal procedures.¹³³

Indiana. Indiana's version of independent administration, entitled Unsupervised Administration, is contained in a short 1975 addition to the Indiana statutes.¹³⁴ Its drafting is attributable to lawyers who dominated the State's Probate Code Study Commission, which began serious study of the Uniform Probate Code only after being directed by the legislature to do so.¹³⁵

The unsupervised administration procedure is integrated with Indiana's standard opening procedure, but threshold requirements are added for unsupervised administration. The standard opening procedure discourages advance notice of an opening petition, because it requires that a jurisdictional notice of the proceeding be given after letters have been issued.¹³⁶ When unsupervised administration is sought, however, as it may be at the time of or subsequent to filing of an initial estate proceeding, the clerk must publish a special notice of the petition for the benefit of creditors.¹³⁷ Other special threshold requirements are potentially quite formidable, presumably reflecting either extreme reluctance to alter Indiana's existing probate procedures in any substantial way, or hostility to the concept of independent administration, or both. Before granting a petition for unsupervised administration, the court must find that "the estate is

131. See McCarty, *Informal Administration in Wisconsin*, 5 PROBATE NOTES No. 3, at 1 (Spring 1979).

132. *Id.*

133. See text at notes 128-29 *supra*.

134. Probate Reform Act of 1975, Pub. L. No. 125, 1975 Ind. Acts 606 (current version at IND. CODE §§ 29-1-7.5-1 to -8 (1976 & Supp. 1979)). See Poland, *Trusts and Decedents' Estates, Survey of Recent Developments in Indiana Law*, 9 IND. L. REV. 371, 383-88 (1975).

135. See Poland, *supra* note 134, at 377.

136. See IND. CODE §§ 29-1-7-4, -7 (1976). The standard opening procedure is a variant of the Model Probate Code. See Model Probate Code § 68, contained within L. SIMES, PROBLEMS IN PROBATE LAW (1946).

137. See IND. CODE § 29-1-7-7.5-1(b) (1976). This special notice may not have to occur prior to the granting of the petition. However, if the statute is interpreted differently, unsupervised administration would involve a *delay* for published notice that does not relate to supervised administration proceedings, a burden that is more than the added expense of an extra published notice.

solvent; the personal representative is qualified to administer the estate without court supervision; the heirs, or legatees and devisees, . . . freely consent to and understand the significance of administration without court supervision; and the will does not request supervised administration."¹³⁸

Once the initial barriers have been surmounted, the balance of the Indiana procedure appears to be free of court control; unsupervised fiduciaries have broad statutory powers, but there are some catches. First, either on its own motion or that of any interested person, the court may revoke an order of unsupervised administration and make any order regarding future estate activities that it pleases.¹³⁹ Secondly, a new statutory power to sell land¹⁴⁰ is unsupported by purchaser protection provisions that might serve to relieve purchasers of concerns regarding the propriety of the fiduciaries' exercise of the power. Hence, it is of little importance.

Also, survivors to whom land is distributed in an unsupervised administration face title problems. Under supervised administration, the title of purchasers or distributees to such property is made marketable either by specific time limitations or final court orders that preclude any future claims that may arise for the property.¹⁴¹ For example, a court order of final distribution bars probate of a will and therefore eliminates the possibility of late-probated wills that would otherwise be a cloud on the title of distributees. Under unsupervised administration, however, there is no final order of distribution. Instead, the possibilities of late-discovered wills and erroneous identification of heirs or devisees remain as title clouds until barred by time limitations in the new law;¹⁴² challenges to a

138. IND. CODE § 29-1-7.5-2(a) (Cum. Supp. 1979); see generally Jurgemeyer, *Indiana Probate Reform*, UPC NOTES No. 16, at 3 (July 1976).

139. See IND. CODE § 29-1-7.5-2(c) (Cum. Supp. 1979). Another possible catch is the requirement of posting bond. The sections dealing with unsupervised administration are silent about whether bond may be required of an unsupervised personal representative.

140. IND. CODE § 29-1-7.5-3(6) (Cum. Supp. 1979).

141. Under formal, supervised administration, wills are not contestable unless challenged within five months of being presented for probate. IND. CODE § 29-1-7-17 (1976). Intestate succession is final if no will is offered for probate before the final decree of distribution is entered, and purchasers from heirs are protected from late-probated wills if they purchase in good faith after five months from death and before a will has been duly probated. Section 29-1-7-15.1. Creditors' claims and a spouse's elective rights are eliminated by time limits. See §§ 29-1-14-1 (5 months after first publication for creditors' claims), and 29-1-3-2 (10 days after expiration of nonclaim period for spouse's election). Time limits on the probate of wills, will contests, spouse's election, and creditors' claims apply to unsupervised estates as well as to supervised ones.

142. IND. CODE § 29-1-7-15 (1976) bars probate of a will only after "the court decrees final distribution of the estate," an event that never occurs if final settlement and closing take place through unsupervised administration.

distribution are barred only at the later of three years from death or one year from the closing of an unsupervised administration.¹⁴³ Distributees frequently will be unwilling to wait until the third anniversary of death to market estate assets. Accordingly, title considerations will compel independent fiduciaries to forgo unsupervised administrations and seek court orders of final distribution.

Perhaps the unsupervised administration procedure offers some advantage to successors of estates consisting largely of cash or readily marketable securities. In these cases, title questions that affect purchasers are settled as a practical matter once registration has been transferred from the decedent's name to the name of a purchaser or successor. In intestate cases, the unsupervised representative's statutory powers¹⁴⁴ and letters of administration should suffice to permit sales, if necessary, and to facilitate final distribution without court order. For testate estates, the procedure supplies administrative powers that may not be provided for in the will as well as an escape from inventory and accounting requirements.¹⁴⁵ These advantages encourage the cooperative action necessary to invoke the procedure.¹⁴⁶

Still, the procedure is not likely to be heavily used so long as court personnel have virtually unlimited discretion to give or withdraw the authority contemplated by the statute. The procedure should be strengthened by addition of explicit purchaser protection provisions, by significant reduction of the threshold requirements, and by limitation of the discretionary authority of the probate court to terminate unsupervised administration.

Missouri. The 1980 enactment of a system of independent administration in the Missouri code¹⁴⁷ seems surprising in view of a previously existing provision in the state's probate code that deals with compensation for personal representatives and their attorneys.¹⁴⁸ For personal representatives, the provision fixes *minimum*

143. IND. CODE § 29-1-7.5-7 (Cum. Supp. 1979).

144. See IND. CODE §§ 29-1-7.5-3(19), (23) (Cum. Supp. 1979).

145. See IND. CODE §§ 29-1-7.5-3, -4 (Cum. Supp. 1979).

146. However, since the court that issues letters to an unsupervised personal representative can invoke standard procedures on its own motion at any time and for any reason that it can assert to be in the best interests of creditors or others interested in the estate, an unsupervised personal representative will be subject to the wishes of the court in relation to bond, inventory, and accounting requirements.

147. 1980 Mo. Legis. Serv. (Vernon) 637 (effective Jan. 1, 1981).

148. MO. ANN. STAT. § 473.153 (Vernon 1956).

fees¹⁴⁹ and provides that additional, reasonable compensation may be allowed *without* demonstration of extraordinary services. Also, it fixes parameters for the aggregate compensation of two or more joint or successor representatives.¹⁵⁰ For estate attorneys, the provision requires the same minimum fees as are provided for estate representatives and also permits higher reasonable allowances without regard to extraordinary services. It prohibits double fees for an attorney who also serves as personal representative, and authorizes reduction or denial of compensation for any failure of performance as representative. It also mandates denial of any attorney's fee upon a finding of "wrong, improper or injurious" conduct by the attorney. Finally, to assure that every estate has an attorney, the fee section directs that a personal representative who is not an attorney must be represented in court by an attorney, and specifies that the attorney cannot be the personal representative's salaried employee.

With this extraordinarily complete and candid guaranty of attorneys' fees for probate work already established by statute, the enactment of a system of independent administration¹⁵¹ recommended by the Missouri State Bar Association posed the question of why the lawyers wanted any change. The lawyers were not concerned that the statutory fee arrangement might be leading to probate avoidance and the associated loss of fees; otherwise, they would not have recommended that the statutory fee arrangement be extended to unsupervised estates.¹⁵² Nor were they attempting to increase their fees by assuming the traditional role of probate court personnel in determining what fees in excess of the statutory minima are reasonable; one of the new independent administration sections states that the minimum fee cannot be exceeded without a court order.¹⁵³

Instead, Missouri lawyers were interested in subterfuge. They supported a new "independent administration" statute that violated the principles of the UPC and contradicted even the basic notion that independent administration is disconnected from the court. The statute did not significantly promote efficiency or lower costs. It

149. Minimum fees are determined by a six point scale of percentages of certain estate assets. Land in an estate is not a part of the probate assets to which the percentage scale applies unless it is sold pursuant to court order during the course of administration.

150. The aggregate compensation for two or more representatives is required to be twice the normal minimum fee, but no more than five percent of the asset base. This five percent ceiling is perforated, however, by language sanctioning added fees for extraordinary services or for court directed possession of estate real property by the fiduciaries.

151. MO. ANN. STAT. §§ 473.780 to .843 (Vernon Supp. 1981).

152. See MO. ANN. STAT. § 473.823 (Vernon Supp. 1981).

153. MO. ANN. STAT. § 473.823(3) (Vernon Supp. 1981).

makes independent administration available only through conventional opening procedures.¹⁵⁴ Bond requirements for independent fiduciaries are the same as for estates in supervised proceedings,¹⁵⁵ inventories are required to be filed in court,¹⁵⁶ and closing statements that include a complete accounting of all estate receipts and disbursements must be filed with the court.¹⁵⁷ Finally, the preservation of fixed minimum fees and court control of fee adjustments contradicts the UPC purposes of encouraging fee agreements, fee competition, and associated fee reductions.¹⁵⁸ Thus, the new statute preserves the probate bar's extraordinary monopoly in the probate sector and perpetuates a very comfortable, statutory minimum compensation for its work.

But why would the bar work to amend statutes if no changes result? The answer is obvious: probate law reform has been in the air. The lawyers apparently concluded that it was advantageous to sponsor elaborate amendments to their code that could be said to adopt the major recommendations of the Uniform Probate Code, but which left their probate fees undisturbed. In addition, they may have wanted the statutory fee schedule as a safe haven from probate court personnel who, in response to public cries for relief from high fees, might have begun or intensified efforts to check the lawyers' work and compensation.

So much for the likelihood that the Missouri amendments will achieve a UPC purpose of encouraging fee agreements, fee competition, and associated fee reductions. Missouri's probate law will remain inconsistent with the UPC's procedural reforms until the Missouri legislature repeals the 1955 fee statute and allows survivors to handle their own uncontested probate matters, with or without legal or other assistance.

Missouri's independent administration does offer some technical advantages over conventional proceedings. The principal advantages are that: (1) the procedure affords escape from court appointed appraisers for an estate;¹⁵⁹ (2) during a defined period the probate

154. Missouri's independent administration procedure becomes available in connection with conventional opening proceedings of the notice-after-probate type. Unless the will authorizes or directs independent administration, the consent of all apparent successors — devisees or heirs — is required. MO. ANN. STAT. § 473.780 (Vernon Supp. 1981). Presumably, the required consent must be recited in the petition; the statute does not specify special formalities.

155. MO. ANN. STAT. § 473.157 (Vernon 1956 & Supp. 1981).

156. MO. ANN. STAT. § 473.793 (Vernon Supp. 1981).

157. MO. ANN. STAT. § 473.840 (Vernon Supp. 1981).

158. See text at note 62 *supra*.

159. MO. ANN. STAT. § 473.797 (Vernon Supp. 1981).

court, though retaining jurisdiction of an unsupervised estate, cannot issue any orders relating to administration unless requested by an interested person;¹⁶⁰ (3) independent fiduciaries have broad statutory administrative powers that include the power to sell land at private sale;¹⁶¹ (4) an independent personal representative is protected against both personal liability on contracts that are proper business for an estate and liability in tort arising from control of estate assets where no personal fault is involved;¹⁶² (5) an independent representative may possess land in an estate without court order;¹⁶³ and (6) final accounts that must be prepared and filed in court need not be accompanied by vouchers to support claimed disbursements.¹⁶⁴

Even these technical advantages may be partially offset by weaknesses in the new statute. First, a serious title problem arises from an independent representative's power to sell without court order because the statute does not protect a purchaser who fails to ascertain that the selling fiduciary is acting improperly, even where the impropriety of the action is not obvious. Supervised executors have also been permitted to make sales prior to court approval of final accounts, but only if the power to sell is contained in the will. If Missouri title experts decide to approve unsupervised sales without waiting for court approval of final accounts,¹⁶⁵ then the failure of the new independent administration procedure to provide adequate purchaser protection arguably is no problem. The new statutory authority to sell without court order should be as effective as has been customary for powers in probated wills.

Second, distributees who receive land from an independent fiduciary face a title problem because the statute does not protect persons who buy from the distributees. An estate distribution that has not been approved by binding court order may be erroneous; the possibility of error clouds the title. If the estate is intestate and there has been no binding adjudication determining the heirs, the prospect of an omitted heir haunts the title. If the estate is controlled by a will, doubts whether the will was properly construed and effectuated by the distribution may arise.

160. MO. ANN. STAT. § 473.787(2) (Vernon Supp. 1981). However, the court may intervene when an independent fiduciary fails to close the administration within one year or to obtain an extension. MO. ANN. STAT. § 473.843 (Vernon Supp. 1981).

161. MO. ANN. STAT. § 473.810 (Vernon Supp. 1981).

162. MO. ANN. STAT. § 473.820 (Vernon Supp. 1981).

163. MO. ANN. STAT. § 473.803 (Vernon Supp. 1981).

164. MO. ANN. STAT. § 473.840 (Vernon Supp. 1981).

165. This has been the practice of Missouri title experts. It is unclear, however, whether this practice will continue under the new independent administration procedures.

If an independent representative's final account, proposed distribution,¹⁶⁶ and closing statement remain unquestioned, then the fiduciary is released.¹⁶⁷ Perhaps Missouri title experts will conclude that a kind of protection against title defects arises at that time. If they do, the utility of independent administration will be enhanced. It would require, however, a change in the title experts' habit of avoiding risks of title whenever possible.

These shortcomings suggest that Missouri's independent administration is inadequate where real estate is involved; judicial sale proceedings and judicially settled final accounts and distributions will probably accompany use of the new procedure as a matter of routine when land is involved. If this proves to be the case, the new procedure simply provides Missouri lawyers with a few more uneconomical procedural wrinkles to use, as they see fit, while continuing the old probate game. All things considered, the Missouri venture toward independent administration appears not to contribute significantly to greater probate efficiency or lower probate costs.

Kansas. Pressure in the early seventies to enact the Uniform Probate Code moved the Kansas Judicial Council, in October 1972, to designate a probate law study committee to consider probate law reform.¹⁶⁸ The committee decided that the fundamental UPC reforms were precluded by a Kansas Supreme Court decision¹⁶⁹ that had overturned a probate proceeding in which statutory notice requirements had not been met.¹⁷⁰ Conceding for the sake of argument that the Kansas and the United States Constitutions require a fully noticed proceeding to open an estate, this form of opening procedure does not necessarily entail a supervised administration and an adju-

166. See MO. ANN. STAT. §§ 473.840(2)(4)-(5), -.840(4) (Vernon Supp. 1981).

167. MO. ANN. STAT. § 473.840(6) (Vernon Supp. 1981) provides: "If no proceeding involving the independent personal representative is filed in the court within one year after the statement of account is filed, the representative thereby is discharged from further claim or demand by any interested party." The section contains no declaration that the estate as distributed is settled when the fiduciary is discharged.

168. See 48 KAN. JUDICIAL COUNCIL BULL. 81, 81 (1974).

169. See *In re Estate of Barnes*, 212 Kan. 502, 512 P.2d 387 (1973) (failure of executor to exercise due diligence in notifying heirs of probate proceedings violates due process).

170. See Hearrell, *Probate Law — A Study and Proposals*, 48 KAN. JUDICIAL COUNCIL BULL. 82, 83, 87-88 (1974). The inference in this report that constitutional barriers or concerns led the group to reject UPC's procedural recommendations is confirmed in a letter to the author from Richard Morse, a nonlawyer member of the Probate Law Study Advisory Committee, dated February 21, 1975: "One of our major concerns was in regard to sufficiency of notice and due process under the UPC. The *In Re Barnes* decision, 212 Kan. 505, had a major bearing on our action." A copy of this letter is on file with the *Michigan Law Review*. The committee's curious view of *Barnes* is discussed in Wellman, *Arkansas and the Uniform Probate Code: Some Issues and Answers*, 2 U. ARK. LITTLE ROCK L. REV. 1, 32 (1979).

licated closing; a fully noticed opening was combined with unsupervised administration in Wisconsin,¹⁷¹ for example.

In any event, the committee recommended, and the Kansas legislature dutifully enacted, an addendum to the Kansas Probate Code called the "Simplified Estates Act."¹⁷² The descriptive section implies that something other than supervised administration is involved, for a petition seeking application of the act requires the court to determine "whether the estate shall be administered as a simplified estate *or as a supervised estate*."¹⁷³ But, a fiduciary appointed under the new act must post bond¹⁷⁴ and file an inventory,¹⁷⁵ lacks power to sell real estate without court order,¹⁷⁶ and must file an account and distribute according to the court's final order.¹⁷⁷ Obviously, the act offers only a puzzle as to why anyone would use the new procedure, which involves a special inquiry by the court into why standard procedures are not being followed.

The Kansas legislation is without merit. It is an example of delaying tactics by probate insiders who were pushed to recommend changes in legislation they thought should be left undisturbed.

B. *District of Columbia: Probate Reform in Reverse*

The District of Columbia Probate Reform Act of 1980¹⁷⁸ is distinctly worse than the statutes of Indiana, Missouri, and Kansas, which do little or nothing to relieve the public of excessive procedural protections and costs in probate. While the new D.C. statute contains some elements of the UPC, it actually increases court involvement in estates. The following discussion explores the legislative background behind this surprising development in an effort to determine whether the enactment portends greater supervision of estates in other jurisdictions.

D.C. Law 3-72 originated in the late 1960s when an ad hoc committee of prominent Washington lawyers began to compare prelimi-

171. See text at note 118 *supra*; Wellman, *supra* note 4, at 463-72 (1970).

172. Kansas Simplified Estates Act, ch. 299, §§ 29-34, 1975 Kan. Sess. Laws 836 (codified at KAN. STAT. ANN. §§ 59-3201 to -3206 (1976)).

173. KAN. STAT. ANN. § 59-3202 (1976) (emphasis added).

174. KAN. STAT. ANN. § 59-3203(b) (1976).

175. KAN. STAT. ANN. § 59-3204 (1976).

176. Compare KAN. STAT. ANN. § 59-3204 with KAN. STAT. ANN. §§ 59-1407, -1410, -2301 to -2322 (1976).

177. Compare KAN. STAT. ANN. § 59-3205 with KAN. STAT. ANN. § 59-2247, -2248 (1976).

178. District of Columbia Probate Reform Act of 1980, D.C. L. No. 3-72 (May 7, 1980) (effective June 24, 1980) (to be codified in D.C. CODE ANN. §§ 20-107 to -1305) [hereinafter cited as D.C. Probate Reform Act, with reference to subsections in *future* codification].

nary drafts of the Uniform Probate Code and other probate legislation and to draft legislation to reform the District's rules. This work culminated in the introduction in late 1973 of S. 2826 in the 93rd Congress, which was reintroduced as Bill 1-142 in the District Council of the District of Columbia following the advent of home rule in 1974. Active study of the proposal began in mid-1977. By then a bill adapting the Uniform Probate Code to the District also had been introduced. In early 1980, following public hearings, a consultant's analyses, and circulation of three draft bills, a bill based on S. 2826 as changed in committee emerged and was promptly passed.¹⁷⁹

The original proposal by the ad hoc lawyer group would have brought the essence of the UPC's articles III and IV to the District. The bill offered an optional "administrative probate" procedure that embodied the advantages of the UPC's informal probate and appointment procedures: it permitted probate of a will without advance notice to heirs or production of attesting witnesses, and quick appointment of an estate fiduciary.¹⁸⁰ The bill also provided an informal administration procedure similar to the UPC's: it gave all personal representatives extensive statutory powers — including the power to sell and convey land — that could be exercised without special court orders.¹⁸¹ These procedures for quick openings and the broad statutory powers for fiduciaries were the bill's most radical changes. In addition, court filed inventories, appraisals, and accounts by personal representatives were made unnecessary if all successors signed and filed a waiver.¹⁸² Thus, an administration could be accomplished with a minimum of court supervision. The bill also specifically provided that a waiver could be effectively withdrawn by any interested party at any time, thereby changing an administration from independent to supervised status.¹⁸³ Finally, the bill included adequate provisions for the protection of purchasers from personal representatives or their distributees and limitations settling distributed estates against claims of improper administration or distribu-

179. See COUNCIL OF THE DISTRICT OF COLUMBIA, REPORT ON BILL 3-91, THE D.C. PROBATE REFORM ACT OF 1980, 1-2, 14, 18 (March 12, 1980) [hereinafter cited as D.C. COUNCIL REPORT] (on file with the *Michigan Law Review*).

180. S. 2826, 93d Cong., 1st Sess., § 201, 119 Cong. Rec. 42,382 (1973) [hereinafter cited as *Senate Bill*] (proposing new D.C. CODE §§ 20-507, -512). (On file with the *Michigan Law Review*.)

181. *Senate Bill*, *supra* note 180 (proposing new D.C. CODE § 20-916).

182. *Senate Bill*, *supra* note 180 (proposing new D.C. CODE § 20-919).

183. *Senate Bill*, *supra* note 180 (proposing new D.C. CODE § 20-919(b)).

tion.¹⁸⁴

As finally enacted, D.C. Law 3-72 retains some of the features of the original lawyers' bill. The new law provides an optional "abbreviated probate" procedure, under which wills may be probated and estates opened without advance notice, elaborate proofs or judicial hearings.¹⁸⁵ The role of the fiduciary, whether he is appointed in an "abbreviated probate" or a "judicial probate" opening proceeding, is defined by many provisions derived from the UPC including provisions for general fiduciary duties to administer and distribute the estate, broad statutory powers, and supporting purchaser protection.¹⁸⁶

But the resemblance to the UPC stops here. In spite of the adoption of several elements of the UPC, the new law actually increases court involvement in estates. There is no power to sell real estate without court order.¹⁸⁷ The ability of successors under the old procedures to waive the requirement of court filed inventories and accounts¹⁸⁸ is narrowed almost to extinction; waiver is permitted only when all successors are also serving as co-personal representatives.¹⁸⁹ Furthermore, the most that can be accomplished by waiver by successors anxious to control probate delays and cost is to reduce the Register's review of the account from "a formal Court audit" to "a cursory review to determine if the inventories and accounts appear regular on their face and are supported by reasonable documentation."¹⁹⁰ Court personnel will determine what distinctions, if any, are to be attached to these highly subjective formulae.¹⁹¹

Fiscal estimates accompanying the Judiciary Committee's Report

184. *Senate Bill*, *supra* note 180 (proposing new D.C. CODE §§ 20-918, -1503).

185. D.C. Probate Reform Act, *supra* note 178, at § 20-311.

186. *See, e.g.*, D.C. Probate Reform Act, *supra* note 178, at §§ 20-505, -701 to -705, -741 to -744.

187. Compare the new D.C. CODE § 20-916(w) proposed in *Senate Bill*, *supra* note 180, with the provisions of the D.C. Probate Act, *supra* note 178, that are to be codified at D.C. CODE §§ 20-741(u) and 20-742(b).

188. A "special bond" provision had long enabled many estates to escape court-supervised inventory and accounting requirements. Under the old procedure an estate could escape these requirements with the consent of all heirs or residuary devisees and an assumption of full and unlimited liability by the consenting successors for all known and all unknown estate liabilities. *See* D.C. COUNCIL REPORT, *supra* note 179, at 31-33.

189. D.C. Probate Reform Act, *supra* note 178, at § 20-731(a).

190. D.C. Probate Reform Act, *supra* note 178, at § 20-731(b).

191. The distinction between a "formal Court audit" and the new "cursory review" procedure is discussed in D.C. COUNCIL REPORT, *supra* note 179, at 56; DISTRICT OF COLUMBIA BAR — D.C. COURT SYSTEM STUDY COMMITTEE, FIDUCIARY, PROBATE, AND TAX REPORT 27-28 (Committee Draft dated Sept. 11, 1979) (on file with the *Michigan Law Review*) [hereinafter cited as HORSKY COMMITTEE REPORT]; and Memorandum from District of Columbia Bankers Association to David Clark, Chairperson of the Council of the District of Columbia Committee on the Judiciary (May 4, 1980) (on file with the *Michigan Law Review*). The memorandum observed:

that preceded enactment of the new law indicate that the new accounting requirement will require fiduciaries of "the vast majority" of estates, as contrasted with the historic sixty percent of estates, to file accounts that will be subject to the "cursory review" procedure.¹⁹² Consequently, five new positions costing an estimated \$68,849 in additional salaries, will probably have to be added to the staff of the Register of Wills. However, the estimates also indicate that increased collections from filing fees charged by the Probate Division of the Superior Court will more than cover the costs of the new staff.¹⁹³ Thus, the new procedure directly *increases* probate costs.

The requirement that practically all estate fiduciaries file inventories and appraisals of estate assets was made additionally onerous by two other changes that crept into the enacted bill. One change, relatively innocuous in the context of the D.C. lawyers' original recommendation that would have made filed inventories unusual, brings estate land under the responsibility of probate fiduciaries and, thus, extends probate court supervision to all real estate in estates.¹⁹⁴ Land must now be appraised in every estate,¹⁹⁵ and significant new appraisal costs will result.

Second, the lawyers' original recommendation included escape from court-appointed appraisers; fiduciaries could have selected any qualified appraiser.¹⁹⁶ However, as enacted, estate fiduciaries must convince the Register or the court that there is "good cause" why an appraiser other than one from a court-approved list should be used.¹⁹⁷ Fiduciaries who select an appraiser without approval run the risk that the appraiser's fee will be disallowed as an estate expense. Also, there is a risk that an official appraiser will have to be

In order to define and delimit "cursory review" and "reasonable documentation," the phrase "as shall be determined by rule of Court" should be added at the end of this sentence.

The recommended addition to the language of D.C. CODE § 20-732 did not find its way into the bill as enacted.

192. See D.C. COUNCIL REPORT, *supra* note 179, at 92.

193. These fees range from 0.5% of small estate values down to 0.05% of estate values in excess of one million dollars. Much smaller rates applied to the eliminated special bond procedures. New revenues also will be generated by the new law's extension of probate court supervision to all real estate in estates, thus subjecting the value of the estate realty to the percentage rates in the new filing fee structure. Previously, only the proceeds from real estate sold during administration were subject to probate controls and fees. D.C. COUNCIL REPORT, *supra* note 179, at 92-93.

194. See note 193 *supra*.

195. D.C. Probate Reform Act, *supra* note 178, at §§ 20-105, -711.

196. *Senate Bill*, *supra* note 180 (proposing new D.C. CODE § 20-907).

197. D.C. Probate Reform Act, *supra* note 178, at § 20-712.

engaged to repeat the appraisal. Obviously, the court's system of approving appraisers has been made more important by the new law.

The enacted measure also contains extensive provisions dealing with fees for personal representatives and attorneys.¹⁹⁸ It requires a court determination of fees in every case. Undoubtedly, this comforted some consumer advocates who sought relief from the old D.C. law that simply set fiduciary and attorney fees at ten percent of the value of personal assets, a rigid and unusually high rate compared with other statutory rates around the country.¹⁹⁹ But, in addition to the power to fix fees, the new law gives court personnel authority to determine whether fee requests are "accompanied by verified documentation" showing that five criteria for controlling fees have been met. The guidelines are anything but precise. Further, the claimant must send a copy of the fee request and supporting documentation to all interested persons²⁰⁰ Thus, considerable work, as well as additional charges for time spent, will be involved in complying with the procedure.

The elaborate nature of the procedures and especially the probable costs of protesting requested fees seem very likely to chill beneficiary interest in making such protests. Hence, the effectiveness of the system to control fees depends almost entirely on the performance of the Register of Wills Office. The outlook of the personnel there is almost inevitably closer to the professional fiduciaries and lawyers — fellow technicians who understand the law — than to survivors. Ironically, the procedure therefore seems destined only to sanction the rates set by lawyers for the additional work made necessary by the District's extravagant efforts to eliminate sin or error from the succession process.

Persons interested in probate reform should note the factors in the movement from the independent administration system proposed in the original D.C. lawyers' bill to the super-supervised system that emerged from the legislative process six years later. One important factor was the "Probate Reform Comparison Chart,"²⁰¹ a report pre-

198. D.C. Probate Reform Act, *supra* note 178, at § 20-751.

199. D.C. COUNCIL REPORT, *supra* note 179, at 62, referring to D.C. CODE ANN. § 20-1705(5) (1973). Probate fees in the District of Columbia have attracted considerable attention in recent literature. See P. STERN, *supra* note 2, at 35 (reporting fee allowances to D.C. probate lawyers of \$6,077 for a \$60,774.24 estate, and \$4,751.69 for an estate appraised at \$47,516.95).

200. D.C. Probate Reform Act, *supra* note 178, at § 20-751.

201. The D.C. Project, *Probate Reform Comparison Chart* (April 1978) (prepared by Thomas Farah of the Legislative Research Center, Georgetown University Law Center, for David Clarke, chairperson of the D.C. Council's Committee on the Judiciary) (on file with the *Michigan Law Review*) [hereinafter cited as *Comparison Chart*].

pared for the D.C. Council's judiciary committee. The document summarily condemned the major procedural recommendations in the original D.C. lawyers' bill that tended to expand testator-successor control. For example, the report condemned the UPC principle that no probate bonds should be required unless beneficiaries demand bond. The report stated that the principle "created an unjustified risk to all parties concerned."²⁰² There is no explanation or elaboration.

Similarly, the report rejected the UPC's position that where an estate is not opened, unsecured claims against the estate should be barred three years from death without the notice to claimants that would have been given had the estate been opened. The report explained that such a provision "would reward delay."²⁰³ Evidently, the staff concluded that successors could defeat creditors by failing to open estate administration. But creditors can initiate administration to protect themselves from delay. A creditor who fails to initiate administration within the three-year period, whether as a result of lack of inclination or failure to note that the debtor has died, is at the least negligent, and may not deserve legal protection.

The report rejected the existing D.C. "special bond" provision that excused court-filed inventories and accounts. The staff condemned this procedure as "illogical" because it required heirs to assume unlimited personal liability for estate debts.²⁰⁴ This conclusion did not address how a procedure can be illogical when it can only be applied with the express written consent of those affected. Presumably, anyone consenting to the special bond procedure was aware of the risk and considered it offset by the attendant advantages.

After discarding the special bond procedure, the staff recommended that court-filed inventories and accounts be required for every estate. They reasoned that estate fiduciaries must maintain estate records in order to provide statements of assets and accounts to beneficiaries demanding information. From this they leaped to the conclusion that court filing would involve so little additional expense or bother that successors should have the benefit of "the enormous value inventories and accounts offer beneficiaries, especially . . . in the framework of a system which places the burden on the beneficiaries to come forward to oppose actions of the fiduciary."²⁰⁵ It is hard to imagine a clearer revelation of the belief, shared by many

202. *Comparison Chart*, *supra* note 201, at 3.

203. *Id.* at 5-6.

204. *Id.* at 7-8.

205. *Id.* at 12.

probate court officials, that estate beneficiaries simply will be without effective protection unless the courts meticulously check the doings of fiduciaries, no matter who they are or who selects them.

The report also concluded that a personal representative should not be able to sell estate realty without a court order, apparently even where such power was expressly granted by the testator. The stated justification for this position is mechanical and incomplete. The staff started with the assumption that the fiduciary's bond must be increased to cover the proceeds of any land sale. From this, they reasoned that unless a fiduciary is forced to obtain a court order before selling real estate, there is no mechanism to assure that the bond increase would be in place before the sale was made.²⁰⁶ However, they ignored provisions in the old and new law that permit the required probate bond to be reduced below the normal statutory amount by testator or beneficiary waivers. They also ignored statutory formulae and procedures having no connection to the fiduciary's power of sale that could be applied to mandate an increase in bond when necessary to cover a land sale.

There is another anomaly here. The staff recommendation and the newly enacted statute narrow the question in a land sale proceeding to whether bond has been increased sufficiently to match the market value of the land;²⁰⁷ other questions surrounding the sale do not seem to be proper for the court to consider. This raises the interesting question of whether a surety's interest in obtaining an additional bond premium might be used to circumvent a provision in a will that purports to prohibit the sale of certain real estate.

The District's probate court officials did not entrust their cause against independent administration to the Probate Reform Comparison Chart, however. Probate court officials prepared documents opposing the independent administration proposals of the original ad hoc committee, explaining that court supervision of estates should be tightened rather than relaxed. The statements were directed to a D.C. bar committee charged with preparing a fiduciary, probate, and tax report as a part of a D.C. court system study.²⁰⁸ Superior Court

206. *Id.* at 22.

207. D.C. Probate Reform Act, *supra* note 178, states that § 20-742(b) provides:

In order to invest in, sell, exchange, or lease real property, the personal representative shall obtain a Court order. The court shall give this order upon certification by the personal representative that the penalty amount of the bond has been expanded by an amount equal to the fair market value of the real estate as appraised pursuant to subchapter II of chapter 7. Adjustments to the expanded penalty amount may be made by the Court after the proposed transaction.

208. Memorandum from Margaret A. Haywood, Judge, Superior Court of the District of Columbia, addressed to the D.C. Court System Study Committee of the D.C. Bar (undated)

Judge Margaret Haywood and Register of Wills Peter McLaughlin rested their case for increased supervision on their view that the quality of work in too many District probates already was abysmally low, and that a withdrawal of court supervision would make matters worse. Judge Haywood's comments were particularly sharp.

[T]here are lawyers whose lack of expertise is appalling . . . Nothing exists in the law, or procedure, or standards for practice, to serve as an eliminator [*sic*] and any lawyer is eligible to enter upon counselling the administration of an estate. The bungling and fumbling that goes on is beyond belief, and the instances of erroneous distribution, unauthorized disbursements, failures in adherence to rules of procedure, dilatory compliances, and other serious mishaps, designed or inadvertant . . . are legion.²⁰⁹

Register McLaughlin supported the judge's general statement with twenty-six cases involving serious errors of administration or distribution. He added that "[f]ortunately for all parties, the errors are discovered by our staff and, ordinarily, are corrected and all persons are made whole before it is too late."²¹⁰

(concerning *Draft Report of the Fiduciary, Probate, and Tax Subcommittee*, *supra* note 191) [hereinafter cited as Judge Haywood's Memorandum]; letter and attached memorandum from Peter J. McLaughlin, Register and Clerk, Office of Register of Wills and Clerk of the Probate Division, Superior Court of the District of Columbia, to Samuel F. Harahan, Director, District of Columbia Court System Study Committee of the District of Columbia Bar (May 24, 1979) [hereinafter cited as Register McLaughlin's Memorandum]. Copies of these documents are on file with the *Michigan Law Review*.

209. Judge Haywood's Memorandum, *supra* note 208, at 2.

210. Register McLaughlin's Memorandum, *supra* note 208, at 4-7. Descriptions as provided by Register McLaughlin in the first ten of the twenty-six cases listed in his memorandum are reproduced here for illustrative purposes:

Attorney/fiduciary paid over \$4,000 funeral expenses in an insolvent estate. (By law, the maximum allowable payment in such a case is \$600 to \$1,000).

Distribution of several thousand dollars was *not* made to a particular legatee because he is now deceased. (Legatee survived the decedent, and his estate would be entitled to legacy). Although the will specifically states distribution of estate assets to minors should be made to named trustees for benefit of the minors, the legacies were shown payable directly to the minors.

Distribution of \$11,000 was shown payable to decedent's widow ignoring docketed claims totalling over \$70,000.

Distribution of surplus of intestate estate was shown payable to two brothers of decedent, the attorney/fiduciary steadfastly maintaining that he could ignore a third brother whose whereabouts had been unknown for two years. (His share would be paid into the Court Registry pending his return.)

Fiduciary, decedent's only child, claimed reimbursement for funeral expenses when, in fact, decedent's widower had paid bill.

Executors claimed that a commission of fifteen percent (15%) (ten percent (10%) is the maximum allowed by law), reported joint property (which would pass outside probate to the joint owner), and made a notation in the account that decedent's home would have to be sold to pay decedent's debts, when, in fact, the house was owned as tenants by the entirety and not subject to decedent's debts.

In an insolvent estate, attorney/fiduciary showed payment only to creditors who had probated claims, ignoring many others of whom he knew and acknowledged.

Intestate estate showed distribution solely to decedent's widow, ignoring decedent's fourteen year old minor child.

The statements of Judge Haywood and Register McLaughlin plainly impressed the court system study committee. It issued a draft report a few months later reversing its prior support of independent administration.²¹¹ The Haywood-McLaughlin statements also swayed public opinion. The Washington Bar Association, an organization of black lawyers, and a D.C. Bar Association citizens' advisory committee of thirty-three nonlawyers quickly picked up the statements. They urged revision of the pending probate bill according to the recommendations of the probate officials "to protect consumers and to provide for freedom of information."²¹²

Spokesmen for independent administration noted flaws in the widespread arguments against their position. They pointed out that the recommended "cursory review" of accounts in all cases would be tantamount to a requirement of court audit since an account submitted for "cursory review" must be "supported by reasonable documentation."²¹³ Why, they asked, should the law subject all estates to the delays and administrative costs of court audits and court supervision generally when all of the data indicated that most fiduciaries-attorneys appear to act flawlessly?²¹⁴ Also, they noted that since in-

Distribution was shown payable directly to a hopelessly incompetent person. (A conservator must be appointed to receive his share.)

211. See HORSKY COMMITTEE REPORT, *supra* note 191, at 23: "For the protection of all parties, all estates should be subject to a reasonable review with reasonable documentation to protect both fiduciaries and the citizenry from mistakes in this very technical field."

212. Letter from Citizens' Advisory Committee to David Clarke, Chairperson, D.C. Council Committee on the Judiciary, 1-2 (Aug. 3, 1979); Letter from J. Clay Smith, President, The Washington Bar Association, to Charles A. Horsky, Chairman, Court Systems Study Committee (Aug. 7, 1979) (copies on file with the *Michigan Law Review*).

213. See memorandum from Virginia L. Riley, Chairperson, Steering Committee, Division VIII (Trusts, Estates Probate) D.C. Bar, to David Clarke, Chairperson, D.C. Council Committee on the Judiciary (March 4, 1980) (on file with the *Michigan Law Review*). At page 5, the memorandum criticizes what soon was to be enacted as § 20-732 of the D.C. Code. The memorandum observes:

Subsection (b) attempts to provide for the type of review of accountings to be conducted by the Court in lieu of a formal audit, in those cases where all heirs and legatees have filed appropriate waivers. The reference in this subsection to "reasonable documentation" could be cited by the Court as justification for requiring the filing of all cancelled checks, receipted bills and bank records, as is now required under a formal audit. Thus there would be no point in obtaining the waivers of heirs and legatees to the formal audit.

214. See letter from Doris D. Blazek, member, Steering Committee, Division VIII (Trusts, Estates & Probate) D.C. Bar, to Gregory E. Mize, Staff Director, D.C. Council Committee on the Judiciary (Dec. 26, 1978) (on file with the *Michigan Law Review*). The letter states:

Whether or not the District of Columbia should move in the direction of less supervised administration is not a question subject to one clear answer. Those who favor court supervision desire a system designed to protect beneficiaries from that fiduciary who is the "rotten apple in the barrel." In order to prevent misappropriation or diversion of assets in that exceptional estate, all estates will be subject to delays and greater administrative costs. Others suggest that it is more important to make the administrative process as easy as possible for beneficiaries and heirs, and the risk of a dishonest or irresponsible fiduciary must simply be accepted in favor of the overall good conferred by facilitating the process. A number of jurisdictions have determined to follow the latter course, which must be

dependent administration does not disturb basic accountability by estate fiduciaries to beneficiaries, it will not leave them uninformed, or deprive them of inventories and accounts.²¹⁵ Since the beneficiaries are informed, why should the court intervene if the beneficiaries are entirely satisfied?²¹⁶ In a supervised proceeding the court examines all papers that are required to be filed, regardless of the satisfaction of the fiduciary-successor group. There may be no dispute to generate interest in and thought about how the law should apply to the particular case. The court may therefore require corrections for reasons that are significant to it alone. Since there is no interest, there will be no appeal of such corrections, and the possibly ill-informed lights of probate magistrates become the law by default.

Even if one assumes that all successors want the law as perceived by the probate office to be followed meticulously, the meticulous audits conducted by the Register of Wills Office may be unnecessary. Some District lawyers with marginal knowledge of probate law may accept estate work counting on the audits to straighten matters out if, by chance, their guesswork proves to be wrong. With fees rigidly set by law and custom, many survivors simply may not care whether their attorney or the Register of Wills Office detects and corrects errors in the handling of their estates. Thus, the audits themselves may be creating the apparent need for the audits by encouraging the participation of marginally competent lawyers.

Nevertheless, in the end, "consumer protection" carried the day in the District, and a law with "reform" in its title is now on the books. It relegates the administration of every District of Columbia probate estate to whoever happens to head the Office of the Register of Wills.

Perhaps, the new D.C. law is a political aberration that other jurisdictions are unlikely to emulate. The Washington area is unique for its large population of lawyers who are primarily concerned with federal matters and know little about probate law. Surely it stands

regarded as the current trend. Advocates of the "paternalistic" or "protectionist" view have suggested that that approach is particularly appropriate in the District of Columbia since many of the estates are smaller and the people less sophisticated in financial and property matters. There is no basis for such a view, we believe, and we urge adoption of the informal probate procedures. That will place the District of Columbia in a position to be termed a "modern" jurisdiction for probate procedures.

215. See Comments of Division VIII Steering Committee (Trusts, Estates & Probate) of the District of Columbia Bar to Bill 3-91, "The District of Columbia Probate Reform Act of 1979," at 2-3 (undated memorandum) (on file with the *Michigan Law Review*).

216. The legislative history of the D.C. bill does not indicate that even the instances of fiduciary/attorney bungling described by Judge Haywood and Register McLaughlin were viewed as serious problems by the estate successors involved.

alone as a city-state where virtually all probate authority is exercised by one judge and one register of wills whose practices cannot, therefore, be scrutinized by comparisons with practices of similar officials in other parts of the jurisdiction. With responsibility for a very busy probate office, an apparent reputation for sticking to the book, and a singularly undependable probate bar, Register McLaughlin probably has no comparable counterpart anywhere in the country. Also, Washington's brand new, self-rule government has attracted new citizen interest in government, which, while commendable in general, can be a source of serious misjudgments in a field like probate where generations of accumulated law can, if taken seriously, create a monstrous contradiction to the principle of owner control of private property.

Lawyers who have quietly encouraged some unobtrusive form of mandatory court proceedings for every probate estate, either to eliminate competition or to inflate a job that is usually held by lawyers, should take note of the D.C. experience. It shows that supervision of estates is a flexible concept that under the right political conditions lends itself to absurd expansion of court authority and staff. It can easily lead to elimination of any role for lawyers in uncontested successions. While UPC formulations may also lead to do-it-yourself probate, the community stands to gain more from UPC's testator-survivor control of estates than from complete public control of estates.

III. INDEPENDENT ADMINISTRATION OR NO ADMINISTRATION

In retrospect, the ad hoc committee of D.C. lawyers may wish that they had urged enactment of the UPC text rather than compromise provisions designed to free some estates from some court contacts that impede successor control. The approach they adopted conceded that court control was appropriate whenever the successors had not consented to the appointed fiduciary. The concession led to charges that beneficiaries do not understand the complications of fiduciary law and therefore cannot exert adequate control over those gaining authority by public appointment. The UPC eliminates the need for the concession by giving full control of the identity and emergence of an estate fiduciary to the testator and his successors.

But the D.C. lawyers' judgment that their strategy stood a better chance of acceptance than the UPC should not be criticized too hastily. The UPC's procedures may be too radical and complex to have been adopted in their entirety in the District of Columbia. But the D.C. lawyers' compromise was unsuccessful anyway, despite the

work of many influential people. This failure in the District and the mixed results in the six other jurisdictions discussed earlier make a strong case for a simpler approach that can be more readily understood and is less susceptible to defeat in the political arena.

If people believe that fiduciaries should be watched by the courts or some adjunct to them, perhaps the simplest route to probate reform is to eliminate the fiduciary from routine probate settlements. A universal succession procedure would offer a more viable approach to probate simplification than various approaches to testator-successor control keyed to a publicly appointed fiduciary.²¹⁷ As contemplated by a draft prepared for the Joint Editorial Board for the Uniform Probate Code,²¹⁸ the universal succession procedure would enable intestate heirs or devisees, other than devisees entitled only to pecuniary gifts, to accept a succession without administration. A named executor would not qualify as a universal successor but might block succession without administration by opening a conventional administration before potential universal successors accepted a succession. Accepting successors would assume personal liability for a share of the decedent's debts and for any funeral expenses, expenses of administration, and pecuniary devises; each successor's liability would be proportional to his share of the estate. Accepting successors would also receive statutory power to create secure titles in purchasers of estate assets during periods within which changes in the successor group might still occur.²¹⁹ The procedure for accepting an estate would be similar to the UPC's informal probate and appointment proceedings. It might be combined with probate of a will or, if no personal representative has been appointed, started after a will has been probated by either informal or formal procedures.

The political appeal of this proposal is obvious. The necessary legislation could be significantly briefer than formulations based on the UPC that describe testator-successor control of administered estates. Furthermore, it would not need elaborate cross-referencing or other integration with existing statutes concerning executors, administrators, and other probate fiduciaries. The universal succession concept that a decedent's successors should be able to step into the decedent's place vis-à-vis creditors and other claimants is easily un-

217. See Halbach, *Probate and Estate Planning: Reducing Need and Cost Through Change in the Law*, in DEATH, TAXES AND FAMILY PROPERTY 165 (E. Halbach ed. 1977); *Succession Without Administration*, UPC NOTES No. 15, at 6 (March 1976); Rheinstein, *European Methods for the Liquidation of the Debts of Deceased Persons*, 20 IOWA L. REV. 431 (1935).

218. See *Report on Joint Editorial Board for UPC*, UPC NOTES No. 24, at 7, 8 (Oct. 1979).

219. Changes could occur as a result of will contests or discovery of error in the determination of successors.

derstood by lay persons, is familiar to most lawyers, and is presently available for important numbers of cases in Louisiana²²⁰ and California²²¹ and, to lesser extents, in other areas of the country.²²² More work toward implementing this approach is overdue.

A new uniform law project devoted to succession without administration has begun. Acting upon recommendations of the Joint Editorial Board for the Uniform Probate Code — which promoted the project with encouragement from the Section of Real Property, Probate, and Trust Law of the American Bar Association and the American College of Probate Counsel — the National Conference of Commissioners on Uniform State Laws has formed a special committee to draft a “Uniform Succession Without Administration Act.” The product, which will probably be recommended as a freestanding uniform law as well as a new addition to the Uniform Probate Code, may be ready by 1982 or 1983. It should restimulate legislative activity in the succession area and accelerate the day when most U.S. estates will be controlled by those selected by decedents and successors, rather than by courts and lawyers.

CONCLUSION

The only legitimate goal of new legislation touching the old subject of probate procedure is to lower succession costs, which are notoriously higher in the United States than in other countries.²²³ The direct route to this end is legislation that enables successors of a decedent, or executors selected by decedents for the purpose, to receive and settle estates without any contact with the court system once they have established a public record tending to legitimate their claim and attaching responsibility for the control assumed.

The success of legislative efforts to decrease the role of public officials in the routine administration of decedent's estates is mixed. A baker's dozen states have enacted the Uniform Probate Code, affirming that testator-successor control of estates is preferable to control by the courts and related offices. Several other states have recently enacted legislation that merely changes statutory formulae by which court supervision of estates is expressed. This Article has

220. Sarpy, *Probate, Economy and Celerity in Louisiana*, 34 LA. L. REV. 523 (1974).

221. See Spittler, *How To Succeed To California Community Property . . . Without Even Trying*, UPC NOTES No. 18, at 8 (Dec. 1976).

222. Georgia statutes provide that the surviving spouse of an intestate decedent who is the sole heir when there are no surviving descendants of the decedent, may, upon payment of the decedent's debts, “take possession of [the estate] without administration.” GA. CODE ANN. §§ 113-902, -903(1) (1979).

223. See note 2 *supra*.

examined the details of seven non-UPC enactments that appear to offer options between court supervised administration and independent administration. Only one of these ventures, the new Michigan probate statute, approaches UPC standards for eliminating unnecessary procedural requirements. Two others, those in Illinois and Wisconsin, are disappointing but hold some promise of lower succession costs. Enactments in Indiana, Missouri, and Kansas are without public benefit. The seventh, the District of Columbia Probate Reform Act of 1980, is a serious setback that increases court control of estates and promises to increase probate costs for many successors to District of Columbia estates.

The process of expanding statutes so that some estates may escape unnecessary court procedures is technically difficult and politically hazardous. Proponents of this approach to probate law reform should reconsider the possibility of adopting articles III and IV of the Uniform Probate Code in their entirety as replacements for present procedures. Experience in Minnesota teaches that this form of partial enactment of the Uniform Probate Code is a viable route to probate reform.²²⁴

Where replacement legislation is impossible, reformers should frame amendments and additions to meet the fourteen principles of probate procedure isolated from the UPC by this Article. These principles offer practical freedom from unnecessary court procedures for some estates. Where compromise of the principles is necessary, reformers should weigh the different costs to UPC goals of various modifications.

The Michigan, Illinois, and Wisconsin enactments illustrate that the public can benefit from efforts to add independent administration options to codes in which court supervision remains the norm. However, the perils of advocating add-on independent administration are so serious that American lawmakers should give more attention to universal succession. This approach appears to be less vulnerable to political compromise and contradiction and, as a standing alternative to both supervised and independent administration, might serve in practice to make advocates of fiduciary administration of estates more interested in cost-cutting procedures.

This review of the struggle for probate reform suggests that there must be a shortage of persons drafting legislation who are tuned to developments in probate procedure and sympathetic to the goal of

224. Minnesota's enactment of articles I, III and IV of the Uniform Probate Code is discussed in UPC NOTES No. 8, at 6 (July 1974). See also, Brink, *The Uniform Probate Code Comes to Minnesota*, 30 BENCH & B. MINN., April 1974, at 18.

testator-successor control of the estates. Thought should be given to organizing a governmental or nonprofit office charged solely with keeping track of the legislative and judicial outpourings that contribute to the growth and complexity of probate procedure. Persons staffing such an office who are charged with and regularly compensated for reporting and evaluating developments in probate legislation for the benefit of the public might, in time, provide a sorely needed new source of legislative expertise in probate. The record demonstrates that legislators, because of lack of familiarity with the relevant issues and techniques, are sitting ducks when faced with the recommendations of probate court personnel and other interest groups who prefer to see probate court control of estates perpetuated. The public deserves equal time for its perspective.