

#L-625

7/2/82

First Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation--
Definitions and General Provisions §§ 1-100.520)

Attached are the preliminary provisions and definitions portion of the recommended legislation and the preliminary portion of the tentative recommendation relating to this portion of the recommended legislation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Introduction

This tentative recommendation relating to wills and intestate succession is the first portion of the California Law Revision Commission's probate law revision project. The project is the result of a 1980 legislative directive that the Commission study "whether the California Probate Code should be revised, including but not limited to whether California should adopt, in whole or in part, the Uniform Probate Code."¹

For this portion of the project the Commission found particularly helpful a number of published critical analyses of the California Probate Code and comparisons with the Uniform Probate Code,² including an analysis by the State Bar of California³ and a response by the Joint Editorial Board for the Uniform Probate Code.⁴ Published empirical information was also useful.⁵ Formulation of the proposed law contained in this tentative recommendation was accomplished with the assistance of a number of expert consultants⁶ and the State Bar Estate Planning, Probate and Trust Law Section.⁷

1. Cal. Stats. 1980, res. ch. 37.
2. See Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602 (1931) (Professor Evans was draftsman of the 1931 Probate Code); Turrentine, Introduction to the California Probate Code, in West's Annotated California Codes, Probate Code (1956); French & Fletcher, A Comparison of the Uniform Probate Code and California Law With Respect to the Law of Wills, in Comparative Probate Law Studies (1976); Niles, Probate Reform in California, 31 Hastings L.J. 185 (1977).
3. State Bar of California, The Uniform Probate Code: Analysis and Critique (1973).
4. Joint Editorial Board for the Uniform Probate Code, Response of the Joint Editorial Board (1974).
5. See, e.g., Fellows, Simon & Rau, Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States, 1978 Am. Bar Found. Res. J. 321 (1978). This study was conducted by a scientifically-designed telephone survey of 750 families in five states, including California.
6. The consultants, expert in the fields of probate law, community property law, real and personal property law, and tax law, are Professors Paul E. Basye, Gail Boreman Bird, and Russell D. Niles of the Hastings College of the Law; Professor James L. Blawie of the University of Santa Clara School of Law; Professors Carol S. Bruch, Susan F. French, and Bruce Wolk of the U.C. Davis Law School; Professor Jesse Dukeminier of U.C.L.A. Law School; and Professor William A. Reppy, Jr., of the Duke University School of Law.
7. Several members of this section regularly attend Commission meetings when probate matters were considered and aided the Commission with their expertise and practical suggestions.

The proposed law recodifies substantial portions of existing California law on wills and intestate succession without substantive change. Existing law appears in many respects to be fundamentally sound and not in need of substantive revision.

In many cases the recodification made by the proposed law uses language from the Uniform Probate Code in preference to existing California language, even though no substantive change in the law is intended. The Commission has found that the Uniform Probate Code language is consistently simpler, and uniformity of language will enable use of cases from other jurisdictions construing the language. In other cases a substantive change is made in California law not because of an inherent defect in the law but because national uniformity in that area of the law is particularly desirable and the Uniform Probate Code offers a sound rule that would help achieve national uniformity.⁸ The importance of national uniformity in probate law and related fields is recognized in the adoption in California of such laws as the Uniform Simultaneous Death Act,⁹ Uniform Testamentary Additions to Trusts Act,¹⁰ Uniform Gifts to Minors Act,¹¹ Uniform Durable Power of Attorney Act,¹² and other uniform acts.¹³

National uniformity is only one of the major goals of the proposed law, however. Other major objectives identified by the Commission in this project are to carry out the actual or presumed intent of the decedent to the extent possible, minimize the opportunity for fraud or

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8. Because of the relatively high mobility of California residents and relatively high frequency of interstate property transactions, a decedent may leave property in several jurisdictions. Uniformity of the law of wills and intestate succession in these jurisdictions will help ensure that the decedent's intent is effectuated with a minimum disruption of the estate. To the extent the Uniform Probate Code offers a vehicle for uniformity, the proposed law draws upon it.
9. Prob. Code §§ 296-296.8.
10. Prob. Code §§ 170-173.
11. Civil Code §§ 1154-1165.
12. Civil Code §§ 2400-2407.
13. See, e.g., Uniform International Wills Act (Prob. Code §§ 60-60.8); Revised Uniform Principal and Income Act (Civil Code §§ 730-730.17); Uniform Anatomical Gift Act (Health & Safety Code §§ 7150-7158); Uniform Act on Interstate Compromise of Death Taxes (Rev. & Tax. Code §§ 14195-14195.4); Uniform Act on Interstate Arbitration of Death Taxes (Rev. & Tax. Code §§ 14197-14197.13).

perjury, and provide a system of probate that is efficient and expeditious. The significant changes in the California law of wills and intestate succession made in the proposed law that are designed to achieve these purposes are discussed below.¹⁴

Transitional Provisions

The proposed law is drawn on the assumption that it will be enacted during 1983 but that it will not become operative until July 1, 1984. This will give the bench, bar, and public time to become familiar with the provisions of the new law. As a general rule the new law will apply only to cases where the decedent dies on or after the operative date; old law will continue to govern cases where the decedent dies before the operative date.

Quasi-Community Property

Under existing law, property acquired by the decedent while domiciled in another jurisdiction is treated as community property if it would have been community property had it been acquired while domiciled in California. Thus half of the decedent's "quasi-community" property goes to the surviving spouse and half is subject to testamentary disposition by the decedent.¹ Quasi-community property principles do not extend to property acquired by the surviving spouse (as opposed to the decedent) while domiciled in another jurisdiction, and the decedent may not dispose of half of the property by will.²

One consequence of this statutory scheme is that property acquired by the surviving spouse while domiciled in another community property jurisdiction that would be classified as community property both under the laws of the jurisdiction where it was acquired and under California law if it had been acquired while domiciled in California is not treated as community property at the decedent's death. This defect in the law is apparently not intentional but the result of a drafting oversight. The proposed law remedies this defect by making clear that property acquired by either spouse in another community property jurisdiction

14. Insignificant and technical changes are noted in the Comments following each section of the proposed law.

1. Prob. Code § 201.5.

2. Paley v. Bank of America, 159 Cal. App.2d 500, 324 P.2d 35 (1958).

that is characterized as community under the laws of that jurisdiction is treated as community in California at the decedent's death.³

Election to Take Quasi-Community Property
Against the Will

Under existing law the surviving spouse must elect whether to claim the statutory half share of the decedent's quasi-community property or to take the benefits provided by the decedent's will.¹ This requirement is contrary to general principles governing community property which permit the surviving spouse to claim the statutory share without sacrificing benefits under the will.² The requirement also is inconsistent with the decedent's probable intent in most cases. The proposed law does not continue the special quasi-community property election requirement.

3. Under this proposal community property acquired while domiciled in another community property jurisdiction is given community property treatment in California even though the property might not have been classified as community property under California law if it had been acquired while domiciled in California. This ensures generally comparable treatment of the property in California to that given it in the other community property jurisdiction.

1. Prob. Code § 201.7. The election is not required if the will permits the surviving spouse to both claim the statutory share and take under the will.

2. See 7 B. Witkin, Summary of California Law Wills and Probate §§ 21-22, at 5542-44 (8th ed. 1974). An election is necessary if the will expressly requires an election or if the decedent's intent to require an election may be implied from the fact that not to require an election would thwart the decedent's estate plan.

An act to repeal and reenact the Probate Code, relating to probate law.

The people of the State of California do enact as follows:

SECTION 1. The Probate Code is repealed.

SEC. 2. The Probate Code is enacted, to read:

Note. Sections 1 and 2 are drafted on the assumption that the entire Probate Code will be repealed, new Divisions 1 and 2 will be enacted, and existing Divisions 3 and 4 will be continued with such conforming changes as are necessary and the existing sections renumbered to permit inclusion of new Divisions 1 and 2 at the beginning of the new Probate Code.

368/220

DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

PART 1. PRELIMINARY PROVISIONS AND CONSTRUCTION

§ 1. Short title

1. This code shall be known as the Probate Code.

Comment. Section 1 continues former Section 1.

§ 2. Construction of code

2. Unless the provision or context otherwise requires, these general provisions and rules of construction govern the construction of this code.

Comment. Section 2 continues former Section 6.

§ 3. Liberal construction

3. This code shall be liberally construed and applied to promote its underlying purposes and policies.

Comment. Section 3 is the same as Section 1-102(a) of the Uniform Probate Code.

§ 4. Continuation of existing law; construction of provisions drawn from Uniform Probate Code

4. (a) The provisions of this code, insofar as they are substantially the same as previously existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

(b) A provision of this code, insofar as it is the same in substance as a provision of the Uniform Probate Code, shall be so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision of the Uniform Probate Code.

Comment. Subdivision (a) of Section 4 continues the substance of former Section 2. Subdivision (b) is new and recognizes that some provisions of this code are the same in substance as the provisions of the Uniform Probate Code.

§ 5. Tenure of office

5. All persons who, at the time this code becomes operative, hold office under the code repealed by the act that enacted this code, which offices are continued by this code, continue to hold them according to their former tenure.

Comment. Section 5 is the same in substance as Section 3 of the Vehicle Code.

406/001

§ 6. Pending proceedings; cases where decedent died before July 1, 1984

6. (a) Except as otherwise provided, no action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but the proceedings therein shall conform to the provisions of this code so far as possible.

(b) Except as otherwise specifically provided, Chapters 1 (commencing with Section 110.010), 3 (commencing with Section 111.010), 5 (commencing with Section 113.010), and 6 (commencing with Section 114.010) of Part 3 of Division 1 and Division 2 (commencing with Section 200.010) do not apply in any case where the decedent died before July 1, 1984, and such cases continue to be governed by the law in effect on June 30, 1984.

Comment. Subdivision (a) of Section 6 is the same in substance as former Probate Code Section 3.

Subdivision (b) limits the application of certain portions of this code to cases where the decedent died after the operative date. The introductory clause makes clear that this rule is subject to specific exceptions. See, e.g., Sections 112.330 (disclaimers), 114.050(c) (survival under life or accident insurance), 208.050(b) (filing requirement for Secretary of State's certificate of search for notice of will). See also Sections 1309 (missing person presumed dead), 1849.5 (conservator for estate of missing person).

§ 7. Running of limitations and other period of time

7. If a limitation or period of time for acquiring a right or barring a remedy, or for any other purpose, prescribed by the law in effect prior to the operative date of this code has begun to run before the operative date of this code, and the same limitation or period of time or any limitation or period of time is prescribed in this code, the time that has already run shall be deemed part of the time prescribed by this code.

Comment. Section 7 is new and is the same in substance as Section 9 of the Code of Civil Procedure.

§ 8. Effect of headings in code

8. Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

Comment. Section 8 continues the substance of former Section 4.

§ 9. Certified mail equivalent of registered mail

9. If a notice or other communication is required by this code to be mailed by registered mail, the mailing of the notice or other communication by certified mail is deemed to be a sufficient compliance with the requirements of law.

Comment. Section 9 is the same in substance as former Section 5.

§ 10. References to statute

10. Whenever a reference is made to any portion of this code or to any other law, the reference applies to all amendments and additions heretofore or hereafter made.

Comment. Section 10 continues former Section 7.

404/120

§ 11. Reference to division, part, chapter, article, section, or part of section

11. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

Comment. Section 11 continues former Section 8.

§ 12. Construction of tenses

12. The present tense includes the past and future tenses, and the future, the present.

Comment. Section 12 continues former Section 9.

§ 13. Construction of singular and plural

13. The singular number includes the plural, and the plural, the singular.

Comment. Section 13 continues former Section 10.

§ 14. Construction of "shall" and "may"

14. "Shall" is mandatory and "may" is permissive.

Comment. Section 14 is new.

§ 15. Severability

15. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

Comment. Section 15 continues former Section 11.

PART 2. WORDS AND PHRASES DEFINED

§ 100.010. Application of definitions

100.010. Unless the provision or context otherwise requires, the words and phrases defined in this part govern the construction of Divisions 1 (commencing with Section 1) and 2 (commencing with Section 200.010).

Comment. Section 100.010 is new. Some definitions in this part apply to the entire Probate Code. See, e.g., Sections 100.060 ("community property") and 100.380 ("quasi-community property").

405/952

§ 100.020. Annulment of marriage

100.020. "Annulment of marriage" includes adjudication of nullity of marriage.

Comment. Section 100.020 is new.

404/168

§ 100.030. Beneficiary

100.030. "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

Comment. Section 100.030 is the same as Section 1-201(2) of the Uniform Probate Code.

404/089

§ 100.040. Child

100.040. "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a step-child, a foster child, a grandchild, or any more remote descendant.

Comment. Section 100.040 is the same as Section 1-201(3) of the Uniform Probate Code.

§ 100.050. [Reserved]

404/285

§ 100.060. Community property

100.060. As used in this code, "community property" includes:

(a) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person while domiciled elsewhere, that is community property, or a substantially equivalent type of marital property, under the laws of the place where the acquiring spouse was domiciled at the time of its acquisition.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person in exchange for real or personal property, wherever situated, that is community property, or a substantially equivalent type of marital property, under the laws of the place where the acquiring spouse was domiciled at the time the property so exchanged was acquired.

Comment. Section 100.060 supplements the definition of community property in Civil Code Section 5110. Under Section 100.060 community property acquired while domiciled in another community property jurisdiction is treated as community property in California even though the property might not have been community if acquired while domiciled in California. For example, property is community property under Section 100.060 if it is the income of separate property and the income of separate property is community property under the laws of the place where the spouse owning the separate property is domiciled at the time the income is earned. Thus, Section 100.060 ensures generally comparable treatment of the property in California to that given it in the other community property jurisdiction and fills a gap in the quasi-community property law. See Section 100.380 ("quasi-community property" defined). Section 100.060 applies whether the property is acquired before or after the operative date of the section. The reference in Section 100.060 to substantially equivalent types of marital property is intended to cover possible adoption in other jurisdictions of the Uniform Marital Property Act or other laws establishing a community property regime. See also Sections 100.320 ("personal property" defined), 100.390 ("real property" defined).

§ 100.070. [Reserved]

§ 100.080. [Reserved]

999/354 NZ

§ 100.090. Devise

100.090. "Devise," when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will.

Comment. Section 100.090 is the same in substance as Section 1-201(7) of the Uniform Probate Code.

999/537 NZ

§ 100.100. Devisee

100.100. (a) "Devisee" means any person designated in a will to receive a devise.

(b) In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

Comment. Section 100.100 is the same in substance as Section 1-201(8) of the Uniform Probate Code.

§ 100.110. Dissolution of marriage

100.110. "Dissolution of marriage" includes divorce.

Comment. Section 100.110 is new.

§ 100.120. [Reserved]

404/937

§ 100.130. Family allowance

100.130. "Family allowance" means an allowance provided for in Chapter 4 (commencing with Section 252.010) of Part 3 of Division 2.

Comment. Section 100.130 is new.

§ 100.140. Family maintenance

100.140. "Family maintenance" means maintenance provided for in Chapter 5 (commencing with Section 253.010) of Part 3 of Division 2.

Comment. Section 100.140 is new.

404/967

§ 100.150. Financial institution

100.150. "Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization.

Comment. Section 100.150 is the same as a portion of Code of Civil Procedure Section 680.200.

§ 100.160. [Reserved]

§ 100.170. [Reserved]

§ 100.180. [Reserved]

404/973

§ 100.190. Heirs

100.190. "Heirs" means the persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

Comment. Section 100.190 is the same as Section 1-201(17) of the Uniform Probate Code.

404/985

§ 100.200. [Reserved]

§ 100.210. [Reserved]

§ 100.220. Interested person

100.220. (a) Subject to subdivision (b), "interested person" includes any of the following:

(1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.

(2) Any person having priority for appointment as personal representative.

(3) A fiduciary representing an interested person.

(b) The meaning of "interested person" as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

Comment. Section 100.220 is the same in substance as Section 1-201(20) of the Uniform Probate Code.

404/988 NZ

§ 100.230. Issue

100.230. "Issue" of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent.

Comment. Section 100.230 is the same in substance as Section 1-201(21) of the Uniform Probate Code.

404/990

§ 100.240. [Reserved]

§ 100.250. [Reserved]

§ 100.260. [Reserved]

§ 100.270. [Reserved]

§ 100.280. [Reserved]

§ 100.290. [Reserved]

31444

§ 100.300. Parent

100.300. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

Comment. Section 100.300 is the same as Section 1-201(28) of the Uniform Probate Code.

32679 NZ

§ 100.310. Person

100.310. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

Comment. Section 100.310 is drawn from Section 1-201(29) of the Uniform Probate Code. The language of paragraph (27) of UPC Section 1-201 defining "organization" is substituted for the word "organization" in paragraph (29) of that section.

34258

§ 100.320. Personal property

100.320. "Personal property" does not include a leasehold interest in real property.

Comment. Section 100.320 is consistent with the last sentence of Civil Code Section 5110. See also Section 100.340 ("real property" defined).

§ 100.330. [Reserved]

§ 100.340. Probate homestead

100.340. "Probate homestead" means a homestead provided for in Chapter 3 (commencing with Section 251.010) of Part 3 of Division 2.

Comment. Section 100.340 is new.

28296

§ 100.350. Property

100.350. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

Comment. Section 100.350 is the same as Section 1-201(33) of the Uniform Probate Code.

29212

§ 100.360. [Reserved]

§ 100.370. [Reserved]

31471

§ 100.380. Quasi-community property

100.380. As used in this code, "quasi-community property" means the following property, other than community property as defined in Section 100.060:

(a) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired by a decedent while domiciled elsewhere that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time of its acquisition.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired in exchange for real or personal property, wherever situated, that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the property so exchanged was acquired.

Comment. Section 100.380 continues the substance of portions of former Section 201.5, except that community property under the laws of another jurisdiction is classified as community rather than quasi-community property. See Section 100.060 ("community property" defined). See also Sections 100.320 ("personal property" defined), 100.390 ("real property" defined).

31469

§ 100.390. Real property

100.390. "Real property" includes a leasehold interest in real property.

Comment. Section 100.390 is new and is consistent with the last sentence of Civil Code Section 5110. See also Section 100.320 ("personal property" defined).

406/171

§ 100.400. Security

100.400. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

Comment. Section 100.400 is the same as Section 1-201(37) of the Uniform Probate Code.

31500

§ 100.410. [Reserved]

§ 100.420. [Reserved]

§ 100.430. State

100.430. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Comment. Section 100.430 is the same as Section 1-201(40) of the Uniform Probate Code.

31517

§ 100.440. [Reserved]

§ 100.450. [Reserved]

§ 100.460. [Reserved]

32102

§ 100.470. Surviving spouse

100.470. "Surviving spouse" does not include any of the following:

(a) A person whose marriage to the decedent has been dissolved or annulled, unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

(b) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as husband and wife.

(c) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony with a third person.

(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Comment. Section 100.470 is drawn from Section 2-802 of the Uniform Probate Code. Subdivisions (b) and (c) deal with the problem of a divorce or annulment which is not recognized in California, and apply an

estoppel principle against the surviving spouse. These provisions are consistent with prior California law. See, e.g., Spellens v. Spellens, 49 Cal.2d 210, 317 P.2d 613 (1957) (estoppel to deny validity of marriage); Estate of Atherley, 44 Cal. App.3d 758, 764, 119 Cal. Rptr. 41 (1975) (recognizing principle but declining to apply it).

34257 NZ

§ 100.480. [Reserved]

§ 100.490. Trust

100.490. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, Totten trusts, custodial arrangements pursuant to the Uniform Gifts to Minors Act of any state, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

Comment. Section 100.490 is the same in substance as Section 1-201(45) of the Uniform Probate Code.

35060

§ 100.500. Trustee

100.500. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Comment. Section 100.500 is the same as Section 1-201(46) of the Uniform Probate Code.

§ 100.510. [Reserved]

§ 100.520. Will

100.520. "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

Comment. Section 100.520 is the same as Section 1-201(48) of the Uniform Probate Code.