The Uniform Probate Code and Oklahoma Law: A Comparison

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PART II†

INTRODUCTION

The first part of this study dealt primarily with what may be characterized as substantive rights relating to the devolution and distribution of a decedent's property by will or intestate succession. Attention is now turned to the procedures available for concluding the affairs of a decedent and vesting his property in the persons entitled to it. In addition, sections of the Uniform Probate Code pertaining to non-probate transfers and trust administration will be examined.

Article III. Probate of Wills and Administration

This article constitutes the Flexible System of Administration of Decedents' Estates, which, as the Commissioners state, is the heart of the Uniform Probate Code.¹

Overall, the system accepts the premise that the Court's role in regard to probate and administration, and its relationships to personal representatives who derive their power from public appointment, is wholly passive until some interested person invokes its power

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¹ UNIFORM PROBATE CODE, art. III, General Comment [hereinafter cited as UPC].
to secure resolution of a matter. The state, through the Court, should provide remedies which are suitable and efficient to protect any and all rights regarding succession, but should refrain from intruding into family affairs unless relief is requested, and limit its relief to that sought.²

This system is the most controversial part of the Code. It is believed that readers are familiar with the close and detailed supervision, typical to Oklahoma and many American jurisdictions, that courts exercise in the probate of a decedent’s will and the administration of his estate. Comparisons with Oklahoma law will be limited largely to significant likenesses and differences in the Code. Principal discussion will center on the alternative procedures embodied in the Code, to explain the way the system works and the safeguards it provides.


Under the Code,³ the real and personal property of a decedent devolves by operation of law to the persons named in the last will, or their substitutes;⁴ in case of intestacy, the property devolves to the heirs.⁵ In either case, however, the devolution is subject to statutory allowances, elective share and creditors’ rights, and to administration.⁶

If property is devised by will, it is normally necessary that the will be held valid informally⁷ or by court adjudication⁸ in order to prove title.⁹ But neither probate of a will

² Id. (Emphasis added.)
³ See UPC § 3-101.
⁴ In Oklahoma, only in the case of a specific device or legacy does title pass by the will. OKLA. STAT. tit. 84, § 7 (1971). See generally 1 R. Huff, OKLAHOMA PROBATE LAW AND PRACTICE § 211 (1957). See also T. Atkinson, HANDBOOK OF THE LAW OF WILLS 503-05 (2d ed. 1953).
⁵ Accord, OKLA. STAT. tit. 84, § 212 (1971).
⁶ UPC § 3-101; accord, OKLA. STAT. tit. 58, §§ 290-91, 311-12, 314-15; tit. 84, §§ 7, 44, 212 (1971).
⁷ Informal probate is discussed in art. III, pt. 3 infra.
⁸ Formal probate is discussed in art. III, pt. 4 infra.
⁹ See UPC § 3-102.
nor administration of an estate is required under the Code; if neither occurs within three years of death, intestacy is conclusively presumed. Consequently if title is sought to be established by an unprobated will, it must be shown not only that there has been no proceeding in probate but also that the property claimed either has been possessed by the person to whom it was devised or that it was unknown to and not possessed by any of decedent’s heirs or the devisee during the time allowed for testacy proceedings. The provision creates an exception to a rule that prohibits admission of a will into evidence, but it does not permit probate of a late-discovered will. It is designed to prevent injustice in cases, for example, where the devisee erroneously believed all property was held jointly with survivorship rights or where he thought there was no estate and subsequently discovered valuable rights. Oklahoma, on the other hand, has no conclusive presumption of intestacy and thus no time limit within which a will must be probated. However, undue delay in offering a will for probate may constitute laches, and, one year after a decedent’s death, the district court may determine heirs to real property in the absence of a determination of them in probate.

Issuance of letters under the Code commences administration of an estate. No person may serve as personal representative of a decedent in the absence of appointment by a public official. In addition, to be effective to nominate an executor a will must be probated. Although administration

10 UPC, art. III, General Comment (1).
11 UPC § 3-108, Comment.
12 See UPC § 3-102; id., Comment.
13 UPC § 3-102, Comment; see UPC § 3-108.
14 See UPC § 3-102, Comment.
15 See Goff v. Knight, 201 Okla. 411, 206 P.2d 992 (1949).
16 See OKLA. STAT. tit. 84, § 257 (1971). See generally 1 R. Huff, supra note 4, at § 261.
17 See UPC § 3-103.
18 See UPC § 3-102.
is not required by the Code, it may be forced by a creditor, for “[n]o proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative.”

The Code, as drafted, contemplates separate courts of probate and of general jurisdiction. It gives exclusive jurisdiction to the probate court of formal proceedings to determine how an estate is to be administered, expended and distributed. The probate court “has concurrent jurisdiction of any other action or proceeding concerning succession or to which an estate, through a personal representative, may be a party . . . .”

The Code is concerned, however, with the functions to be performed by public officials, not how they may be assigned within a given state. Therefore, for states such as Oklahoma where probate is part of a single court of general jurisdiction, it suggests alternatives: jurisdiction in probate may be limited as it is in Oklahoma today, or it may be expanded to give concurrent jurisdiction in probate of all matters relating to succession or affecting an estate. In view of the familiarity a probate judge may have of matters relating to

19 UPC § 3-104.
20 UPC § 3-105.
21 Id., Comment.
22 See OKLA. STAT. tit. 58, § 1 (1971). Oklahoma Supreme Court precedent denies to the probate courts the power to try title to property. See, e.g., In re Fullerton’s Estate, 375 P.2d 933 (Okla. 1962); cf. In re Kelley’s Estate, 132 Okla. 21, 269 P. 282 (1928); Strawn v. Brady, 84 Okla. 66, 202 P. 505 (1921) (guardianship); In re Overton’s Estate, 5 Indian Terr. 334, 82 S.W. 766 (1904). The Court of Appeals, Division No. 1, has held that court reform in 1967, by creating a single district court in each judicial district with “unlimited original jurisdiction of all justiciable matters,” OKLA. CONST. art. 7, § 7(a), has reversed the former rule. See In re Estate of Fisher, 43 OKLA. B. ASS’N J. 3172 (Ct. App. 1972). Supreme Court review of the Fisher case was not sought. Letter from Edwin W. Ash, Esq., to Orley R. Lilly, Jr., January 4, 1973.
23 See UPC § 3-106, Comment; cf. UPC § 3-105, Comment.
an estate, expansion of his jurisdiction may be desirable if considerations of docketing and assignment of cases otherwise permit. Thus he would have concurrent jurisdiction of “actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.”

He also would have jurisdiction of negligence and other actions involving jury trials; thus it would be desirable to incorporate the provision confirming the jury trial right. In exclusive proceedings the Code provides that interested persons, after notice, may be bound by the court’s orders in respect to property, even though all interested parties are not given notice.

Except in supervised administration, each proceeding relating to an estate is independent of any other proceeding involving the same estate; thus formal and informal proceedings may be independently used by interested persons for different matters relating to a single estate. Unless the Code otherwise requires, the scope of a proceeding is limited to matters framed by the petition. Consequently interested persons may determine not only whether but also what estate matters shall become the subject of a judicial order.

Three years from a decedent’s death is the basic limitation period under the Code for determination of whether he left a will and for commencement of administration. Intestacy is conclusively presumed if no will is probated within this period; Oklahoma has no comparable provision.

24 UPC § 3-105.
25 See id., Comment.
27 See UPC § 3-106.
28 Supervised administration is discussed in art. III, pt. 5 infra.
29 See UPC § 3-107; id., Comment.
30 UPC § 3-108, Comment; see UPC § 3-108.
31 See notes 7-16 supra and accompanying text.
however, exceptions to the limitation period. Two of these relate to situations in which the fact of death itself is in doubt or cannot be proved. The third exception is more important: "[A] proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from decedent’s death."

Risks are implicit in the three-year limitation period, although interested persons may secure earlier protection. For example, distributees within the period are potentially liable to persons determined in a formal proceeding to have prior rights. If the distribution had been made after a formal determination of testacy or intestacy, however, the period of uncertainty would have been shortened. On the other hand certain protections are available without regard to the three-year period. Purchasers from personal representatives or distributees may be protected, as may the personal representative himself, for distributions made after only informal proceedings. And in any event, all claims of creditors are barred three years after death.

The Code contains an exception to the general rule, which would seem to be favored in Oklahoma, that the statute of

32 UPC § 3-108.
33 See generally id., Comment.
34 See UPC §§ 3-909, -1006. See notes 224-26, 338, 358 infra and accompanying text.
35 See UPC §§ 3-412, -413. See notes 144-53 infra and accompanying text.
36 See UPC §§ 3-714, -910. See notes 261-63, 339 infra and accompanying text.
37 See UPC § 3-703. See notes 220-26 infra and accompanying text.
38 See UPC § 3-803 (a) (2). See text accompanying note 304 infra.
limitation on a cause of action which accrued to a decedent during his lifetime is not suspended or tolled by his death. It provides that such a statute shall not bar an action that survives sooner than four months after death. An action which would have been barred within the four month period is barred at the end of that period unless tolled.\footnote{40}

Part 2. Venue for Probate and Administration; Priority to Administer; Demand for Notice

Venue provisions for estate matters in Oklahoma and under the Code are basically the same. In the case of domiciliaries, venue lies in the county where decedent was domiciled.\footnote{41} In other cases, venue lies in a county where property of the decedent is located.\footnote{42} In either case, jurisdiction is exclusive in the court first assuming jurisdiction.\footnote{43} The Code has two other helpful provisions. One allows transfer of a proceeding, on a finding of venue elsewhere, to the proper court.\footnote{44} The second locates the situses of debts and evidences of debts for venue purposes.\footnote{45}

Proceeding on the theory that a decedent would prefer his estate to be administered and distributed as a unified whole according to the law of a single state, the Code con-

\footnote{40}{UPC § 3-109.}
\footnote{41}{OKLA. STAT. tit. 58, § 5 (1) (1971); UPC § 3-201 (a) (1); see, e.g., Grosclose v. Rice, 366 P.2d 465 (Okla. 1961).}
\footnote{42}{UPC § 3-201 (a) (2). Oklahoma's venue provisions as to non-domiciliaries are somewhat more localizing. See OKLA. STAT. tit. 58, §§ 5 (2) - (5), 6 (1971). Under the Code it may not be necessary to administer an estate except in the state of domicile. See notes 374-87 infra and accompanying text.}
\footnote{43}{See OKLA. STAT. tit. 58, §§ 6, 7 (1971); UPC § 3-201 (b); Whitney v. Cook, 303 P. 2d 1116 (Okla. 1957); Woodruff v. Firestone, 182 Okla. 606, 79 P.2d 210 (1938).}
\footnote{44}{UPC §§ 1-303, 3-201 (c). See generally UPC § 3-201, Comment.}
\footnote{45}{See UPC § 3-201 (d).}
tains provisions designed to reduce the occasions in which different states can reach conflicting decisions as to his domicile. One section extends the effect of formal proceedings concluded in another state:

A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.46

Thus matters affecting the disposition of local land, insofar as they relate to execution, revocation and ambiguities of wills, may be determined by the law of another state. Local law will control these matters, however, if a local proceeding is concluded prior to the conclusion of formal proceedings in the domicile state.47 Under present Oklahoma law, the validity and interpretation of wills relating to realty in this state is governed by situs law.48

Another provision of the Code applies in cases where conflicting claims of domicile are pending in different states. If a local formal testacy or appointment proceeding is commenced before a similar proceeding in another state, the domicile issue will be resolved locally. If, on the other hand, the proceeding in the other state was first commenced, the local court must stay its proceeding and will be bound by the domicile determination of the other state.49 The section is not intended to affect the usual rules of res judicata, collateral estoppel and full faith and credit.50 It does have the effect

46 UPC § 3-408.
47 See id., Comment.
48 OKLA. STAT. tit. 84, § 20 (1971).
49 See UPC § 3-202.
of requiring that a local claimant “either initiate litigation in the forum of his choice before litigation is started somewhere else, or accept the necessity of contesting unwanted views concerning the decedent’s domicile offered in litigation pending elsewhere.”\textsuperscript{51} This section applies even though the local claimant first receives notice of the foreign proceeding by way of defense in the local proceeding; since the foreign proceeding is pending, he may contest the domicile issue there.\textsuperscript{52}

A question arises as to whether the Code provisions may be used to prevent the taxing authorities of different states from reaching conflicting conclusions as to a decedent’s domicile for estate tax purposes, a situation that occurred in the well known Dorrance litigation.\textsuperscript{53} Nowhere in the Code sections or comments is that possibility specifically suggested; the answer may depend on a state’s tax or other relevant law, as well as its liberality in interpreting the Code. Some interesting questions could arise in Oklahoma were it to adopt the Code. Current Oklahoma estate tax law permits the Oklahoma Tax Commission to be made a defendant in any action to determine heirs,\textsuperscript{54} and the settlement of an estate is such an action.\textsuperscript{55} Thus even today the Commission may be bound by a local court’s decision that a decedent died domiciled in this or another state.\textsuperscript{56} If the Commission is made a party to a testacy proceeding in this state and an earlier commenced proceeding is pending in another state, will the Code require the Commission to litigate the issue of decedent’s domicile

\textsuperscript{51} UPC § 3-202, Comment.
\textsuperscript{52} Id.
\textsuperscript{54} OKLA. STAT. tit. 68, § 801 (1971).
\textsuperscript{55} E.g., In re Pratt’s Estate, 160 Okla. 256, 16 P.2d 104 (1932).
\textsuperscript{56} See OKLA. STAT. tit. 68, § 801 (1971).
in the foreign state? If the Commission is made a party to a testacy proceeding in this state, will the Code bind the Commission to a finding of foreign domicile in a final order of an earlier concluded proceeding in that foreign state? Whatever the answers to these questions may be, it probably can be agreed that prevention of multiple estate taxation based on domicile is desirable.

Although there are differences in details, both Oklahoma and the Code have provisions on priorities among persons seeking appointment as personal representative, on disqualification to serve, on nomination of another by the person entitled to letters, and the like. The normal priorities in the Code do not apply in certain instances, however. If the estate appears inadequate to satisfy anticipated unsecured claims, on petition of creditors the court may appoint any qualified person. Except in a case where a person is nominated as executor by a will, a person with a substantial interest in an estate may object to the appointment of the person having priority; the court may then appoint any person agreed upon by those having a majority interest of the probable distributable estate, or in default of agreement any suitable person. Finally, the Code provides that the personal representative appointed by a court of decedent's domicile has priority over all others, unless the will nominates a different person for any non-domicile state.

57 See UPC § 3-202. See notes 49-52 supra and accompanying text.
58 See UPC § 3-408. See notes 46-48 supra and accompanying text.
60 See Okla. Stat. tit. 58, §§ 102, 106, 126 (1971); UPC § 3-203(f).
61 See Okla. Stat. tit. 58, § 134 (1971); UPC 3-203(c), (d), (g).
62 UPC § 3-203(b) (1); cf. Okla. Stat. tit. 58, § 124 (1971).
63 UPC § 3-203(b) (2).
64 UPC § 3-203(g).
Because of the Code's flexibility for probate and administration of estates and its minimal notice requirements, a person having a financial or property interest in a decedent's estate may file a demand for notice with the court. After the demand is made, no order or filing to which the demand relates shall be made or accepted unless notice is given the demandant. Failure of notice does not affect the validity of an order or filing, but the failure does permit the demandant to recover for any loss it occasioned.65

Part 3. Informal Probate and Appointment Proceedings

As drafted, the Code creates the position of Registrar, a non-judicial officer whose duty it is to act on informal applications.66 Failure to create that office, however, will not destroy the Code's goal of uniformity as it specifically provides that the Registrar's duties may be performed by a judge, clerk or other person designated by order of the court.67 The Commissioners state the hope that informal probate, which is at least comparable to probate in common form, "will serve to keep the simple will which generates no controversy from becoming involved in truly judicial proceedings."68

Any application for informal probate or informal appointment directed to the Registrar must be verified by the applicant.69 The purpose of verification is to discourage misuse of the no-notice feature of informal proceedings, and the Code contains an unusually strong provision relating to it:

Except as otherwise specifically provided in this Code or by rule, every document filed with the Court under this Code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its

65 See UPC § 3-204.
66 See UPC § 3-105, Comment.
67 See UPC § 3-107.
68 UPC § 3-302, Comment (emphasis in original).
69 UPC § 3-301.
representations are true as far as the person execut-
ing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification there-
in.\textsuperscript{70}

Because remedies for fraud are available without specified time limit,\textsuperscript{71} the Commissioners believe the safeguards provided “may extend well beyond those presently available under supervised administration for persons damaged by deliberate wrongdoing.”\textsuperscript{72}

Upon receipt of an application requesting informal probate of a will,\textsuperscript{73} the Registrar is required by the Code to determine whether the application is complete and verified, the applicant is an interested person, venue is proper, any required notice has been given, and the time limit for original probate is unexpired.\textsuperscript{74} If the will appears to have the required sig-
natures and contains a clause which indicates it was duly executed, the Code provides that it shall be probated without further proof;\textsuperscript{75} it is not necessary that the will be self-prov-
ed.\textsuperscript{76} In the absence of an attestation clause, the Registrar may probate the will either if it appears properly executed, or on the basis of a sworn statement of a person, whether or not he was a witness to the will, who has knowledge of the circumstances of its execution.\textsuperscript{77}

Informal probate is inappropriate in certain cases. The Registrar must deny informal probate unless he has an origi-

\textsuperscript{70} UPC § 1-310.
\textsuperscript{71} See UPC § 1-106; Lilly, supra note 26, at 160-61.
\textsuperscript{72} See UPC § 3-301, Comment.
\textsuperscript{73} The contents of a petition for probate in Oklahoma and of an application under the Code are similar. See Okla. Stat. tit. 58, § 23 (1971); UPC § 3-301 (1), (2).
\textsuperscript{74} UPC § 3-303 (a).
\textsuperscript{75} UPC § 3-303 (c).
\textsuperscript{76} UPC § 3-303, Comment. The self-proved will is authorized by UPC § 2-504, and in Oklahoma by Okla. Stat. tit. 84, § 55 (5) (1971).
\textsuperscript{77} UPC § 3-303 (c).
nal will in his possession, except in cases where probate or its equivalent previously has occurred elsewhere.\footnote{78} An application must also be denied if it indicates that a personal representative has been appointed in another county in the same state\footnote{79} or if it relates to "one or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier . . . ."\footnote{80} Finally, the Registrar may decline the application if for any reason he is not satisfied that the will is entitled to informal probate.\footnote{81} If the application is denied, recourse is not by appeal but by instituting formal probate proceedings.\footnote{82}

In the usual case, no notice of informal probate will be required. Notice must be given, however, to any person who has filed a demand for notice\footnote{83} and to any person whose appointment as personal representative of the decedent has not been terminated.\footnote{84}

An application for informal appointment of a personal representative is also addressed to the Registrar. He must make findings similar to those required for an application for informal probate,\footnote{85} that the applicant has priority and, if the appointment relates to a will, that it has been probated.\footnote{86} No informal appointment, other than of a special administrator, may be made until at least 120 hours have elapsed since the decedent's death. If, however, the decedent was a non-resident, appointment must be delayed thirty days unless the ap-

\footnote{78} See UPC § 3-303 (a) (5), (b), (d), (e); UPC § 3-303, Comment. A lost or destroyed will can be established only in a formal proceeding. See UPC § 3-403 (b).

\footnote{79} UPC § 3-303 (b).

\footnote{80} UPC § 3-304.

\footnote{81} UPC § 3-305.

\footnote{82} See id.

\footnote{83} UPC § 3-306. See note 65 supra and accompanying text.

\footnote{84} Id.

\footnote{85} See UPC §§ 3-303, -308. See text accompanying notes 73-74 supra.

\footnote{86} UPC § 3-308 (a).
Applicant is the decedent's domiciliary personal representative, or unless the decedent's will subjects his estate to the laws of the state where appointment is sought. The purpose of this provision is to allow the first appointment to be made at decedent's domicile, and in Code states the domiciliary representative has priority for appointment over all others. If a personal representative has been appointed at the decedent's domicile, only that representative or his nominee may be appointed in a Code state, unless a probated will provides otherwise. No appointment shall be made if the application indicates that a personal representative has been appointed in any county in the state and that that appointment has not been terminated. Nor shall the Registrar accept an application if it "indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court . . . ." Finally, if for any other reason the Registrar is not satisfied, he may refuse to make an informal appointment. Recourse to a refusal to appoint informally is through formal proceedings.

In the usual case, no notice of an informal appointment proceeding is required. Notice must be given, however, to any person who has filed a demand for notice and to any person having a prior or equal right to appointment who has not filed a written waiver of his right with the court.

An informal appointment fully establishes the status of

87 UPC § 3-307 (a).
88 UPC § 3-307, Comment.
89 See UPC § 3-203 (g). See text accompanying note 64 supra.
90 See UPC § 3-308 (b).
91 See UPC § 3-203 (g). See text accompanying note 64 supra.
92 UPC § 3-308 (b).
93 UPC § 3-311.
94 See UPC § 3-309.
95 See id.
96 UPC § 3-310. See note 65 supra and accompanying text.
97 Id.
personal representative and confers upon the appointee all the powers and duties of the office. The appointment, although subject to termination in certain circumstances, is not subject to retroactive vacation.

Part 4. Formal Testacy and Appointment Proceedings

“A formal testacy proceeding is litigation to determine whether a decedent left a valid will.” It may, but need not, include a request for appointment of a personal representative.

The formal proceeding may take one of several forms. First, it may be merely “an original proceeding to secure ‘solemn form’ probate of a will.” In this form the formal proceeding most nearly resembles probate under current Oklahoma law. However, the proceeding may seek “solemn form” probate to corroborate a previous informal probate, or it may seek to contradict a previous order of informal probate.

In the latter form, the formal proceeding is at least comparable to an Oklahoma will contest. The formal proceeding may also be used to block a pending application for informal probate or to prevent informal probate in the future. Finally, the formal proceeding may be used “to secure

98 UPC § 3-307(b). The duties and powers of a personal representative are discussed in art. III, pt. 7 infra.
99 See UPC §§ 3-608 to -612. See text accompanying notes 194-98 infra.
100 UPC § 3-307(b).
101 UPC § 3-401.
102 Id.
103 Id., Comment.
104 See OKLA. STAT. tit. 58, § 42 (1971).
105 UPC § 3-401, Comment.
106 See OKLA. STAT. tit. 58, §§ 41, 61 (1971).
107 UPC § 3-401, Comment. “During the pendency of a formal testacy proceeding, the Registrar shall not act upon any application for informal probate . . . or . . . for informal appointment . . . .” UPC § 3-401.
a declaratory judgment of intestacy and a determination of heirs in a case where no will has been offered.\textsuperscript{108}

"If a personal representative has been appointed prior to the commencement of a formal testacy proceeding, the petitioner must request confirmation of the appointment to indicate that he does not want the testacy proceeding to have any effect on the duties of the personal representative . . . .\textsuperscript{109}"

If confirmation is not sought, notice of the proceeding requires the representative to refrain from exercising his power to distribute the estate during the proceeding's pendency.\textsuperscript{110} If the petition requests appointment of another as representative, it may also request an order restraining the previously appointed representative from exercising any powers of office and the appointment of a special administrator.\textsuperscript{111}

A petition for formal probate or for an adjudication of intestacy generally must contain the statements required for an informal application of like nature;\textsuperscript{112} in addition, a request for a determination of heirs is required.\textsuperscript{113} In a case of intestacy, the formal determination of heirship will be useful to preclude questions that might arise at the time of distribution.\textsuperscript{114}

A major difference between a formal and an informal proceeding is the notice requirement. As in informal cases,\textsuperscript{115} notice must be given to any person who has filed a demand

\textsuperscript{108} UPC § 3-401, Comment.
\textsuperscript{109} Id.
\textsuperscript{110} See UPC § 3-401. The representative's distributive power may be restored at the completion of the proceeding, with UPC § 3-703 directing him to abide by the will. See UPC § 3-401, Comment.
\textsuperscript{111} UPC § 3-401.
\textsuperscript{112} See UPC § 3-402 (a), (c). See also UPC § 3-301.
\textsuperscript{113} UPC § 3-402 (a), (c).
\textsuperscript{114} UPC § 3-402, Comment.
\textsuperscript{115} See UPC §§ 3-306, -310. See notes 83-84, 96-97 supra and accompanying text.
for notice\textsuperscript{118} and to any personal representative of the decedent whose appointment has not been terminated.\textsuperscript{117} In addition, however, the Code requires that notice shall be given to “the surviving spouse, children and other heirs of the decedent, the devises and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the [county,] or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere . . . .”\textsuperscript{118} The petitioner may give notice to any other person and, in addition, “shall give notice by publication to all known persons and to all persons whose addresses are unknown who have any interest in the matters being litigated.”\textsuperscript{116} It can readily be seen that the notice requirements for formal Code proceedings are similar to those of Oklahoma.\textsuperscript{120}

In cases where the fact of an alleged decedent’s death may be in doubt, the Code requires registered mail notice to his last known address. Furthermore, the court in its discretion may require a search for the alleged decedent, including advertisement, notification of law enforcement and other public agencies, and employment of an investigator.\textsuperscript{121}

The Code is more flexible than Oklahoma law in cases where no person opposes probate of a will. A court in a Code state may order probate of any will on the strength of the pleadings, or it may conduct an open hearing and require proof. In case evidence concerning execution is necessary, the affidavit or testimony of one attesting witness, or if that is unavailable any other evidence or affidavit, is sufficient.\textsuperscript{122}

\textsuperscript{116} UPC § 3-403 (a). See note 65 supra and accompanying text.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{121} UPC § 3-403 (b).
\textsuperscript{122} UPC § 3-405. Since the formal proceeding may also be used for an adjudication of intestacy, that may also be ordered on the strength of the pleadings. See id.
Only in the case of a self-proved will may an Oklahoma court order probate without the testimony of a subscribing witness.\textsuperscript{123} If the will is not self-proved but no person contests its probate, it may be admitted in Oklahoma on the testimony of one subscribing witness,\textsuperscript{124} or if holographic on proof of the handwriting.\textsuperscript{125}

Objections to the formal probate of a will must be expressed in writing.\textsuperscript{123} In the case of a contest of a self-proved will and "unless there is proof of fraud or forgery affecting the acknowledgement or affidavit, compliance with signature requirements for execution is conclusively presumed . . . ."\textsuperscript{127} Thus, for example, whether the witnesses signed in the testator's presence may not be raised; however, proof of undue influence, capacity, revocation and the like is not foreclosed.\textsuperscript{128} "[O]ther requirements of execution are presumed subject to rebuttal without the testimony of any witness . . . ."\textsuperscript{129} In the case of a contest of an attested will that is not self-proved and if evidence concerning its execution is necessary, "the testimony of at least one of the attesting witnesses, if within the state competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence."\textsuperscript{130} In contested cases, Oklahoma law requires the testimony of all subscribing witnesses who are competent and present in the county.\textsuperscript{131}

\textsuperscript{124} See \textit{Okla. Stat. tit.} 58, § 30 (1971). In no case no competent subscribing witness resides in the county or is present to testify, the court may admit a will to probate on the basis of testimony of other witnesses or of other evidence. The testimony of a subscribing witness who resides outside the county may, however, be taken by deposition. See \textit{Okla. Stat. tit.} 58, § 43 (1971).
\textsuperscript{127} UPC § 3-406 (b).
\textsuperscript{128} UPC § 3-406, Comment.
\textsuperscript{129} UPC § 3-406 (b).
\textsuperscript{130} UPC § 3-406 (a).
In contested cases the Oklahoma statutes provide only that "[o]n the trial the contestant is plaintiff, and the petitioner is defendant." Nonetheless, in numerous cases the Oklahoma supreme court has worked out appropriate rules concerning the parties' obligations in making a prima facie showing on issues, going forward with evidence, and bearing the ultimate burdens of persuasion. The Uniform Probate Code codifies these usual rules.

"After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary," if the court is satisfied of its jurisdiction, "it shall determine the decedent's domicile at death, his heirs and his state of testacy" and formally probate any valid unrevoked will. In Oklahoma the determination of heirship is made in a statutory proceeding for that purpose or coincident to the final decree of distribution, rather than at the time of probate or opening an intestate administration. The early determination of heirship in a formal Code proceeding is desirable in view of the facts that no further assistance of the court may be sought or required in the settlement and distribution of an estate and that the court's order is binding on the per-

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133 See, e.g., In re Hart's Estate, 106 Okla. 180, 233 P. 227 (1925) (contest after probate); Tiger v. Peck, 74 Okla. 9, 176 P. 529 (1919) (contest before probate).
134 See UPC § 3-407.
135 See UPC § 3-409. The section also provides for termination of the informal appointment of a personal representative if appropriate, conversion of the proceeding to one to protect a missing person's estate if proof of his death is not satisfactory, and probate of a will from a place that does not provide for probate. See id.
138 See UPC § 3-704. See text accompanying note 223 infra.
sonal representative in making distributions. In appropriate cases the court may issue an order of partial intestacy. In addition, a Code court may, as may an Oklahoma court, probate more than one instrument "if neither expressly revokes the other or contains provisions which work a total revocation by implication." In such a case, the court's probate order should resolve questions, if any, as to who is nominated executor and may, but need not, state how the provisions of one instrument affect those of the other.

Subject to appeal and subject to vacation . . . a formal testacy order . . . including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs . . . . The Code further provides that the court shall entertain a petition for modification or vacation of its probate order in two situations. The first case is that of a later-offered will where the proponent was unaware of its existence at the time of the earlier proceeding, a ground for contest after probate in Oklahoma. The second case is where the proponent was unaware of the earlier proceeding and was given notice only by publication, apparently an insufficient basis to per-

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139 See UPC § 3-703.
140 UPC § 3-411.
141 See OKLA. STAT. tit. 84, §§ 105, 154, (1971).
142 UPC § 3-410.
143 Id. "If wills are not construed in connection with a judicial probate, they may be subject to construction at any time. See Section 3-108." UPC § 3-410, Comment; see UPC § 3-107, Comment.
144 UPC § 3-412.
145 UPC § 3-412(1).
146 See OKLA. STAT. tit. 58, § 61 (1971). Oklahoma law requires a will of a later date than that probated; apparently the Code does not. Compare id. with UPC § 3-412(1).
147 UPC § 3-412(1).
mit vacation of the probate order under current Oklahoma law.\textsuperscript{148} In the case of an order of total or partial intestacy, the Code court may redetermine heirs if it is shown that the person who was omitted was unaware of his relationship to the decedent, unaware of the death, or was given notice of the testacy proceeding only by publication.\textsuperscript{149} The Code requires a petition for vacation to be filed within the earliest of several possible time limits,\textsuperscript{150} all of which in the usual case seem to be longer than Oklahoma’s periods for contest after probate\textsuperscript{151} or for filing an appeal.\textsuperscript{152} In addition, however, the Code permits vacation of an order for good cause shown within the time allowed for appeal.\textsuperscript{153}

It is not necessary under the Code to request formal appointment of a personal representative as part of a formal testacy proceeding, though as a matter of convenience an appointment may be sought. A representative may be appointed informally before or after a formal proceeding determining the decedent’s testacy status, or no appointment may be

\textsuperscript{149} UPC § 3-412(2).
\textsuperscript{150} See UPC § 3-412(3).
\textsuperscript{151} Okla. Stat. tit. 58, §§ 61, 67 (1971) (3 months).
\textsuperscript{152} Okla. Stat. tit. 12 § 990 (1971) (30 days).
\textsuperscript{153} UPC § 3-412. The period for appeal under the Code is the same as is prescribed for appeals in equity cases to the state’s supreme court. See UPC § 1-308. If an alleged decedent is not dead, the finding of the fact of his death may not be vacated if notice was properly mailed to his last known address and an appropriate search was made. See UPC § 3-412(5). See note 121 supra and accompanying text. In any case, however, he may recover estate assets still retained by the personal representative, and remedies for fraud or intentional wrongdoing are preserved to him. He may also recover any estate or its proceeds from distributees or, if “equitable in view of all the circumstances,” the value of distributions they received. See UPC § 3-412; id., Comment. Presumably, Oklahoma courts would reach similar results. See 1 R. Huff, Oklahoma Probate Law and Practice § 23 (1957).
sought. Perhaps the only situation in which a formal appointment will be desired without an adjudication of the decedent's testacy status is when the priority or qualification to serve of the applicant for appointment, but not the decedent's testacy status, is in dispute. A petition for formal appointment stays pending or after-commenced informal appointment proceedings. A previously appointed representative, after notice, may act only to preserve the estate or as the court otherwise orders.

**Part 5. Supervised Administration**

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the Court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

It is this form of administration under the Code which most nearly resembles Oklahoma estate proceedings. There are significant differences, however, for the Code further provides that:

Unless restricted by the Court, a supervised personal representative has, *without interim orders approving exercise of a power*, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the Court.

A personal representative or any interested person may petition for supervised administration at any time. Any questions of decedent's testacy or concerning an appointment

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154 *See* UPC § 3-414, Comment.
155 *See* UPC § 3-414(a).
156 *UPC* § 3-501.
157 *UPC* § 3-504 (emphasis added). Restrictions may be made only in the case of a supervised representative, and they must be endorsed on his letters of appointment. *See id.; id.*, Comment. *See notes 261-63 infra* and accompanying text.
which have not been previously adjudicated must be decided by the court at the hearing on the petition for supervised administration, even though that petition may be denied.158

In determining whether to order supervised administration, the court must consider expressed wishes of a testator. If a decedent's will has directed supervised administration it should be ordered unless circumstances occurring since the will's execution permit a finding that it is not necessary. If unsupervised administration has been directed in the will, only on a finding that it is necessary for protection of persons interested in the estate should supervised administration be ordered. In the absence of directions, the court's order should be based on what is "necessary under the circumstances."160

Supervised administration is terminated by a closing order issued after notice to interested parties.160 "Interim orders approving or directing partial distributions or granting other relief may be issued by the Court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person."161 Persons who have filed a demand for notice are entitled, where appropriate, to notice of interim orders.162 Notice to others of interim matters, however, is not prescribed by the Code but left to determination by court order or rule.163 It can readily be seen that existing Oklahoma statutes require notice of interim proceedings in far more instances than will be mandatory under the Code.164

158 See UPC § 3-502.
159 See id.; id., Comment.
160 See UPC §§ 3-505, -1001.
161 UPC § 3-505.
162 See id., Comment. The demand for notice is controlled by UPC § 3-204. See note 65 supra and accompanying text.
163 See UPC § 3-505, Comment.
164 See, e.g., OKLA. STAT. tit. 58, §§ 385(c), 386, 414, 502, 552 (1971).
Part 6. Personal Representative; Appointment, Control and Termination of Authority

The provisions of this part of the Code apply to all personal representatives, whether informally or formally appointed and whether or not supervised.165 As in Oklahoma,166 to receive letters a personal representative must qualify by filing any required bond and a statement accepting the duties of the office.167 Both systems provide for jurisdiction over the representative's person for all matters relating to the estate: Oklahoma law requires a non-resident representative to appoint a resident as his service agent;168 the Code deems the representative's acceptance statement as his consent in advance to submit personally to the jurisdiction of the court in any proceeding relating to the estate.169

In appropriate circumstances in Oklahoma and under the Code the personal representative is required to furnish bond conditioned on the faithful performance of the duties of his office.170 The principal difference between the two systems is that Oklahoma starts from the premise that bond is required; the Code, that it is not.171 The Oklahoma bond requirement may be expressly waived by a will; but, for good cause shown, the probate court may require a bond in spite of the waiver.172 The bond statute was amended in 1963 to add the following proviso: "Provided, however, the court may in its judgment

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165 UPC § 3-601, Comment.
166 See OKLA. STAT. tit. 58, §§ 161, 171 (1971).
167 UPC § 3-601.
168 OKLA. STAT. tit. 58, § 162 (1971). A personal representative absent from the state need only be given notice by any court of any proceeding in which he is interested. OKLA. STAT. tit. 58, § 231 (1971).
169 UPC § 3-602. To insure due process, mailed notice must be given the representative of any proceeding relating to the estate. Id., Comment.
170 See OKLA. STAT. tit. 58, § 173 (1971); UPC § 3-606 (a) (1).
171 OKLA. STAT. tit. 58, § 171 (1971); see UPC § 3-603; id., Comment.
172 OKLA. STAT. tit. 58, § 178 (1971).
make an order that no bond shall be required if the circumstances indicate none is necessary."\textsuperscript{173} Apparently the proviso has had little impact on Oklahoma practice; practically the bond requirement may be avoided only by its waiver in a will.

Under the Code, "the court and registrar are not responsible for seeing that personal representatives perform as they are supposed to perform. Rather, performance is coerced by the remedies available to interested persons."\textsuperscript{174} The Commissioners believe that "the total package of protection . . . afforded [by the Code] may represent more real protection than a blanket requirement of bond."\textsuperscript{175} Nonetheless, the Code does provide that "[a]ny person apparently having an interest in the estate worth in excess of [\$1000], or any creditor having a claim in excess of [\$1000], may make a written demand that a personal representative give bond."\textsuperscript{176} In cases where a demand is made, "bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate," or if bond is excused by order of court.\textsuperscript{177}

The Code's bond requirement differs for informally- and formally-appointed personal representatives. In the case of an informal appointment, the Registrar shall require a bond (1) of a special administrator,\textsuperscript{178} (2) when a representative's appointment relates to a will which expressly requires bond, or (3) when an interested person or creditor has demanded bond. Under no other circumstances may the Registrar require bond.\textsuperscript{179} In formal proceedings, the court is given dis-

\textsuperscript{173} OKLA. STAT. tit. 58, § 171 (1971).
\textsuperscript{174} UPC § 3-603, Comment.
\textsuperscript{175} Id.
\textsuperscript{176} UPC § 3-605.
\textsuperscript{177} See id. See text following note 179 infra.
\textsuperscript{178} Bond is required of a special administrator appointed in Oklahoma. OKLA. STAT. tit. 58, § 214 (1971).
\textsuperscript{179} UPC § 3-603. Other protections available to interested persons, see text accompanying note 175 supra, include their ability to demand prior notice of informal proceedings, see note 65 supra and accompanying text, and to block informal
cretion not available to the Registrar. The court may require bond except in cases where the requirement is waived by will. Even in a case of waiver, however, the court may require bond if a demand for it has been made and the court is satisfied bond is desirable. On the other hand, where bond is required by a will, the court may dispense with the requirement upon a determination that bond is not necessary.\textsuperscript{180} Neither in Oklahoma nor under the Code is bond required of a corporate fiduciary.\textsuperscript{181}

It is necessary in Oklahoma to state the probable value and character of the property of a decedent's estate in a petition for probate or for administration.\textsuperscript{182} The Code permits somewhat more privacy by eliminating this requirement. If bond is required, however, and unless the will or a court order specifies the amount, the personal representative must state under oath "his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year . . ."\textsuperscript{183} He must then file with the Registrar a bond, or other suitable security, in an amount not less than the estimate.\textsuperscript{184} The criteria set by the Code for determining the amount of bond are approximately the same as those considered by an Oklahoma proceedings by instituting formal proceedings, see note 107 \textit{supra} and accompanying text, wherein the bond requirement may be made an issue for resolution by the court, see note 180 infra and accompanying text. "Finally, interested persons have assurance under this Code that their rights in respect to the values of a decedent's estate cannot be terminated without a judicial order after notice or before the passage of three years from the decedent's death." UPC § 3-603, Comment. See \textit{generally id.}

\textsuperscript{180} UPC § 3-603.
\textsuperscript{181} \textit{See Okla. Stat. tit. 6, § 1005 (1971); UPC § 3-603.}
\textsuperscript{182} \textit{Okla. Stat. tit. 58, §§ 23, 127 (1971).}
\textsuperscript{183} \textit{See UPC § 3-604; id., Comment.}
\textsuperscript{184} UPC § 3-604.
However, the Code offers greater flexibility than Oklahoma law by permitting the Registrar to accept, in lieu of bond, other suitable security, which the Commissioners indicate may include a “co-signature arrangement,” and by the broad discretion the court has in formal proceedings in resolving any matter relating to bond. Under either system failure to furnish required bond is sufficient cause for the personal representative’s removal.

Oklahoma law requires that sureties on a personal representative’s bond state by affidavit that they are “residents and householders or freeholders within the State . . . .” Other security may be required by the court where a surety has removed or is about to remove from the state. Although it may be possible under one of Oklahoma’s long-arm statutes to obtain personal jurisdiction over a surety who has left the state to resolve matters encompassed by his obligation, the Code appears to offer a more viable alternative. A surety, by executing an approved bond, consents to the jurisdiction of the court “in any proceeding pertaining to the fiduciary duties of the personal representative and naming the surety as a party.” Under both systems successive re-

The Oklahoma court is not required to consider income from personality, though it may consider “other circumstances.” OKLA. STAT. tit. 58, § 171 (1971).

See UPC § 3-604, Comment. In addition, “[t]he Registrar may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution . . . in a manner that prevents their unauthorized disposition.” UPC § 3-604.

See UPC §§ 3-603, -604. See notes 174-77, 180-81 supra and accompanying text.

See OKLA. STAT. tit. 58, §§ 177, 182-83, 187 (1971); UPC §§ 3-605, -611(b).

OKLA. STAT. tit. 58, § 176 (1971).

See OKLA. STAT. tit. 58, § 179 (1971).

See OKLA. STAT. tit. 12, §§ 187, 1701.03 (1971).

See UPC § 3-606(a) (3).
coveries on a bond are permitted until the whole penalty is exhausted.\textsuperscript{193}

Termination of a personal representative's appointment is treated comprehensively by Oklahoma and the Code. Although there are differences in detail, both systems provide for termination by resignation,\textsuperscript{194} by death or disability,\textsuperscript{195} by change in the decedent's testacy status,\textsuperscript{196} by removal for cause,\textsuperscript{197} and by discharge.\textsuperscript{198} Both systems provide for the appointment of successor personal representatives who have the same powers as\textsuperscript{199} and may be substituted in pending actions for the original representative.\textsuperscript{200} However under the Code, the powers and duties of a formally-appointed successor may be restricted by order of the court.\textsuperscript{201}

In general, special administrators are appointed for the same purposes in the two systems.\textsuperscript{202} Under the Code, the Registrar without notice may appoint a special administrator prior to or upon termination of the appointment of a general personal representative.\textsuperscript{203} The administrator's duties are limited to collecting, managing, preserving, accounting for, and delivering the assets of the estate to the general personal

\textsuperscript{193} Okla. Stat. tit. 58, § 175 (1971); UPC § 3-606(a)(5).

\textsuperscript{194} Okla. Stat. tit. 58, § 231 (1971); UPC § 3-610(c).

\textsuperscript{195} Okla. Stat. tit. 58, § 221 (1971); UPC § 3-609.

\textsuperscript{196} Okla. Stat. tit. 58, § 218 (1971); UPC § 3-612.

\textsuperscript{197} Okla. Stat. tit. 58, § 231 (1971); UPC § 3-611.

\textsuperscript{198} Okla. Stat. tit. 58, § 691 (1971); UPC §§ 3-610(b), -1001 to -1002.

\textsuperscript{199} Okla. Stat. tit. 58, § 221 (1971); see UPC § 3-613. See notes 267, 286 infra and accompanying text.

\textsuperscript{200} UPC § 3-613; see Okla. Stat. tit. 12, § 235 (1971).

\textsuperscript{201} See UPC § 3-613.

\textsuperscript{202} See Okla. Stat. tit. 58, § 211 (1971); UPC § 3-614. Where appropriate, the person named as executor in the decedent's will is given preference in the appointment. See Okla. Stat., tit. 58, § 213 (1971); UPC § 3-615.

\textsuperscript{203} UPC § 3-614(1)
representative, whose appointment terminates his office. In formal proceedings the court may appoint a special administrator "to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act," for example, where there is a conflict of interest. The appointment may be made without notice in an emergency and may be for a specified time. The administrator has the powers and duties of a general personal representative except as they may be limited by the appointment order. In any case the administrator's appointment may be terminated in the same manner as that of a personal representative.

Because of the availability of unsupervised administration, the Code contains a special provision which permits any person interested in the estate to petition the court temporarily to control the personal representative if it appears that he "otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person." The Commissioners believe that the control permitted the court under this provision is "equal, if not

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206 UPC § 3-614 (2).
207 UPC § 3-614, Comment.
209 UPC § 3-617; see UPC § 3-618.
210 UPC § 3-617.
211 See UPC § 3-618. See text accompanying notes 194-98 supra.
212 See UPC § 3-607 (a). "Persons with whom the personal representative may transact business may be made parties." Id. Notice as the court may direct and a hearing are required. UPC § 3-607 (b).
superior to that presently available with respect to 'supervised' personal representatives appointed by inferior courts.\textsuperscript{213}

\textit{Part 7. Duties and Powers of Personal Representatives}

"The duties and powers of a personal representative commence upon his appointment."\textsuperscript{214} Certain acts occurring prior to the appointment of any representative, however, are permitted by the Code. "[A] person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements."\textsuperscript{215} "[A]cts by the person appointed which are beneficial to the estate occurring prior to appointment [have] the same effect as those occurring thereafter."\textsuperscript{216} In addition, acts of others which would have been proper for the representative may be ratified and accepted by him on behalf of the estate.\textsuperscript{217} The Code also recognizes the possibility of erroneous appointment of a second representative.\textsuperscript{218} and provides that his good faith acts before notice of the first appointment are not void.\textsuperscript{219}

\textsuperscript{213} See UPC § 3-607, Comment. "The request for a restraining order may mark the beginning of a new proceeding but the personal representative, by the consent provided in Section 3-602, is practically in the position of one who, on motion, may be cited to appear before a judge." Id. See text accompanying notes 28-29, 169 supra.

\textsuperscript{214} UPC § 3-701. "A person to whom general letters are issued first has exclusive authority under the letters until the appointment is terminated or modified." UPC § 3-702.

\textsuperscript{215} Id. Compare id. with Okla. Stat. tit. 84, § 17 (1971).

\textsuperscript{216} UPC § 3-701.

\textsuperscript{217} Id.

\textsuperscript{218} The Commissioners suggest the desirability of a central record keeping office to reduce the possibility of an erroneous second appointment. See UPC § 3-702, Comment. Such an office appears desirable in Oklahoma today since erroneous appointment by a second court can occur. See State \textit{ex rel.} Monahawee v. Hazelwood, 81 Okla. 69, 196 P. 937 (1921).

\textsuperscript{219} See UPC § 3-702.
The Code makes it clear that a personal representative is a fiduciary and imposes on him the standards of care it applies to trustees—"the standards . . . that would be observed by a prudent man dealing with the property of another . . . ." He must use his authority for the best interests of successors to the estate and is obligated, consistent with the best interests of the estate, expeditiously and efficiently to settle and distribute it in accordance with the terms of any applicable will and of the Code. Except in the case of supervised administration, the personal representative exercises his authority and performs his duties independent of the court although at any time "he may invoke the jurisdiction of the Court . . . to resolve questions concerning the estate or its administration."

The Code contains an important provision which . . . ties the question of [the representative's] personal liability for administrative or distributive acts to the question of whether the act was "authorized at the time". Thus, a personal representative may rely upon and be protected by a will which has been probated without adjudication or an order appointing him to administer which is issued in no-notice proceedings even though proceedings occurring later may change the assumption as to whether the decedent died testate or intestate. For example, distributions to heirs on the basis of an assumption of intestacy in informal proceedings are authorized; a subsequent order in formal proceedings of probate of a will will not cause the representative to be liable for distributions inconsistent with it. The provision does not, however, preclude recovery from distributees under appropriate circumstances.

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220 **UPC** § 3-703 (a).
221 **UPC** § 7-302.
222 **UPC** § 3-703 (a).
223 **UPC** § 3-704; see **UPC** § 3-105.
224 **UPC** § 3-703 (b).
225 **UPC** § 3-703, Comment; see **UPC** § 3-401, Comment.
228 See **UPC** §§ 3-909, -1004. See notes 338, 358 *infra.*
Except as to causes of action which do not survive death, Oklahoma confers upon a locally appointed personal representative the same right to sue and be sued in its courts as his decedent had immediately prior to death.\textsuperscript{227} This is true also of the Code, though it goes farther to indicate a willingness that the domiciliary representative appointed in a Code state be permitted to sue and be sued in any jurisdiction, the purpose of the provision being to lessen the necessity for ancillary administration.\textsuperscript{228}

Whether or not the personal representative is appointed in no-notice informal proceedings or in formal proceedings after notice, within thirty days of his appointment he must inform heirs and devisees by delivery or ordinary mail of his name and address, the court where estate papers are on file, whether bond has been filed, and that this information is being sent to persons who are or may be interested in the estate. Failure of the representative to give the information does not affect the validity of his appointment, although it is a breach of his duty to the persons concerned.\textsuperscript{229} Since interested persons are entitled to notice of formal probate or appointment proceedings,\textsuperscript{230} the Code's information requirement apparently will serve only to advise persons who failed to appear of some of the decisions made in those proceedings. The require-


\textsuperscript{228} See UPC § 3-703 (c); UPC § 3-703, Comment. See text accompanying notes 382-87 infra.

\textsuperscript{229} See UPC § 3-705. An informally appointed representative administering the estate on the basis of decedent's intestacy must also inform devisees named in any will not offered for probate. Id.; see UPC § 3-301(4) (i).

\textsuperscript{230} UPC §§ 3-403(a), -414(b). See text accompanying notes 115-19 supra.
ment should, however, minimize objection to the no-notice feature of informal appointment proceedings. After being informed of an informal appointment, an interested person may institute formal proceedings to obtain court adjudication to confirm or contradict decisions of the Registrar made in the informal proceedings.\footnote{See UPC § 3-401. See generally id., Comment; UPC § 3-705, Comment. See notes 101-11 supra and accompanying text.}

In Oklahoma and under the Code the personal representative must prepare an inventory of the decedent's property.\footnote{See OKLA. STAT. tit. 58, § 281 (1971); UPC § 3-706.} Oklahoma law requires that court-appointed appraisers value the assets of an estate\footnote{OKLA. STAT. tit. 58, §§ 282-83 (1971). An appraisement is not required if the entire estate consists of money. OKLA. STAT. tit. 58, § 284 (1971).} and that the inventory and appraisement be made a public record by return to the court.\footnote{See OKLA. STAT. tit. 58, §§ 281, 287 (1971).} The Code eliminates involvement of the court in the selection of appraisers\footnote{UPC § 3-706, Comment.} and provides that the personal representative may employ an appraiser when the value of any asset is in doubt.\footnote{UPC § 3-707.} Nor does the Code require filing of the inventory; alternative procedures are provided. “The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court.”\footnote{UPC § 3-706.} If no interested person requests a copy of the inventory, this language apparently does not require that it be filed. Filing is designed to avoid having to furnish copies when there are numerous requests.\footnote{See id.; id., Comment. When an inventory is filed, the court has no affirmative duties concerning it but is only a repository. See id. Notice of the inventory’s filing must be given by the representative to persons who have made a demand for notice. See UPC § 3-204. See text accompanying note 65 supra.} To keep the in-
ventory from becoming a matter of public record the representative need only comply with the requests.\textsuperscript{239} Both systems require a supplementary inventory of later discovered assets of the estate,\textsuperscript{240} and the Code expressly requires that a correction be made when the representative learns that the original value or description of an inventoried item is erroneous or misleading.\textsuperscript{241} Apparently an amendment of the latter type is permitted in Oklahoma.\textsuperscript{242} Breach of a duty regarding inventory is grounds for the representative's removal or surcharge.\textsuperscript{243}

An Oklahoma representative must take possession of all the decedent's estate except the realty constituting the homestead\textsuperscript{244} and the personal property not considered assets of the estate.\textsuperscript{245} A Code representative is under a duty to possess or control the decedent's property, although he may leave with or surrender to the person presumptively entitled to it any real or tangible personal property. If the representative adjudges that possession of the property is necessary for purposes of administration, his judgment is conclusive in any

\begin{footnotesize}
\textsuperscript{239} See UPC § 3-706, Comment.
\textsuperscript{240} Okla. Stat. tit. 58, § 289 (1971); UPC § 3-708.
\textsuperscript{241} UPC § 3-708.
\textsuperscript{243} See Okla. Stat. tit. 58, § 288 (1971); UPC § 3-611; cf. UPC § 3-706, Comment.
\textsuperscript{244} Okla. Stat. tit. 58, §§ 251, 290 (1971). See also Lilly, THE Uniform Probate Code and Oklahoma Law: A Comparison, 8 Tulsa L.J. 159, 182-83 (1972). Oklahoma law does require, however, that the court order delivery of possession of non-homestead realty to the heirs or devisees at the end of ten months from the first publication of notice to creditors, unless it finds that the probable solvency of the estate requires retention of the realty by the representative. See Okla. Stat. tit. 58, § 291 (1971).
\textsuperscript{245} Okla. Stat. tit. 58, §§ 251, 290 (1971). See also Lilly, supra note 244, at 183-84.
\end{footnotesize}
action for possession against an heir or devisee.\textsuperscript{246} Although it may be possible to test the representative's judgment in an action for surcharge, the Commissioners believe that possibility should not interfere with his right to possession.\textsuperscript{247} In either system the personal representative may maintain whatever action is necessary to recover possession of property,\textsuperscript{248} determine title to it,\textsuperscript{249} or set aside a fraudulent conveyance of it.\textsuperscript{250}

That an Oklahoma personal representative lacks the power freely to transfer title to estate assets without the concurrence of the court requires no citation of authority. In sharp distinction is "the broadest possible 'power over title'" given the representative under the Code.\textsuperscript{251} It provides that:

Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. \textit{This power may be exercised without notice, hearing, or order of court.}\textsuperscript{252}

The power concept "embraces all possible transactions which might result in a conveyance or encumbrance of assets, or in a change of rights of possession."\textsuperscript{253} The Code does provide,

\textsuperscript{246} See UPC § 3-709. Possession of property may be otherwise provided for by decedent's will. \textit{Id.}

\textsuperscript{247} See \textit{id.}, Comment.

\textsuperscript{248} OKLA. STAT. tit. 58, § 252 (1971); UPC § 3-709.

\textsuperscript{249} OKLA. STAT. tit. 58, § 251 (1971); UPC § 3-709.

\textsuperscript{250} OKLA. STAT. tit. 58, § 259 (1971); UPC § 3-710.

\textsuperscript{251} See UPC § 3-711, Comment.

\textsuperscript{252} UPC § 3-711 (emphasis added).

\textsuperscript{253} \textit{Id.}, Comment.

He [the personal representative] receives a "\textit{power}," rather than title, because the power concept eases the succession of assets which are not possessed by the personal representative. Thus, if the power is unexercised prior to its termination, its lapse clears the title of devisees and heirs. . . . The relationship
however, several methods by which a person interested in an estate may check the representative's improper exercise of any power concerning the estate. He may petition to have administration of the estate supervised\textsuperscript{254} or to remove the personal representative.\textsuperscript{255} Or, he may seek an order requiring the representative to post bond\textsuperscript{256} or to refrain "from performing any specified act or from exercising any power in the course of administration."\textsuperscript{257} In addition, self-dealing by the representative, broadly defined by the Code,\textsuperscript{258} is proscribed and results in a title that

... is voidable by any person interested in the estate except one who has consented after fair disclosure, unless

of the personal representative to the estate is that of a trustee. Hence, personal creditors or successors of a personal representative cannot avail themselves of his title to any greater extent than is true generally of creditors and successors of trustees.

\textit{Id.} (Emphasis in original.)

\textsuperscript{254} See UPC § 3-502. See text accompanying notes 156-58 \textit{supra.}

\textsuperscript{255} See UPC § 3-611.

\textsuperscript{256} See UPC § 3-605. See text accompanying notes 174-81 \textit{supra.}

\textsuperscript{257} UPC § 3-712, Comment; see UPC § 3-607. See notes 212-213 \textit{supra} and accompanying text.

Evidence of a proceeding, or order, restraining a personal representative from selling, leasing, encumbering or otherwise affecting title to real property subject to administration, if properly recorded under the laws of this state, would be effective to prevent a purchaser from acquiring a marketable title under the usual rules relating to recordation of real property titles.

UPC § 3-712, Comment.

\textsuperscript{258} Self-dealing includes "[a]ny sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative . . . ." UPC § 3-713.
(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.\textsuperscript{259}

Finally, "the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust."\textsuperscript{260}

Purchasers and others who deal with a Code personal representative in good faith and for value are protected from his improper exercises of power in the same manner as persons similarly situated are protected in their dealings with an Oklahoma trustee who is acting in breach of his trust.\textsuperscript{261} "The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise."\textsuperscript{262} Apparently it is at least necessary to determine whether the administration is supervised, for restrictions on powers endorsed on letters in such an administration will be effective to avoid an improper transaction. On the other hand, a power-

\textsuperscript{259} \textit{Id.}

Other breaches of duty relating to sales of assets will not cloud titles except as to purchasers with actual knowledge of the breach. See Section 3-714. The principles of bona fide purchase would protect a purchaser for value without notice of defect in the seller's title arising from conflict of interest.

\textit{Id.}, Comment. See notes 261-63 \textit{infra} and accompanying text.

The Code's restrictions on self-dealing by the personal representative are comparable to those imposed by Oklahoma law on the trustee of an express trust. \textit{See Okla. Stat. tit. 60, §§ 175.9, -.11 to -.13} (1971).

\textsuperscript{260} UPC 3-712.

\textsuperscript{261} Compare UPC § 3-714 with \textit{Okla. Stat. tit. 60, § 175.7} (1971).

\textsuperscript{262} UPC § 3-714 (emphasis added).
limiting provision in a will or order of court is not effective except as to persons with actual knowledge of the limitation.263

Consistent with the broad authority the personal representative has over title to estate assets,264 the Code "accepts the assumption of the Uniform Trustee's Powers Act that it is desirable to equip fiduciaries with the authority required for the prudent handling of assets . . . "265 Consequently, the transactions authorized for a Code representative more nearly parallel those permitted an Oklahoma trustee than of an Oklahoma personal representative.266 As in the case of an Oklahoma trust, however, the statutory powers may be restricted or otherwise provided by will or order of court.267 Otherwise, the Code representative need only act "reasonably for the benefit of the interested persons . . . ."268

A summary of authorized transactions may be useful at this point. The representative may retain assets in which he is personally interested or which are improper trust investments.269 He may perform, compromise or refuse to perform decedent's contracts.270 He may "satisfy written charitable

263 Id. Compare id. with Okla. Stat. tit. 60, § 175.7 (1971).
   Apparently "actual knowledge" as used in UPC § 3-714 includes the notice provided by proper recordation of a will or order of court in the chain of title to real property. See note 256 supra.
   See generally UPC § 3-712. Comment; UPC § 3-713, Comment; UPC § 3-714, Comment.

264 See text accompanying notes 251-53 supra.

265 UPC § 3-715, Comment.


267 Okla. Stat. tit. 60, § 175.24 (1971); UPC § 3-715.

268 UPC § 3-715.

269 UPC § 3-715 (1); accord, Okla. Stat. tit. 60, § 163 (1971) (trustee).

270 UPC § 3-715 (3). This subsection merely gives the representative the same alternatives the decedent would have had; "[i]t is not intended to affect the right to performance or to damages of any person who contracted with the decedent." UPC §3-715, Comment.
pledges of the decedent..." 271 He may place estate funds in investments prudent for a trustee. 272 He may deal with real property in the estate as if he were absolute owner of it; 273 he may deal with stocks and other securities in the same manner, 274 including holding them in the name of a nominee. 275 He may insure assets of the estate and insure himself against liability to third persons. 276 He may borrow money; 277 compromise claims; 278 pay taxes, expenses, his own compensation, and the like; 279 and allocate items of income or expense, as permitted or provided by law. 280 A Code representative may employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated

271 UPC § 3-715(4). The holder of a contractual pledge may pursue the remedies afforded a creditor. This subsection permits the representative to fulfill noncontractual pledges without fear of surcharge. UPC § 3-715, Comment.

272 UPC § 3-715(5); accord, OKLA. STAT tit. 60, § 161 (1971) (trustee). By order of court, funds of an Oklahoma estate may be invested in United States securities. OKLA. STAT tit. 58 § 581 (1971).

273 UPC § 3-715(6)-(11), (23); accord, OKLA. STAT tit. 60, § 175.24A-D (1971) (trustee). See text accompanying notes 251-53 supra.

274 UPC § 3-715(12), (13), (19); accord, OKLA. STAT tit. 60, § 175.24F (1971) (trustee).

275 UPC § 3-715(14); accord, OKLA. STAT tit. 60, § 175.15 (1971) (trustee).

276 UPC § 3-715(15); accord, OKLA. STAT tit. 60, § 175.24D (1971) (trustee).

277 UPC § 3-715(16). An Oklahoma trustee's authority to borrow money may be more limited than the Code representative's authority. Compare id. with OKLA. STAT tit. 60, § 175.24(I)(2) (1971).

278 UPC § 3-715(17); accord, OKLA. STAT tit. 60, § 175.24E (1971) (trustee).

279 UPC § 3-715(18); accord, OKLA. STAT tit. 60, §§ 175.24K, -48 (1971) (trustee).

280 UPC § 3-715(20). Oklahoma trust law incorporates the Uniform Principle and Income Act (1931 version) as OKLA. STAT tit. 60, §§ 175.26 to -36 (1971).
with [him], to advise or assist [him] in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary . . . .

He may prosecute or defend claims and may exonerate himself in contracts from personal liability. He may continue an unincorporated business for four months or for a longer period by order of court, or, without objection by competent adults, incorporate the business. Finally, he may satisfy claims and distribute the estate in accordance with the Code.

It bears repeating that, unless otherwise required, these transactions can be engaged in by the personal representative without the necessity of approval by the probate court.

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281 UPC § 3-715(21). The use of agents by an Oklahoma trustee is more limited. Compare id. with OKLA. STAT. tit. 60, § 175.24H (1971).

282 UPC § 3-715(22); accord, OKLA. STAT. tit. 60, § 175.24E (1971) (trustee).

Defending or prosecuting any proceeding in good faith, whether successful or not, entitles a representative to reimbursement from the estate of his necessary expenses, including reasonable attorney's fees incurred. UPC § 3-720; accord, OKLA. STAT. tit. 58, § 525 (1971); cf. Nichols v. Wallace, 155 Okla. 231, 9 P.2d 430 (1932).

283 UPC § 3-715(26); accord, OKLA. STAT. tit. 60, § 175.18C (1971) (trustee).

284 UPC § 3-715(24), (25). An Oklahoma personal representative may continue a going business only by order of court. OKLA. STAT. tit. 58, § 263 (1971).

285 UPC § 3-715(27). In Oklahoma, claims against an estate must be presented to the court for its allowance or rejection, OKLA. STAT. tit. 58, § 337 (1971), and distribution must be made pursuant to court decree, OKLA. STAT. tit. 58 § 631 (1971).

286 See text accompanying notes 264-68 supra.

Unless a power is expressly made personal to an executor named in the will, a successor personal representative has the same powers and duties as the original representative. UPC § 3-716; accord, OKLA. STAT. tit. 58, § 221 (1971).
Whereas in Oklahoma co-representatives may act by majority agreement, the Code requires all to concur on all acts connected with administration and distribution of the estate. This restriction does not apply when a co-representative receives property due the estate, when concurrence may delay emergency action necessary to preserve the estate, and when one has been delegated to act for all. Although limited delegations to a co-representative are permitted, a blanket delegation is a breach of the fiduciary duty. In any event, persons dealing with a co-representative are fully protected if they are unaware that others were appointed or are advised by the representative with whom they deal that he has authority to act alone.

Compensation of a personal representative in Oklahoma and under the Code is based on different theories. When compensation is not provided by will or when the compensation provided by will is renounced, an Oklahoma representative's commission is fixed by statute and is computed by applying a diminishing scale of percentages to the value of the assets of the estate. For extraordinary services, the court may allow an additional fee which may not exceed the statutory commission. It can readily be seen that the compensation may not reasonably relate to the services performed. The Code provides that “[a] personal representative is entitled to reasonable
compensation for his services." 292 The representative may determine the amount of and pay his own fee, 293 although interested persons may make his actions the subject of litigation. 294 In the absence of a contract with the decedent concerning his compensation, a representative before qualifying may renounce a will provision setting his compensation and be entitled to a reasonable fee. 295

Because "the Code's theory that personal representatives may fix their own fees and those of estate attorneys marks an important departure from much existing practice under which fees are determined by the court in the first instance," 296 a special review proceeding is authorized. At the request of the personal representative or of any interested person, the probate court may review the propriety of the employment of any person by the representative, the reasonableness of the compensation of any employee, or the reasonableness of the compensation the representative sets for his own services. The court may order excessive compensation refunded. 297 In Oklahoma the personal representative lacks authority to bind the estate to a fixed sum, for example, as the fee of an attorney employed by him to render necessary services to the estate.

292 UPC § 3-719.
293 See UPC § 3-715(18).
294 See UPC §§ 3-105, -721. See text accompanying note 297 infra.
295 UPC § 3-719. "If a will provision concerning a fee is framed as a condition on the nomination as personal representative, it could not be renounced." Id., Comment. There appears to be nothing in the Code to preclude the person nominated from refusing to qualify as executor, but, if he has priority, qualify as administrator with the will annexed and thus avoid a restrictive compensation provision.

The Commissioners also state that section 3-719 "has no bearing on the question of whether a personal representative who also serves as attorney for the estate may receive compensation in both capacities." Id. See text accompanying notes 296-97 infra.

296 UPC § 3-721, Comment (emphasis in original).
297 UPC § 3-721.
It is the court in probate that has the power to determine a reasonable attorney's fee.\textsuperscript{288}

Members of the bar are no doubt keenly interested in the in the overall impact adoption of the Uniform Probate Code may have on their practices, especially in regard to the amount of income probate work generates. To engage in much discussion of that matter would be indulging in speculation. In a recent symposium on the Code held by the American College of Probate Counsel, however, several salient points were made. Code practice should provide savings to an attorney both in time and costs, by elimination of a number of court appearances, by simplifying ancillary administration and, in uncontested matters, by reducing paper work, with a consequent savings in direct salary and overhead costs through a lesser need for the use of paraprofessionals. Work on small estates could be concluded more rapidly than is today's usual practice; however, since much of the work in large estates relates to estate and fiduciary income taxes, the Code will not greatly affect the work load they entail. Finally, as practice under the Code will require greater creativity on the part of an attorney in advising a personal representative, he should expect to receive a fee which recognizes the increased responsibility and liability that creativity entails.\textsuperscript{299}

\textit{Part 8. Debtors' Claims}

The Commissioners urge that "[t]he need for uniformity of law regarding debtors' claims against estates is especially strong."\textsuperscript{300} Significant differences between Oklahoma's present law and the Code proposals thus need to be discussed.


\textsuperscript{300} UPC, art. III, pt. 8, General Comment.
Under the Code, a general statute of limitation which was already running against a creditors' claim at the time of the decedent's death is suspended for a period of four months after that event, but thereafter it commences running again and may operate to bar the claim before the normal period of non-claim has elapsed.\textsuperscript{301} The Codes' basic period of non-claim after notice to creditors is four months from the first publication of notice,\textsuperscript{302} in Oklahoma it is two months.\textsuperscript{303} If no notice to creditors is published, however, the Code would bar all claims three years after the decedent's death.\textsuperscript{304}

The Code also contains a limitation on claims which arise at or after the decedent's death. If the claim is based on a contract with the personal representative, it is barred four months after his performance is due; any other claim is barred four months after it arises.\textsuperscript{305}

The types of claims which must be presented within the appropriate non-claim period to avoid bar are different in Oklahoma and under the Code. Oklahoma's non-claim statute applies expressly only to claims arising upon a contract, whether the claim is due, not due or contingent.\textsuperscript{300} Claims arising in tort,\textsuperscript{307} equitable claims,\textsuperscript{308} and claims for taxes\textsuperscript{309}...

\textsuperscript{301} See UPC § 3-802; id., Comment.
\textsuperscript{302} See UPC §§ 3-801, -803 (a) (1). "[C]laims barred by the non-claim statute at decedent's domicile before the first publication for claims in this state are also barred in this state." id.
\textsuperscript{303} See OKLA. STAT. tit. 58, §§ 331, 333 (1971). Oklahoma has a savings clause that a claim may be presented at any time before entry of a decree of distribution if the claimant had no notice because he was outside the state. See id. In addition, the running of the non-claim statute is tolled during a vacancy in administration. OKLA. STAT. tit. 58, § 342 (1971).
\textsuperscript{304} UPC § 3-803 (a) (2).
\textsuperscript{305} UPC § 3-803 (b).
\textsuperscript{306} OKLA. STAT. tit. 58, § 333 (1971).
\textsuperscript{307} E.g., USF&G Co. v. Krow, 184 Okla. 444, 87 P.2d 950 (1939).
\textsuperscript{308} E.g., Johnson v. Hazaleus, 338 P.2d 345 (Okla. 1959).
\textsuperscript{309} People v. Olvera, 43 Cal. 492 (1872).
are thus not required to be presented to the personal representative. The Code, on the other hand, requires presentation of "[a]ll claims . . . including claims of the state and any subdivision thereof . . . founded on contract, tort, or other legal basis."\textsuperscript{310} Not affected by the non-claim provisions, however, is any proceeding either to enforce a mortgage, pledge or other lien on estate property,\textsuperscript{311} or to establish liability of the decedent or the personal representative to the limits provided by liability insurance coverage.\textsuperscript{312}

"The process of perfecting a claim [under the Code] is so simple that most creditors will be protected if they merely submit a statement that accords with ordinary business practice. No involved proofs are required."\textsuperscript{313} Even the failure to describe correctly any contingency, uncertainty, security and the like does not invalidate the presentation.\textsuperscript{314} As an alternative to mailing or delivering the statement of a claim to the personal representative, the claimant may file the statement with the probate court, though the court's role is only that of a depository.\textsuperscript{315} As in Oklahoma,\textsuperscript{316} no claim which is the subject of proceedings against the decedent pending at his death need be presented.\textsuperscript{317}

\textsuperscript{310} UPC § 3-803 (a), (b).

\textsuperscript{311} UPC § 3-803 (c) (1); accord, Okla. Stat. tit. 58, § 333 (1971) (real property).

\textsuperscript{312} UPC § 3-803 (c) (2). See generally UPC § 3-803, Comment.

\textsuperscript{313} Questions Answered: Creditors and the UPC, UPC Notes, Jul., 1972, at 4; see UPC § 3-804 (1). But see Okla. Stat. tit. 58, § 334 (1971).

\textsuperscript{314} See UPC § 3-804 (1). See also, e.g., Shumake v Haggard, 183 Okla. 223, 80 P.2d 643 (1938); Shumake v. Waller, 183 Okla. 225, 80 P.2d 645 (1938).

\textsuperscript{315} See UPC § 3-804 (2); UPC § 3-804, Comment. The purpose of court filing is "to protect the claimant who may anticipate some need for evidence to show that his claim is not barred." Id.

\textsuperscript{316} Okla. Stat. tit. 58, § 343 (1971), was repealed in 1972.

\textsuperscript{317} UPC 3-804 (2).
Claims in Oklahoma must be allowed or rejected by the personal representative and the court. Only the personal representative need act on a claim under the Code. However, a claimant has sixty days in which to seek court review of a claim after being given notice of its disallowance and warned of its impending bar. The representative may change his decision on a claim, though he may not change and disallow a claim after the non-claim period has run. In contrast to Oklahoma where no action on a claim constitutes a rejection of it, under the Code it has the effect of a notice of allowance.

The Uniform Probate Code changes some of the usual rules of a personal representative's liability in his individual and fiduciary capacities. For example, he need not expressly contract to exclude personal liability, but may do so by revealing his representative capacity and identifying the estate in the contract. Nor is he individually liable for a tort unless he is personally at fault. A claimant ordinarily must exhaust his remedies against a fiduciary individually, and then only may he reach the estate to the extent the fiduciary is entitled to indemnity. The Code is "designed to make the estate a quasi-corporation for purposes of such liabilities. The personal representative would be personally liable only if an

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319 UPC § 3-806(a); see UPC § 3-804(3). If the claim is contingent, unliquidated or not due, the personal representative, or the court to avoid injustice, may extend the sixty-day period. See id. In Oklahoma suit on a rejected claim must be commenced within three months after rejection if it is then due or within two months after it becomes due. Okla. Stat. tit. 58, § 339 (1971).
320 See UPC § 3-806(a).
322 See UPC § 3-806(a).
323 See UPC § 3-808(a); UPC § 3-808, Comment; cf. Okla. Stat. tit. 60, § 175.18C (1971) (trustee).
324 See UPC § 3-808(b); cf. Okla. Stat. tit. 60, § 175.20A, B (1971) (trustee).
agent for a corporation would be under the same circumstances, and the claimant has a direct remedy against the quasi-corporate property.\textsuperscript{325}

\textbf{Part 9. Special Provisions Relating to Distribution}

If a decedent’s estate is not administered, the Code provides that record title to devised property may be established in the devisee by a probated will. Title to property as a result of homestead allowance, exemption or intestacy rights may be established by proof of the decedent’s ownership, his death and the claimant’s relationship to the decedent.\textsuperscript{326}

Both Oklahoma and the Code have provisions setting the order of abatement of legacies—indeed, Oklahoma has several provisions.\textsuperscript{327} Both give preference to an express testamentary order,\textsuperscript{328} though the Code goes further to permit giving effect to a testator’s intention if necessary to avoid defeat of a testamentary plan or an express or implied purpose of a devise.\textsuperscript{329}

The Uniform Probate Code codifies two matters which are not yet the subjects of appellate decision in Oklahoma. One is the common law right of retainer.\textsuperscript{330} The Code also states that “[a] provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.”\textsuperscript{331} No-contest clauses apparently are permitted in Oklahoma wills;\textsuperscript{332} however, the

\textsuperscript{325} UPC § 3-808, Comment.
\textsuperscript{326} See UPC § 3-901. See text accompanying notes 3-14 supra.
\textsuperscript{327} OKLA. STAT. tit. 84, §§ 3-5, 133 (1971); UPC § 3-902(a).
\textsuperscript{328} OKLA. STAT. tit. 84, §§ 3 (1), 4 (1) (1971); UPC § 3-902 (b).
\textsuperscript{329} See UPC § 3-902 (b); cf. OKLA. STAT. tit. 84, § 133 (1971).
\textsuperscript{330} UPC § 3-903. See generally T. ATKINSON, HANDBOOK OF THE LAW OF WILLS § 141 (2d ed. 1953).
\textsuperscript{331} UPC § 3-905.
\textsuperscript{332} See OKLA. STAT. tit. 84, § 151 (1971); Whitmore v. Smith, 94 Okla. 90, 221 P. 775 (1924) (dictum).
consequences of lack of success on contest are not entirely clear.

The Code establishes a preference for distribution of an estate in kind.333 Even money bequests may be satisfied by value in kind if the legatee has not demanded cash.334 In addition, the Code contains a helpful provision for determining the value of assets about to be distributed.335 A distributee's title to property is evidenced by an instrument executed by the personal representative which assigns, transfers or releases an asset to him.336 That instrument is conclusive evidence of the distributee's title as against all persons interested in the estate.337 If he is not barred by adjudication, estoppel or limitation, however, the personal representative may recover from a distributee property improperly distributed or paid. Recovery may also be had against a claimant improperly paid.338 On the other hand, where a distributee has received an instrument of distribution from the personal representative and has transferred for value an interest in the property, the transferee "takes title free of any claims of the estate and incurs

333 See UPC § 3-906, Comment.
334 See UPC § 3-906 (a) (2) (i).
335 See UPC § 3-906 (a) (3).
336 See UPC § 3-907. See generally id., Comment.
337 See UPC § 3-908.
338 See UPC § 3-909. This section must be read in conjunction with UPC § 3-703. See text accompanying notes 224-26 supra.

Thus, a distribution may be "authorized at the time" as contemplated by Section 3-703, and still be "improper" under this section. . . . 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. UPC § 3-909, Comment.
no personal liability to the estate, whether or not the distribution was proper.\textsuperscript{339}

Both Oklahoma and Code probate courts are authorized to partition property for distribution or, in appropriate circumstances, order its sale.\textsuperscript{340} Family settlements are recognized in Oklahoma and may be enforced in its courts.\textsuperscript{341} The Code recognizes a broad power in successors, including trustees, to alter their interests in an estate; the personal representative must abide by their written agreement, subject to his obligations to others who have rights in the estate and who are not parties to the agreement.\textsuperscript{342} Before distributing to a trustee, the personal representative may require registration of the trust if that is provided for in the state where the trust is to be administered,\textsuperscript{343} and he may petition the proper court to require a trustee to post bond, unless bond is excused by the trust instrument.\textsuperscript{344} Finally, both systems have provisions, though they differ in detail, which regulate distribution to persons under a disability or whose whereabouts are unknown.\textsuperscript{345}

The last section included in this part of the Code is the Uniform Estate Tax Apportionment Act.\textsuperscript{346} Apparently Oklahoma's experience with that Act was unsatisfactory in light of the fact that it was the law of this state for less than four years.\textsuperscript{347}

\textsuperscript{339} See UPC § 3-910. The transferee need not inquire whether the distribution was proper. Id.

\textsuperscript{340} See Okla. Stat. tit. 58, §§ 641-51 (1971); UPC § 3-911.

\textsuperscript{341} See, e.g., Rice v. Young, 200 Okla. 416, 194 P.2d 882 (1948); Vinson v. Cook, 76 Okla. 46, 184 P. 97 (1919).

\textsuperscript{342} See UPC § 3-912. See art. III, pt. 11 infra.

\textsuperscript{343} See UPC § 3-913(a). Trust registration is discussed in art. VII, pt. 1 infra.

\textsuperscript{344} UPC § 3-913(b); accord, Okla. Stat. tit. 60, § 175.24L (1971). See generally UPC § 3-913, Comment.

\textsuperscript{345} See Okla. Stat. tit. 58, § 693 (1971); UPC §§ 3-914, -915.

\textsuperscript{346} UPC § 3-916; id., Comment.

Part 10. Closing Estates

It should first be pointed out that the Uniform Probate Code does not compel a personal representative to close an estate. Whether he closes at all, and if he closes which alternative method of closing he selects, will depend largely on the protections he desires.348

If he does not close, the Code protects the representative from surcharge for acts of administration or distributions which were authorized at the time they were done.349 He "has no protection against later claims of breach of his fiduciary obligation other than any arising from consent or waiver of individual distributees who may have bound themselves by receipts given to the personal representative."350

One method of closing is by the representative's filing in court a verified closing statement.351 In such a case, the Code states that

\[
\text{unless previously barred by adjudication...}
\]

the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to settlement of the decedent's estate.352

The Commissioners recognize that this provision offers little more protection than a receipt, but they believe "it may be useful to decrease the likelihood of later claim of non-disclosure."353 The filing of a closing statement does serve as a form

348 See UPC § 3-1003, Comment.
349 See UPC § 3-703. See notes 224-26, 338 supra and accompanying text.
350 UPC § 3-1003, Comment.
351 See UPC § 3-1003. The closing statement may not be utilized in cases of supervised administration or if prohibited by order of court. Id.
352 UPC § 3-1005.
353 UPC § 3-1003, Comment.
of notice to third persons for, if no proceedings are pending against the personal representative, his office is terminated one year from the filing date.\textsuperscript{354}

The second and third methods of closing an estate are by court adjudication after notice to appropriate persons and a hearing. The second method, which may be used only for administration under an informally probated will, finally determines only the rights of devisees as among each other and against the personal representative; the testacy status of the decedent is not adjudicated.\textsuperscript{355} By using the third method the rights of all persons interested in an estate are finally determined.\textsuperscript{356} Additionally, this proceeding may be curative of defects if an heir or devisee was omitted as a party in or not given notice of an earlier formal testacy proceeding. The court may determine testacy as it affects such a person and, if appropriate, modify a previous order of testacy.\textsuperscript{357}

Because claims and rights of successors might not otherwise be barred at and after distribution of the estate, the Code

\textsuperscript{354} UPC § 3-1003 (b); see UPC § 3-1003, Comment. After termination and if no actions are pending, the representative or any surety is entitled to a certificate releasing security either has given, but not affecting either's liability. See UPC § 3-1007.

A final order in a court proceeding closing an estate terminates a representative's appointment. See UPC § 3-610 (b).

\textsuperscript{355} See UPC § 3-1002; id., Comment. Either the personal representative or a devisee may petition for closing by this method. UPC § 3-1002.

\textsuperscript{356} See UPC § 3-1001; UPC § 3-1002, Comment. Either the personal representative or any interested person may petition for closing by this method. UPC § 3-1001. The Code directs the closing of a supervised administration by this method, UPC § 3-505, and it is the only formal means of closing an intestate administration, see UPC §§ 3-1001, -1002.

\textsuperscript{357} See UPC § 3-1001 (b); UPC § 3-1001, Comment. Although their interests in the estate may be affected, persons given notice of the earlier testacy proceeding should not be permitted to appear in the curative proceeding. See id.
place an ultimate time limit on recovery from distributees—the later of three years after decedent's death or one year after distribution.\textsuperscript{358}

Both Oklahoma and the Code provide for administration of property discovered after an estate has been settled.\textsuperscript{359}

\textit{Part 11. Compromise of Controversies}

Though all of its ramifications may not be clear, the family settlement doctrine is recognized in Oklahoma.\textsuperscript{360} This part of the Code is a codification of procedures for securing court approval of a compromise of a controversy among persons having beneficial interests in a decedent's estate. Furthermore it resolves some of the substantive issues which may attend a compromise.

A compromise may relate "to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate . . . ."\textsuperscript{361} Court approval of a compromise binds all parties to it including persons unborn, unascertained or unlocated, though the rights of creditors and taxing authorities, unless they are parties, are not impaired. Furthermore, an approved compromise is binding even though it may affect a trust or an inalienable right.\textsuperscript{362}

\textsuperscript{358} See UPC § 3-1006; \textit{id.}, Comment. A supposed decedent's rights against distributees is governed by UPC § 3-412. A distributee is liable for an undischarged claim up to the value of his distribution at the time it was made, although by notice he may preserve his right of contribution from other distributees. See UPC § 3-1004; \textit{id.}, Comment.

\textsuperscript{359} See OKLA. STAT. tit. 58, § 692 (1971); UPC § 3-1008.

\textsuperscript{360} Cases cited note 341 \textit{supra.} See text accompanying notes 341-42 \textit{supra.}

\textsuperscript{361} See UPC § 3-1101.

\textsuperscript{362} \textit{id.}
Minors represented only by their parents, however, may be bound only if the parents join in executing the compromise.\textsuperscript{363}

To approve a compromise the court must find “that the contest or controversy is in good faith and that the effect of the agreement upon the interest of persons represented by fiduciaries or other representatives is just and reasonable . . . .”\textsuperscript{364} The court may order all fiduciaries under its supervision to execute the compromise.\textsuperscript{365} Thus it may prevent executors and testamentary trustees from vetoing an agreement because of the interest they may have in fees to be earned by carrying out a testator’s intention.\textsuperscript{366} Once approved and executed, the agreement governs further disposition of an estate.\textsuperscript{367}

Part 12. Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates

The first procedure described in this part of the Code permits transfer of small estates by affidavit without use of a personal representative. The affidavit must state that:

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed $5,000;

(2) 30 days have elapsed since the death of the decedent;

\textsuperscript{363} UPC § 3-1102(3). UPC § 1-403 governs representatives and appointment of guardians ad litem. See also Lilly, The Uniform Probate Code and Oklahoma Law: A Comparison, 8 TULSA L.J. 159, 162 (1972).

\textsuperscript{364} UPC § 3-1102(3). The Commissioners believe that “the procedure does not threaten the planning of a testator who plans and drafts with sufficient clarity and completeness to eliminate the possibility of good faith controversy concerning the meaning and legality of his plan.” UPC § 3-1102, Comment.

\textsuperscript{365} UPC § 3-1102(3).

\textsuperscript{366} See UPC § 3-1102, Comment.

\textsuperscript{367} UPC § 3-1102(3).
(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claiming successor is entitled to payment or delivery of the property.\footnote{UPC § 3-1201(a).}

Presentation of the affidavit to him requires any person indebted to the decedent or possessing tangible personal property or an instrument evidencing an intangible to pay the debt or deliver the property to the claiming successor.\footnote{Id.} Presentation to a transfer agent requires him to change a security's ownership on the corporation's books.\footnote{UPC § 3-1201 (b).} A person who complies with these requirements is discharged and released to the same extent as if he had dealt with a personal representative, although the claiming successor is accountable to a personal representative or any other person who has superior rights.\footnote{UPC § 3-1202.}

The second procedure permits the personal representative, without giving notice to creditors, to distribute the estate to the persons entitled to it and file a closing statement if "the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent . . . ."\footnote{UPC § 3-1203. \textit{See also} UPC § 3-1204.}

Summary administration in Oklahoma differs from both Code procedures. If the value of the entire estate does not exceed $5,000, use of the summary procedure shortens the time for presentation of creditors' claim and the time in which probate of a will becomes conclusive; it also permits rapid settlement of the estate and discharge of the personal representative.\footnote{See OKLA. STAT. tit. 58, §§ 241-43 (1971).}

\footnote{UPC § 3-1201 (a).} \footnote{Id.} \footnote{UPC § 3-1201 (b).} \footnote{UPC § 3-1202.} \footnote{UPC § 3-1203. \textit{See also} UPC § 3-1204.} \footnote{See OKLA. STAT. tit. 58, §§ 241-43 (1971).}
Article IV. Foreign Personal Representatives; Ancillary Administration

This Article is concerned with the powers and responsibilities in a Code state of a personal representative appointed in another state, regardless of whether that state has adopted the Code. In addition, a number of provisions in Article III relate to local appointment of personal representatives for non-residents and administration of their estates. Together they are "designed to coerce respect for domiciliary procedures and administrative acts to the extent possible."\(^{374}\) Thus, "it may be possible to avoid administration in any state other than that in which the decedent was domiciled."\(^{375}\) Ancillary administration of a non-resident decedent's estate is not compelled in Oklahoma. However, an order of an Oklahoma court is necessary to perfect title in a transferee, successor or devisee to realty situated in this state.\(^{376}\)

Part 2. Powers of Foreign Personal Representatives

Local debtors of a non-resident decedent are, of course, subject to some risk of double liability by voluntarily paying their debts to a personal representative appointed at decedent's domicile.\(^{377}\) That risk is minimized by the Code. Upon presentation of an affidavit\(^{378}\) by the domiciliary foreign personal

\(^{374}\) See UPC, art. IV, General Comment. See also UPC §§ 3-201 to -203, -307 (a), -308 (a), -602, -611 (b), -803 (a), -815, -816.

\(^{375}\) See UPC § 3-201, Comment.


\(^{378}\) The affidavit must indicate that sixty days have elapsed since the decedent's death, that no local administration has commenced or is pending and that the domiciliary foreign personal representative is entitled to payment or delivery. See UPC § 4-201.
representative, a local debtor who in good faith pays the debt to him is released to the same extent as if he had paid a locally-appointed representative.\(^{379}\) A local creditor is afforded protection, however, for he may notify a local debtor not to pay the domiciliary representative\(^{380}\) and thus prevent good faith payment of the debt.

Alternatively, a domiciliary foreign personal representative may file in a Code state copies of his appointment and any official bond he has given.\(^{381}\) That filing entitles him to maintain actions in the state,\(^{382}\) an authority which is available under present Oklahoma law.\(^{383}\) In addition, as to assets in the state the Code filing permits the domiciliary representative to exercise locally "all of the powers provided for in an unsupervised administration as provided in Article III of the Code."\(^{384}\) By contrast, only local appointment in ancillary proceedings can confer on any foreign representative the full authority of Oklahoma law.\(^{385}\) Such a true ancillary administration, governed by Article III, also is authorized by the Code.\(^{386}\)

\(^{379}\) See UPC § 4-202. A local person who possesses or controls personal property belonging to the decedent is released to the same extent by delivery of it to the domiciliary representative. Id.; see UPC § 4-201.

\(^{380}\) See UPC § 4-203. See generally UPC, art. IV, General Comment.

\(^{381}\) See UPC § 4-204.

\(^{382}\) See UPC § 4-205.

\(^{383}\) See OKLA. STAT. tit. 58, § 262 (1971).

\(^{384}\) See UPC, art. IV, General Comment.

\(^{385}\) See generally 1 R. Huff, supra note 376, at §§ 444-45.

\(^{386}\) See, e.g., UPC § 4-207. The representative appointed at the decedent's domicile has priority over others to appointment as ancillary representative in a Code state. See UPC § 3-203(g). No other person may be appointed ancillary administrator except in formal proceedings. See UPC § 3-308(b).
Since an application or petition for local administration terminates the authority of the foreign representative to act locally, the Code protects persons who act in reliance on that authority and without actual notice of a pending local administration. Furthermore, "[t]he local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any [local] action or proceedings . . . ." 387

**Part 3. Jurisdiction over Foreign Representatives**

A person who accepts the office of personal representative in a local or ancillary administration commenced under Article III submits himself to jurisdiction of the appointing court for any proceeding relating to the estate. 388 This part of the Code states the circumstances under which long-arm jurisdiction may be exercised over a foreign personal representative.

A foreign representative submits himself to local jurisdiction by filing an authenticated copy of his foreign appointment or by doing any act locally as personal representative which would give the state jurisdiction over him as an individual. Quasi-in-rem jurisdiction over him is conferred on local courts to the extent of funds collected or the values of personal property received from within the state. 389 In addition, he is subject to local jurisdiction "to the same extent that his decedent was subject to [local] jurisdiction immediately prior to death." 390

387 See UPC § 4-206.
388 See UPC § 3-602. See notes 168-69 supra and accompanying text.
389 See UPC § 4-301. See generally UPC, art. IV, General Comment. See notes 377-84 supra and accompanying text.
390 UPC § 4-302.

Service on the foreign representative by certified or registered mail is preferred, but if neither is available it may be made by ordinary mail. Any other method of service authorized by local law is also permitted. See UPC § 4-303.
Part 4. Judgments and Personal Representative

This part of the Code contains one section which was adapted from section 8 of the Uniform Ancillary Administration of Estates Act: "An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication." By extending the res judicata effect of judgments relating to an estate, the Code minimizes the usual rule that two or more administrations are independent of each other.

Article VI. Non-Probate Transfers
Part 1. Multiple-Party Accounts

"Account", as used in this part of the Code, "means a contract of deposit of funds between a depositor and a financial institution," including, for example, banks and trust companies, savings and loan associations, and credit unions. A "multiple-party account" is one of three types of accounts that often are used as will substitutes: joint accounts, payable-on-death (P.O.D.) accounts, and Totten trust accounts. The purpose of this part is twofold: to regulate "the relationship between parties to multiple-party accounts, on the one hand, and . . . the financial institution-depositor . . . relationship, on the other."

By keeping these relationships separate, it is possible to achieve the degree of definiteness that financial institutions must have in order to be induced to offer multiple-party accounts for use by their customers, while preserving the opportunity for individ-

391 UPC § 4-401; see id., Comment.
392 See generally 1 R. Huff, supra note 376, at § 445.
393 UPC § 6-101(1).
394 UPC § 6-101(3).
395 See UPC § 6-101(4) (defined).
396 See UPC § 6-101(10), (11) (defined).
397 See UPC § 6-101(14) (defined).
398 See UPC § 6-102, Comment.
uals involved in multiple-party accounts to show various intentions that may have attended the original deposit, or any unusual transactions affecting the account thereafter.\textsuperscript{599}

On the assumption that these multiple-party arrangements are not intended as irrevocable gifts, funds deposited by a single depositor belong to him during his lifetime; in the case of joint accounts or of multiple depositors to a P.O.D. or trust account, ownership is in proportion to the net contributions by each to the sums on deposit.\textsuperscript{400}

Of greater interest because of its relationship to a decedent's estate is the right of survivorship which attaches to a multiple-party account. On the death of a depositor in a joint account, the funds belong to the surviving depositors as against the estate of the decedent, and the right of survivorship continues between the surviving depositors. The presumption of the survivorship right may be negated by clear and convincing evidence of a different intention at the time the account is created.\textsuperscript{401} In the case of P.O.D. or trust accounts, on the death of the original depositor or of the survivor of two or more original depositors, the funds belong to the P.O.D. payee or payees or to the person or persons named as beneficiaries, and no right of survivorship between the latter is presumed.\textsuperscript{402} In other cases and where there is no survivorship right, the death of a person beneficially interested in a multiple-party account transfers his rights as part of his estate.\textsuperscript{403} Although the form of an account may be changed while the original depositor or depositors are living,\textsuperscript{404} a right

\textsuperscript{599} \textit{Id.}

\textsuperscript{400} See UPC § 6-103; \textit{id.}, Comment. A contrary intention may be shown. See UPC § 6-103(a), (c). UPC § 6-101(6) defines "net contribution."

\textsuperscript{401} See UPC § 6-104(a).

\textsuperscript{402} See UPC § 6-104(b), (c).

\textsuperscript{403} See UPC § 6-104(d). \textit{See generally} UPC § 6-104, Comment.

\textsuperscript{404} See UPC § 6-105.
of survivorship arising from the express terms of an account or under the Code cannot be changed by will. Multiple-party accounts and transfers resulting from them are non-testamentary in character and not subject to Articles I-IV of the Code.

Multiple-party accounts may not, however, be used to defeat the rights of creditors or to defeat completely the rights of a surviving spouse and minor children. If other assets of the estate are insufficient, the Code expressly provides that the personal representative may recover amounts to the extent necessary to pay debts, taxes and expenses of administration, including homestead, family and exempt property allowance.

The other sections in this part of the Code provide rules for the protection of financial institutions in paying out funds from a multiple-party account. This is a subject on which Oklahoma has some, though less comprehensive, legislation. Apparently the relationships of depositors, decedents' estates and others intrusted in multiple-party accounts has been left to judicial resolution in Oklahoma. Adoption of the Code or like rules would serve to reduce possible doubts concerning those relationships and provide definiteness for estate planners and persons who contemplate creating such an account.

Part 2. Provisions Relating to Effect of Death

This part of the Code contains one section which "authorizes a variety of contractual arrangements which have in the past been treated as testamentary. . . . The result . . .

405 See UPC § 6-104(e).
407 See UPC § 6-107; id., Comment.
408 See UPC §§ 6-108 to -113.
409 See, e.g., OKLA. STAT. tit. 6, §§ 901-02; tit. 18, §§ 381.39, -40 (1971).
usually [has been] to invalidate them because not executed in accordance with the statute of wills."411 The section applies to "provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust."412 Two basic types of transactions are authorized. First, money, other benefits or property may transfer on death "to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently."413 Second, "any money due or to become due under the instrument shall cease to be payable in the event of the death of the promisee or the promisor before payment or demand."414 The requirement of a writing reduces the danger of fraud in such a transaction. The instrument does not have to be probated; "nor does the personal representative have any power or duty with respect to the assets involved."415 The rights of creditors under other laws of the state, however, are not affected by this section.416

Article VII. Trust Administration

Persons familiar with trust law and procedures in Oklahoma will recognize immediately that several of the objectives of this Article are inapplicable to this state because the problems sought to be resolved do not exist. The Commissioners summarize the objectives as follows:

1. To eliminate procedural distinctions between testamentary and inter vivos trusts.

2. To strengthen the ability of owners to select trustees by eliminating formal qualification of trustees and restrictions on the place of administration.

411 See UPC § 6-201, Comment.
412 See UPC § 6-201.
413 See UPC § 6-201 (a) (1), (3).
414 UPC § 6-201 (a) (2).
415 See UPC § 6-201, Comment.
416 See UPC § 6-201 (b).
3. To locate nonmandatory judicial proceedings for trustees and beneficiaries in a convenient court fully competent to handle all problems that may arise.

4. To facilitate judicial proceedings concerning trusts by comprehensive provisions for obtaining jurisdiction over interested persons by notice.

5. To protect beneficiaries by having trustees file written statements of acceptance of trusts with suitable courts; thereby acknowledging jurisdiction and providing some evidence of the trust's existence for future beneficiaries.

6. To eliminate routinely required court accountings, substituting clear remedies and statutory duties to inform beneficiaries.\textsuperscript{417}

\textit{Part 1. Trust Registration}

The existence of a testamentary trust in Oklahoma is made a matter of public record by probate of the will; an inter vivos trust may never be made public. The Code imposes a duty on the trustee of any trust that has its principal place of administration in the state to register it at his usual place of business or residence.\textsuperscript{418} Registration does not require disclosure of trust terms, assets or the identity of beneficiaries, but consists of filing a statement identifying the trustee and testator or settlor and giving the date and place of domiciliary probate or date of the instrument and name of any original trustee.\textsuperscript{419} Registration is in only one place, although it may be transferred within a state or to another state.\textsuperscript{420}

\textsuperscript{417} UPC, art. VII, General Comment. See \textit{generally id.}
\textsuperscript{418} See UPC § 7-101. The section contains several alternatives for locating the principal place of administration. See id.
\textsuperscript{419} See UPC § 7-102. An oral trust may be registered, but greater disclosure is required. See id.
\textsuperscript{420} See UPC §§ 7-102, -305. See also UPC, art. VII, pt. 1, General Comment.

The trustee has a continuing duty to administer a trust in an appropriate place. Normally trust terms will be followed; if necessary, however, the court may order a transfer. See UPC § 7-305. See \textit{generally id.}
The effect of registration is to submit the trustee personally to the jurisdiction of the court in any proceeding relating to the internal affairs of the trust.\textsuperscript{421} Quasi-in-rem jurisdiction, to the extent of their interests in the trust, is also conferred on the court over all beneficiaries.\textsuperscript{422} It can readily be seen that, in Oklahoma, the district court in the county of residence of the trustee or any co-trustee may exercise like power.\textsuperscript{423} Under the Code, failure of the trustee to register the trust in a proper place does not defeat an appropriate court's jurisdiction over his person and may constitute grounds for his removal.\textsuperscript{424}

Foreign corporate trustees are given greater freedom to act in a Code state than is the usual case. The only apparent change that would be made in Oklahoma law is to remove its requirement that reciprocity be accorded an Oklahoma corporation to act on like terms within the foreign state.\textsuperscript{425} The Code provision reads in part:

A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within this state. . . . Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation.\textsuperscript{426}

\textsuperscript{421} See UPC § 7-103(a). The court contemplated by this section is "the Court or branch having jurisdiction in matters relating to the affairs of decedents." UPC § 1-201 (5). See text accompanying notes 20-24 supra. See also UPC § 7-201. See note 428 infra and accompanying text.

\textsuperscript{422} See UPC § 7-103(b). See generally UPC § 7-103, Comment.

\textsuperscript{423} See Okla. Stat. tit. 60, § 175.23 (1971).


\textsuperscript{425} Compare Okla. Stat. tit. 18, § 476 (1971) with UPC § 7-105.

Thus, "isolated instances of litigation and management" are permitted, while "continuous pursuit of general trust business" is prevented.\footnote{427} In 1971 Oklahoma resolved the problem of local trustees who cannot qualify to act in a foreign state by enacting a statute which permits a local trustee to appoint a natural or corporate trustee to administer that portion of the trust situated in the foreign state.\footnote{428}

**Part 2. Jurisdiction of Court Concerning Trusts**

"The Court\footnote{429} has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts."\footnote{430} The court may also review the propriety of the trustee's employment of any person and the reasonableness of that person's or the trustee's own compensation.\footnote{431} In addition, the court has concurrent jurisdiction "of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors and debtors of trusts, and of other actions and proceedings involving trustees and third parties."\footnote{432} However, neither registration nor a court proceeding results in con-

\footnote{427}{See UPC § 7-105, Comment.}
\footnote{428}{See OKLA. STAT. tit. 60, § 175.54 (1971).}
\footnote{429}{See note 421 supra.}
\footnote{430}{UPC § 7-201(a). "Internal affairs" relate to "the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts." See id. Compare id. with OKLA. STAT. tit. 60 §§ 175.23, -37 to -40 (1971). Also included is the power to release registration of a trust. UPC § 7-201(a) (4); see UPC § 7-102.}
\footnote{431}{Venue lies in the place of registration, or, if the trust is not registered in the state, in any place where it properly could have been registered. UPC § 7-202. See note 423 supra and accompanying text.
A proceeding is initiated by filing a petition and giving notice to interested parties. All persons notified are bound by the court's decree. UPC § 7-206; see UPC §§ 1-401, -403.}
\footnote{432}{UPC § 7-205. See text accompanying notes 296-97 supra.}
\footnote{422}{UPC § 7-204.
tinuing court supervision of a trust. The court will act only when its jurisdiction is invoked by an interested party or as otherwise provided by law.433

For cases concerning the internal affairs of a trust registered or having its principal place of administration in another state, the Code utilizes the forum non conveniens concept. Over the objection of a party, the local court will not entertain such a case, "unless (1) when all appropriate parties could not be bound by litigation in the courts of the [other] state . . . or (2) when the interests of justice otherwise would seriously be impaired. The Court may condition a stay or dismissal . . . on the consent of any party to jurisdiction of the [other] state . . . ."434

Part 3. Duties and Liabilities of Trustees

Except where special skills are involved, the usual standard applied to a trustee is that "care and skill . . . a man of ordinary prudence would exercise in dealing with his own property."435 That appears to be the standard applicable in Oklahoma generally436 and for investing.437 The Code emphasizes that the standard is an external one:

Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.438

433 See UPC § 7-201 (b).
434 UPC § 7-203; see id., Comment.
437 See OKLA. STAT. tit. 60, § 161 (1971).
438 UPC § 7-302 (emphasis added) see id., Comment.
Accountings by trustees to beneficiaries are not explicitly required by statute in Oklahoma. Private accountings are preferred, though the district court may compel a trustee to account. The Code also contemplates private accountings, though it explicitly requires the trustee to keep beneficiaries "reasonably informed" of the trust and its administration. In addition, the trustee is obligated to disclose registration information to beneficiaries and, upon reasonable request, to provide a beneficiary with a copy of the trust terms and other information related to his interest and to provide a statement of accounts annually, on a change of trustee or on termination of the trust.

Bond is not required of a trustee unless required by the trust terms, reasonably requested by a beneficiary or found necessary by the court. In appropriate circumstances, the court may excuse or reduce bond, release sureties and the like. Oklahoma's bond provision, though less detailed, is comparable and is cited in the Code Comment.

The usual rules relating to a trustee's tort and contract liability in his individual and fiduciary capacities have been changed by the Code and generally are in accord with Oklahoma's rules. "[T]he liability of the trust and trustee [is] the same as that of the decedent's estate and personal representative."

Although a beneficiary's claim against a trustee for breach of trust may be barred by adjudication, estoppel, laches and

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439 See OKLA. STAT. tit. 60, § 175.23A (1971). See generally R. Huff, supra note 376, at §§ 701-03.
440 See UPC § 7-303.
441 See UPC § 7-304.
442 See OKLA. STAT. tit. 60, § 175.24L (1971).
443 See UPC § 7-304, Comment.
444 See UPC § 7-306. Compare id. with OKLA. STAT. tit. 60, §§ 175.18 to 20 (1971).
445 See UPC § 7-306, Comment. See notes 323-25 supra and accompanying text.
the like, the Code contains additional limitations which begin to run upon receipt by the beneficiary of a final account or other statement which indicates termination of the trust relationship with the beneficiary. As to matters fully disclosed the suggested period is six months, otherwise the period is three years.446

Part 4. Powers of Trustees

This part of the Code contains no substantive provisions, but only a General Comment which states, in part: “Comprehensive legislation dealing with trustees' powers appropriately may be included in the Code package at this point.”447 The Commissioners note that Oklahoma has comprehensive trust legislation.448

Conclusion

It was earlier stated that the ultimate goal of Oklahoma estates' law should be to assure “that family protection in the devolution of [their] property which best effectuates the probable expectations and intentions of Oklahoma decedents.”449 That protection should be provided as expeditiously, efficiently and safely as possible, consistent with the rights of all persons interested in an estate. Without a thorough re-examination, can we say with assurance that Oklahoma law achieves its goal?

446 See UPC § 7-307; id., Comment.
447 See UPC, art. VII, pt. 4, General Comment.
448 Id.; see OKLA. STAT. tit. 60, §§ 175.1 to -.54 (1971).
449 See Lilly, supra note 363, at 198.