

12/7/82

Memorandum 83-6

Subject: Study L-625 - Probate Law (Succession Without Administration)

Attached to this Memorandum as Exhibit 1 are amendments to the Uniform Probate Code approved in 1982 to permit succession without administration. Attached as Exhibit 2 are some of the UPC sections which are referred to in the 1982 amendments.

The new provisions are designed to be used when all of the decedent's known heirs or residuary devisees who are adult and legally competent agree that administration of the estate is not necessary, and agree to assume personal liability for the decedent's obligations. See Section 3-313 (Exhibit 1). If the statutory conditions for granting the application are met, the application must be granted. See Section 3-314 and Comment thereto (Exhibit 1). The successful applicants are known as "universal successors." They have full power of ownership of the decedent's property; they may freely transfer it, and purchasers for value take title free of the rights of persons interested in the estate. See Sections 3-316 (Exhibit 1), 3-910 (Exhibit 2).

Professor Wellman will be at the meeting and can amplify on these provisions. The Commission should decide whether to develop a separate recommendation on succession without administration, possibly for submission to the 1984 legislative session.

Respectfully submitted,

Robert J. Murphy II
Staff Counsel

EXHIBIT 1

UNIFORM PROBATE CODE, ARTICLE III AMENDMENTS
SUCCESSION WITHOUT ADMINISTRATION

The Uniform Probate Code (UPC) has long been applauded for its reform provisions which are designed to shorten and simplify the probate of estates. Concepts like informal probate, independent administration of estates, summary settlement of small estates, and non-probate transfers such as pay-on-death accounts, contribute to the UPC's reputation as a vehicle for probate reform. But these innovations have not quelled the desire for even further improvement. A series of new amendments entitled "Succession Without Administration" takes reform another step further.

Are there categories of estate beneficiaries that may, safely, bypass probate altogether? The answer is yes, if certain conditions are to be met. Heirs of intestate estates (those in which there is no will) and the residuary devisees of estates in which there is a will fall into such a category. If there is no will, the deceased person has expressed no preference with respect to takers. The law of intestate succession guarantees priority of distribution of assets. The great majority of estates involve no third party interests, and, if the heirs can agree to accept liabilities of the estate, as well as its assets, and can agree among themselves as to distribution, why not let them take the property immediately, subject to those liabilities?

The same argument can be made for residuary devisees of a will. If there is a will, the testator has, clearly, made some effort to decide the distribution of his property. With specific bequests, his intent must prevail. But residuary devisees take a remainder, after specific devises, on a percentage basis. They are, in effect, very like heirs in an intestate estate. If they can agree to assume liabilities and can agree among themselves on distribution, why force the estate into administration? Even if the testator's exact intent is not quite honored, it is the living who deal with the property and know their own wants and needs. With the widespread use of disclaimer statutes, most states already affirm the principle that a person need not inherit, even when a will makes that person a devisee. So a policy to move beyond a testator's intent is no longer rare in most jurisdictions.

These are the principles which guide the Succession Without Administration Act. The Act provides a simple petition procedure for heirs and residuary devisees to obtain universal succession. The application to the registrar sets out sufficient facts from which the registrar can ascertain that all necessary parties are included and that the estate is not subject to any current contest or difficulty. Once determined, the registrar grants the application, and issues a "written statement of universal succession." This statement is evidence of the named successors' title to the assets.

The named universal successors have full power of ownership and must move expeditiously to distribute the estate. They become the same as distributees of an estate which has been fully probated. In return, the universal successors assume the liabilities of the decedent to creditors, including tax liability. The successors are, also, personally liable to other heirs, devisees, or persons entitled to the property of the decedent for their shares if they are, somehow, left out. In this procedure, there is none of the delay inherent in the administration of estates, even those independently administered.

This procedure aids the heirs or devisees in an ordinary, uncontested estate with no creditors, or creditors easily paid from the estate's assets. Their vulnerability is their liability, if they miscalculate or indulge in misfeasance. Otherwise, they free themselves from the costs and delays of probate. For the great majority of estates, such a procedure is an economic boon.

If the heirs or residuary devisees do not perceive the risk of liability as one worth taking, the estate can be probated, ordinarily. The heirs and devisees, then, wait until settlement to take their shares. But they take free and clear of liability.

The insertion of the new procedure for universal succession maximizes the choices for heirs and devisees. And it is the maximization of choices that best serves the public interest in the settlement of estates.

UNIFORM PROBATE CODE, ARTICLE III AMENDMENTS
SUCCESSION WITHOUT ADMINISTRATION

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FIRST YEAR
IN MONTEREY, CALIFORNIA
JULY 30 - AUGUST 6, 1982

With Prefatory Note and Comments

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1 AMENDMENTS TO UNIFORM PROBATE CODE
2 ARTICLE III - SUCCESSION WITHOUT ADMINISTRATION

3
4 PREFATORY NOTE

5 This amendment to the Uniform Probate Code is an
6 alternative to other methods of administering a decedent's estate.
7 The Uniform Probate Code otherwise provides procedures for
8 informal administration, formal administration and supervised
9 administration. This amendment adds another alternative to the
10 system of flexible administration provided by the Uniform Probate
11 Code and permits the heirs of an intestate or residuary devisees
12 of a testator to accept the estate assets without administration
13 by assuming responsibility for discharging those obligations that
14 normally would be discharged by the personal representative.

15 The concept of succession without administration is drawn
16 from the civil law and is a variation of the method which is
17 followed largely on the Continent in Europe, in Louisiana and in
18 Quebec.

19 This proposed amendment contains cross-references to the
20 procedures in the Uniform Probate Code and particularly
21 implements the policies and concepts reflected in Sections 1-102,
22 3-101 and 3-109. These sections of the Uniform Probate Code
23 provide in part:

24 SECTION 1-102. [Purposes; Rule of Construction.]

25 (a) This Code shall be liberally construed and applied to
26 promote its underlying purposes and policies.

27 (b) The underlying purposes and policies of this Code
are:

(1) to simplify and clarify the law concerning the
affairs of decedents, missing persons, protected persons, minors
and incapacitated persons;

(2) to discover and make effective the intent of a
decedent in the distribution of his property;

(3) to promote a speedy and efficient system for
liquidating the estate of the decedent and making distribution to
his successors;

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SECTION 3-101. [Devolution of Estate at Death; Restrictions.]

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

SECTION 3-901. [Successors' Rights if No Administration.]

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and

1 dependent children, and subject to the rights of others resulting
2 from abatement, retainer, advancement, and ademption.

3
4 AMENDMENTS TO UNIFORM PROBATE CODE

5 ARTICLE III - SUCCESSION WITHOUT ADMINISTRATION

6
7 SECTION 3-312. [Universal Succession; In General.]

8 The heirs of an intestate or the residuary devisees under a
9 will, excluding minors and incapacitated, protected, or
10 unascertained persons, may become universal successors to the
11 decedent's estate by assuming personal liability for (1) taxes,
12 (2) debts of the decedent, (3) claims against the decedent or
13 the estate, and (4) distributions due other heirs, devisees, and
14 persons entitled to property of the decedent as provided in
15 Sections 3-313 through 3-322.

16 COMMENT

17 This section states the general policy of the Act to permit
18 heirs or residuary legatees to take possession, control and title
19 to a decedent's estate by assuming a personal obligation to pay
20 taxes, debts, claims and distributions due to others entitled to
21 share in the decedent's property by qualifying under the
statute. Although the surviving spouse most often will be an
heir or residuary devisee, he or she may also be a person
otherwise entitled to property of the decedent as when a forced
share is claimed.

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

26 The act excludes incapacitated and unascertained persons as
27 universal successors because of the need for successors to deal
with the property for various purposes. The procedure permits
competent heirs and residuary devisees to proceed even where

1 there are some others incompetent or unascertained. If any
2 unascertained or incompetent heir or devisee wishes, they may
3 require bonding or if unprotected they may force the estate into
4 administration. Subsequent sections permit the conservator,
5 guardian ad litem or other fiduciary of unascertained or
6 incompetent heirs or devisees to object. The universal
7 successors' obligations may be enforced by appropriate remedy.
8 In Louisiana the procedure is available even though there are
9 incompetent heirs for whom a tutor or guardian is appointed to
10 act.

11 In restricting universal succession to competent heirs and
12 residuary legatees, the act and makes them responsible to
13 incompetent heirs and legatees. This restriction is deemed
14 appropriate to avoid the problems in dealing with the estate
15 assets vested in an incompetent. This is a variation from the
16 Louisiana practice. The procedure also contemplates that all
17 competent heirs and residuary devisees join and does not permit
18 only part of the heirs to petition for succession without
19 administration. This position means that succession without
20 administration is essentially a consent procedure available when
21 family members are in agreement.

22 This Act contemplates that known competent successors may
23 proceed under it. Although all competent heirs are required to
24 join in the informal process, the possibility of an unknown heir
25 is not treated as jurisdictional. An unknown heir who appeared
26 would be able to establish his or her rights as in administration
27 unless barred by adjudication, estoppel or lapse of time.

17 SECTION 3-313. [Universal Succession; Application;

18 Contents.]

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

24 (1) An application by heirs of an intestate must contain
25 the statements required by Section 3-301(a)(1) and (4)(i) and
26 state that the applicants constitute all the heirs other than
27 minors and incapacitated, protected, or unascertained persons.

1 (2) An application by residuary devisees under a will
2 must be combined with a petition for informal probate if the will
3 has not been admitted to probate in this State and must contain
4 the statements required by Section 3-301(a)(1) and (2). If the
5 will has been probated in this State, an application by residuary
6 devisees must contain the statements required by Section
7 3-301(a)(2)(iii). An application by residuary devisees must
8 state that the applicants constitute the residuary devisees of the
9 decedent other than any minors and incapacitated, protected, or
10 unascertained persons. If the estate is partially intestate, all of
11 the heirs other than minors and incapacitated, protected, or
12 unascertained persons must join as applicants.

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

18 (c) The application may describe in general terms the
19 assets of the estate and must state that the applicants accept
20 responsibility for the estate and assume personal liability for (1)
21 taxes, (2) debts of the decedent, (3) claims against the
22 decedent or the estate and (4) distributions due other heirs,
23 devisees, and persons entitled to property of the decedent as
24 provided in Sections 3-316 through 3-322.

COMMENT.

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2 This section spells out in detail the form and requirements
3 for application to the Registrar to become universal successors.
4 The section requires the applicants to inform the Registrar
5 whether the appointment of a personal representative has
6 occurred or is pending in order to assure any administration is
7 terminated before the application can be granted. The section
8 requires applicants to waive their right to seek the appointment
9 of a personal representative. The appointment of an executor
10 would preclude or postpone universal succession by application
11 for appointment unless the executor's appointment is avoided
12 because of lack of interest in the estate. See Section 3-611,
13 3-912.

14
15 The statements in the application are verified by signing
16 and filing and deemed to be under oath as provided in Section
17 1-310. Like other informal proceedings under the U.P.C., false
18 statements constitute fraud (U.P.C. 1-106).

19
20 Even though the presence of residuary devisees would seem
21 to preclude partial intestacy (U.P.C. 2-605, 2-606), the last
22 sentence of 3-313(a) regarding partial intestacy warns all parties
23 that if there is a partial intestacy, the heirs must join. It
24 avoids problems of determining whether the residuary takers are
25 in all instances true residuary legatees, e.g., if a testator
26 provides: "Lastly, I give 1/2 and only 1/2 of the rest of my
27 estate to A." (cf. U.P.C. 2-603).

Section 3-313(b) provides that a general description of the
assets may be included appropriate to the assets in the estate
and adequate to inform the parties and the Registrar of the
nature of the estate involved.

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

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

The trustee who is a residuary legatee has standing to
qualify as a universal successor by acceptance of the decedent's
assets, then to discharge the obligations of the universal
successor, and finally to administer the residue under the trust
without appointment of a personal representative. The will
would be probated in any event. The residuary trustee could

1 choose to insist on appointment of a personal representative and
2 not seek universal succession. Neither alternative could alter
the provisions of the residuary trust.

3 SECTION 3-314. [Universal Succession; Proof and Findings
4 Required.]

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

6 (1) the application is complete in accordance with Section
7 3-313;

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

11 (3) venue is proper;

12 (4) any notice required by Section 3-204 has been given
13 or waived;

14 (5) the time limit for original probate or appointment
15 proceedings has not expired and the applicants claim under a
16 will;

17 (6) the application requests informal probate of a will,
18 the application and findings conform with Sections 3-301(a)(2)
19 and 3-303(a)(c)(d) and (e) so the will is admitted to probate;
20 and

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

23 (b) The [Registrar] shall deny the application letters of
24 administration are outstanding.

25 (c) Except as provided in Section 3-322, the [Registrar]
26 shall deny the application if any creditor, heir, or devisee who
27 is qualified by Section 3-605 to demand bond files an objection.

1
2 This section outlines the substantive requirements for
3 universal succession and is the guideline to the Registrar for
4 approval of the application. As in U.P.C. 3-303, review of the
5 filed documents is all that is required, with the Registrar
6 expected to determine whether to approve on the basis of
7 information available to the Registrar. There is very little
8 discretion in the Registrar except that if something appears
9 lacking in the application, the Registrar would be able to
10 request additional information. The analogy to U.P.C. 3-303 is
11 rather direct and the authority of the Registrar is somewhat
12 more limited because there is no parallel section to U.P.C. 3-305
13 as there is in probate. (See also U.P.C. 3-309.)

14 Section 3-314(a)(5) requires that the application for
15 universal succession under a will be made before the time limit
16 for original probate has expired. Against the background of
17 U.P.C. 3-108 which limits administration proceedings after three
18 years except for proof of heirship or will construction, the heirs
19 could take possession of property and prove their title without
20 the universal succession provisions.

21 The review of the application by the Registrar essentially is
22 a clerical matter to determine if the application exhibits the
23 appropriate circumstance for succession without administration.
24 Hence, if there are letters of administration outstanding, the
25 application must be denied under Section 3-314(b). Even though
26 a disinterested executor under a will should not be able to
27 preclude those interested in the estate from settling the estate
without administration, coordination of the Registrar's action with
the process of the probate court is imperative to protect the
parties and the public. Consequently, any outstanding letters
must be terminated before succession without administration is
approved. Under the Uniform Probate Code, those with
property interests in the estate are viewed as "interested
persons" (U.P.C. § 1-201(2)) and may initiate either informal
(U.P.C. § 3-105) or formal proceedings (U.P.C. § 3-401); also
the agreement of those interested in the estate is binding on the
personal representative (U.P.C. §§ 3-912, 3-1101). These
provisions appear adequate to preclude the personal
representative who has no other interest in the estate from
frustrating those interested from utilizing succession without
administration.

28 There is need for coordination with other process within the
29 probate court when a petition for letters is pending (i.e., not
30 withdrawn) as when letters were outstanding. The
31 appropriateness of the appointment of the personal
32 representative, i.e., whether administration was necessary,
33 could be determined on an objection to the appointment under
34 U.P.C. Sections 3-414(b); cf., 3-608 to 3-612. If the
35 appointment of a personal representative is denied, then the

1 application for universal succession without administration could
2 be approved in appropriate cases.

3 Section 3-314 does not require prior notice unless requested
4 under U.P.C. 3-204. Information to other heirs and devisees is
5 provided after approval of the application. See Section 3-319.

6 If, after universal succession is approved, a creditor or
7 devisee were not paid or secured, in addition to suing the
8 successor directly, the creditor or devisee could move for
9 appointment of a personal representative to administer the estate
10 properly. This pressure on the universal successors to perform
11 seems desirable. In view of the availability of informal
12 administration and other flexible alternatives under the U.P.C.,
13 if any person properly moves for appointment of a personal
14 representative, succession without administration should be
15 foreclosed or terminated.

16 **SECTION 3-315. [Universal Succession; Duty of Registrar;**
17 **Effect of Statement of Universal Succession.]**

18 Upon receipt of an application under Section 3-313, if at least
19 120 hours have elapsed since the decedent's death, the
20 [Registrar], upon granting the application, shall issue a written
21 statement of universal succession describing the estate as set
22 forth in the application and stating that the applicants (i) are
23 the universal successors to the assets of the estate as provided
24 in Section 3-312, (ii) have assumed liability for the obligations of
25 the decedent, and (iii) have acquired the powers and liabilities
26 of universal successors. The statement of universal succession
27 is evidence of the universal successors' title to the assets of the
estate. Upon its issuance, the powers and liabilities of universal
successors provided in Sections 3-316 through 3-322 attach and
are assumed by the applicants.

1 COMMENT

2 This section provides for a written statement issued by the
3 Registrar evidencing the right and power of the universal
4 successors to deal with the property of the decedent and serves
5 as an instrument of distribution to them. Although the
6 application for universal succession may be filed anytime after
7 death, within the time limit for original probate, the Registrar
8 may not act before 120 hours have elapsed since the testator's
9 death. This period parallels provisions for other informal
10 proceedings under the U.P.C., e.g., §§ 2-601, 3-302, 3-307.

11
12 SECTION 3-316. [Universal Succession; Universal Successors'
13 Powers.]

14 Upon the [Registrar's] issuance of a statement of universal
15 succession:

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

22 (2) Universal successors have the same powers as
23 distributees from a personal representative under Sections 3-908
24 and 3-909 and third persons with whom they deal are protected
25 as provided in Section 3-910.

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

1
2 This section is the substantive provision (1) declaring the
3 successors to be distributees and (2) to have the powers of
4 owners so far as dealing with the estate assets subject to the
5 obligations to others.

6 Details concerning the status of distributees under U.P.C.
7 3-908 and the power to deal with property are provided in
8 U.P.C. 3-910.

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

14 SECTION 3-317. [Universal Succession; Universal Successors'
15 Liability to Creditors, Other Heirs, Devisees and Persons
16 Entitled to Decedent's Property; Liability of Other Persons
17 Entitled to Property.]

18 (a) In the proportions and subject to the limits expressed
19 in Section 3-321, universal successors assume all liabilities of the
20 decedent that were not discharged by reason of death and
21 liability for all taxes, claims against the decedent or the estate,
22 and charges properly incurred after death for the preservation
23 of the estate, to the extent those items, if duly presented,
24 would be valid claims against the decedent's estate.

25 (b) In the proportions and subject to the limits expressed
26 in Section 3-321, universal successors are personally liable to
27 other heirs, devisees, and persons entitled to property of the
decedent for the assets or amounts that would be due those
heirs, were the estate administered, but no allowance having
priority over devisees may be claimed for attorney's fees or

1 charges for preservation of the estate in excess of reasonable
2 amounts properly incurred.

3 (c) Universal successors are entitled to their interests in
4 the estate as heirs or devisees subject to priority and abatement
5 pursuant to Section 3-902 and to agreement pursuant to Section
6 3-912.

7 (d) Other heirs, devisees, and persons to whom assets
8 have been distributed have the same powers and liabilities as
9 distributees under Sections 3-908, 3-909, and 3-910.

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

13 COMMENT

14
15 The purpose of succession without administration is not to
16 alter the relative property interests of the parties but only to
17 facilitate the family's expeditious settlement of the estate.
18 Consistent with this, the liability arising from the assumption of
19 obligations is stated explicitly here to assist in understanding
the coupling of power and liability. Subsection (b) includes an
abatement reference that recognizes the possible adjustment that
may be necessary by reason of excess claims under U.P.C.
3-902.

20 In succession without administration, there being no
21 personal representative's notice to creditors, the short non-claim
22 period under U.P.C. Section 3-803(a)(1) does not apply and
23 creditors are subject to the statutes of limitations and the
24 limitation of three years on decedent's creditors when no notice
25 is published under U.P.C. Section 3-803(a)(2). The general
26 statutes of limitation are suspended for four months following the
27 decedent's death but resume thereafter under U.P.C. Section
3-802. The assumption of liability by the universal successors
upon the issuance of the Statement of Universal Succession is
deemed to be by operation of law and does not operate to extend
or renew any statute of limitations that had begun to run against
the decedent. The result is that creditors are barred by the
general statutes of limitation or 3 years whichever is the
shorter.

1 successors as a group are liable in full to the creditors but that
2 none have a greater liability than in proportion to the share of
3 the estate received. Under the U.P.C., since informal
4 administration is available with limited liability for the personal
5 representative, the analogy to the Louisiana system would be to
6 accept full responsibility for debts and claims if succession
7 without administration is desired but to choose informal
8 administration if protection of the inventory is desired.

9 This definition of liability assumes, first, that the devisees
10 and heirs are subject to the usual priorities for creditors and
11 devisees and abatement for them in §§ 3-316, 3-317. Second, it
12 is assumed that if a creditor or a subsequently appointed
13 personal representative were to proceed against the successors,
14 having jurisdiction by submission, § 3-318, the liability would be
15 on a theory of contribution by the successors with the burden
16 on each universal successor to prove his or her own share of
17 the estate and liability against that share.

18 Third, it is also assumed that, a creditor who is
19 unprotected or unsecured under § 3-322, can object to universal
20 succession under § 3-314(c) and if the creditor does not object,
21 payments by the successors, like those by the decedent when
22 alive, will be recognized as good without any theory of
23 preferring creditors. Thus until a creditor takes action to
24 require administration, that creditor should be bound by the
25 successors' non-fraudulent prior payment to other creditors. If
26 a creditor suspects insolvency, he can put the estate into
27 administration and after the appointment of a personal
representative would have the usual priority as to remaining
assets. This would be subject to the theory of fraud, i.e., a
knowing and conscious design on the part of the successors to
ignore the priority of the decedent's creditors to the harm of a
creditor. This would constitute fraud that would defeat the
limits on successor's liability otherwise available under the
statute.

20 SECTION 3-322. [Universal Succession; Remedies of
21 Creditors, Other Heirs, Devisees or Persons Entitled to
22 Decedent's Property.]

23 In addition to remedies otherwise provided by law, any
24 creditor, heir, devisee, or person entitled to decedent's
25 property qualified under Section 3-605, may demand bond of
26 universal successors. If the demand for bond precedes the
27 granting of an application for universal succession, it must be

1 treated as an objection under Section 3-314(c) unless it is
2 withdrawn, the claim satisfied, or the applicants post bond in an
3 amount sufficient to protect the demandant. If the demand for
4 bond follows the granting of an application for universal
5 succession, the universal successors, within 10 days after notice
6 of the demand, upon satisfying the claim or posting bond
7 sufficient to protect the demandant, may disqualify the
8 demandant from seeking administration of the estate.

9 COMMENT

10 This section provides necessary protection to creditors and
11 other heirs, devisees or persons entitled to distribution. Any
12 person to whom a universal successor is obligated could pursue
13 any available remedy, e.g., a proceeding to collect a debt or to
14 secure specific performance. By this section, any creditor or
15 other heir, devisee or person entitled to distribution may also
16 demand protection and, if it is not forthcoming, put the estate
17 into administration. This seems adequate to coerce performance
18 from universal successors while assuring creditors their
19 historical preference and other beneficiaries of the estate their
20 rights.
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EXHIBIT 2

Section 3-908. [Distribution; Right or Title of Distributee.]

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

COMMENT

The purpose of this section is to channel controversies which may arise among successors of a decedent because of improper distributions through the personal representative who made the distribution, or a successor personal

representative. Section 3-108 does not bar appointment proceedings initiated to secure appointment of a personal representative to correct an erroneous distribution made by a prior representative. But see Section 3-1006.

Section 3-909. [Improper Distribution; Liability of Distributee.]

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

COMMENT

The term "improperly" as used in this section must be read in light of Section 3-703 and the manifest purpose of this and other sections of the Code to shift questions concerning the propriety of various distributions from the fiduciary to the distributees in order to prevent every administration from becoming an adjudicated matter. Thus, a distribution may be "authorized at the time" as contemplated by Section 3-703, and still be "improper" under this section. Section 3-703 is designed to permit a personal representative to distribute without risk in some cases, even though there has been no adjudication. When an unadjudicated distribution has occurred, the rights of persons to show that the basis for the distribution (e.

g., an informally probated will, or informally issued letters of administration) is incorrect, or that the basis was improperly applied (erroneous interpretation, for example) is preserved against distributees by this section.

The definition of "distributee" to include the trustee and beneficiary of a testamentary trust in 1-201(10) is important in allocating liabilities that may arise under Sections 3-909 and 3-910 on improper distribution by the personal representative under an informally probated will. The provisions of 3-909 and 3-910 are based on the theory that liability follows the property and the fiduciary is absolved from liability by reliance upon the informally probated will.

Section 3-910. [Purchasers from Distributees Protected.]

If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was made for value.

COMMENT

The words "instrument or deed of distribution" are explained in Section 3-907. The effect of this section may be to make an instrument or deed of distribution a very desirable link in a chain of title involving succession of land. Cf. Section 3-901.

In 1975, the Joint Editorial Board recommended additions that

strengthen the protection extended by this section to bona fide purchasers from distributees. The additional language was derived from recommendations evolved with respect to the Colorado version of the Code by probate and title authorities who agreed on language to relieve title assurers of doubts they had identified in relation to some cases.