

TITLE 2 - WILLS, DECEDENTS' ESTATES AND PROBATE CODE

CHAPTER 1 - GENERAL PROVISIONS

ARTICLE 1 - CITATIONS, CONSTRUCTION AND GENERAL PROCEDURE

**2-1-101. Short title.**

This act may be cited as the "Wyoming Probate Code".

**2-1-102. Rules of construction and applicability.**

(a) This code shall be liberally construed and applied, to promote the following purposes and policies to:

(i) Simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(ii) Discover and make effective the intent of a decedent in distribution of his property;

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

(iv) Facilitate use and enforcement of certain trusts.

(b) Unless displaced by the particular provisions of this code, the principles of law and equity supplement the code provisions.

(c) This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

(d) The procedure herein prescribed shall govern all proceedings in probate brought after the effective date of this code. It shall also govern further procedure in proceedings in probate then pending unless the court determines its application in particular proceedings or parts thereof is not feasible or will work an injustice, in which event the former procedure shall apply.

**2-1-103. Objections to appointments.**

For appointments made pursuant to the Wyoming Probate Code, unless a shorter period of time is specified in the code or by the court, or where an appointment will be made with no hearing or no notice, all persons having an objection to the appointment of any person as a personal representative, administrator, executor, trustee, conservator, fiduciary or receiver shall file the objection in the court considering the appointment no less than five (5) days prior to any hearing scheduled to consider the appointment. A court may waive this requirement upon a showing of good cause.

ARTICLE 2 - DISTRIBUTION BY AFFIDAVIT AND  
SUMMARY PROCEDURE

**2-1-201. Payment of indebtedness and delivery of tangible personal property or instruments evidencing debt.**

(a) Not earlier than thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or the instrument evidencing the debt, obligation, stock or chose in action to the person or persons claiming to be the distributee or distributees of the property or the attorney for the distributee or distributees, upon being presented an affidavit, filed as provided by subsection (c) of this section, made by or on behalf of the distributee or distributees stating:

(i) The value of the entire estate located in Wyoming subject to administration, either testate or intestate, less liens and encumbrances, does not exceed four hundred thousand dollars (\$400,000.00);

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

(iii) No application for appointment of a personal representative is pending or has been granted in any jurisdiction in this state;

(iv) The person or persons claiming to be a distributee or distributees are entitled to payment or delivery of the property of the decedent; the facts concerning the distributee's or distributees' relationship to the decedent and

concerning the legal basis upon which the distributee or distributees claim entitlement to such property, including facts regarding any intervening estates or other parties who may have a claim of entitlement from the decedent and from whom the applicant distributee or distributees claim and that there are no other distributees of the decedent having a right to succeed to the property under probate proceedings in any jurisdiction; and

(v) If an application for appointment of a personal representative has been made in a jurisdiction outside of Wyoming:

(A) The name and address of the proposed or appointed personal representative, the date of the application and the date of any appointment; and

(B) The title of the proceedings and name of the court and jurisdiction in which the application was made.

(b) The transfer agent for any security shall change the registered ownership on the books of a corporation from the decedent to the distributee or distributees upon presentation of an affidavit as provided in subsections (a) and (c) of this section.

(c) When the affidavit is filed with the county clerk and a certified copy is presented to any person with custody of the decedent's property or a holder of the decedent's property, the affidavit shall be honored and have the effect as provided in this section and W.S. 2-1-202.

(d) The county clerk of the county in which any vehicle is registered shall transfer title of the vehicle from the decedent to the distributee or distributees upon presentation of an affidavit as provided in subsection (a) of this section.

(e) Upon presentation of an affidavit as provided in this section, a person with custody of the decedent's property or a holder of the decedent's property shall pay or deliver any of the decedent's property held or on deposit in the sole name of the decedent, together with the interest and dividends thereon, to the distributee or distributees. A receipt for the payment by the distributee or distributees or proof of delivery by the custodian or holder of the decedent's property shall constitute a valid and sufficient release and discharge for the payment or delivery made.

**2-1-202. Effect; refusal to pay, deliver.**

(a) The person having custody of the decedent's property or a holder of the decedent's property:

(i) Paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent; and

(ii) Is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.

(b) If any person having custody of the decedent's property or a holder of decedent's property to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence thereof, the property may be recovered or its payment, delivery, transfer or issuance compelled upon proof of right in an action by or on behalf of the persons entitled thereto. If an action is brought under this subsection, the court shall award reasonable attorney's fees and costs of the action to the plaintiff if the court finds that the decedent's property was not paid, delivered, transferred or issued within forty-five (45) days after presentation of the affidavit under W.S. 2-1-201 unless the court finds just cause for the refusal to pay, deliver or transfer the property.

(c) Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable to a personal representative of the estate or to any other person having a like or superior right.

(d) For purposes of this article, "holder" means any person who is in possession of property of the decedent and includes but is not limited to a security broker, security dealer, bank, savings and loan institution, credit union or any other like depository.

**2-1-203. Deposits by minors or persons under a disability; joint and trust deposits; pay-on-death accounts.**

(a) Deposits by minors or other persons under a legal disability may be paid on the order of the depositor and the payments are legally valid.

(b) Any portion of a deposit by two (2) or more persons payable to either or any depositor, or to the survivor of the depositors, and interest or dividends thereon, may be paid in accordance with the contract of deposit. The receipt of the payment by the person paid is a valid and sufficient release and discharge to the financial institution for any payment made.

(c) Any portion of a deposit by any person in trust for another and interest or dividends thereon, in the absence of other written notice to the financial institution of the existence and terms of a legal and valid trust, may be paid to the persons for whom the deposit was made in the event of death of the depositor.

(d) Any payable on death (P.O.D.) account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or in equal proportions to multiple P.O.D. payees upon presentation to the financial institution of proof of death showing that the P.O.D. payee or payees survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee. The receipt of the payment by the person paid is a valid and sufficient release and discharge to the financial institution for any payment made. A person named as a payee in a P.O.D. account has no enforceable rights therein during the lifetime of the person or persons creating the account. As used in this subsection:

(i) "P.O.D. account" means an account payable on request to one (1) person during his lifetime and on his death to one (1) or more P.O.D. payees, or to one (1) or more persons during their lifetimes and on the death of all of them to one (1) or more P.O.D. payees;

(ii) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of all original payees.

**2-1-204. Collection of claims of certain creditors of decedent by affidavit.**

(a) Not earlier than ninety (90) days after the death of a decedent, the United States, or any agency or instrumentality thereof, or the state of Wyoming, or any agency, instrumentality

or political subdivision thereof, to whom the decedent was indebted or to whom the decedent's estate would be indebted if the estate were being administered upon, may collect all of the assets of the decedent referred to in W.S. 2-1-201, upon presentation of an affidavit to the parties referred to in W.S. 2-1-201, stating:

(i) The value of the entire estate, wherever located, less liens and encumbrances, does not exceed four hundred thousand dollars (\$400,000.00);

(ii) Ninety (90) days have elapsed since the death of the decedent;

(iii) No application for appointment of a personal representative is pending or has been granted in any jurisdiction;

(iv) To the best knowledge of the affiant, no affidavit pursuant to W.S. 2-1-201, in connection with the decedent, has been presented to any party referred to in W.S. 2-1-201;

(v) The facts concerning the creditor's claim being made by the party on behalf of whom the affidavit is presented, the total amount of the claim, and any payments received thereon from any source whatsoever; and

(vi) That by presentation of the affidavit the party on behalf of whom the affidavit is presented:

(A) Waives any immunities from suit or levy of execution it might otherwise have;

(B) Agrees to indemnify and hold harmless from all claims whatsoever any party delivering assets on the basis of such affidavit, to the extent of the full value of the assets so delivered; and

(C) Is answerable and accountable to a personal representative of the estate, if appointed, or to any other person or party having a superior right.

(b) When filed with the county clerk and a certified copy thereof is presented to a party with custody of assets, the affidavit shall be honored and shall have the effects as provided for in W.S. 2-1-201(b), (c) and (d) and 2-1-202.

(c) If the total assets collected by a creditor designated in this section, by virtue of the affidavit or affidavits, exceed the net balance of the creditor's claim, then the creditor shall:

(i) Pay the overplus to any other creditor who proceeds properly under this section or, if there is no such creditor;

(ii) Pay the overplus to the distributees named in an affidavit prepared and presented pursuant to W.S. 2-1-201, or, if none such be presented;

(iii) Obtain an order from the probate court which would have jurisdiction were the estate being administered upon, designating itself the agent pursuant to W.S. 2-15-101, and thereupon proceed as provided in Chapter 15 of the Wyoming Probate Code.

**2-1-205. Summary procedure for distribution of personal or real property; application for decree; notice by publication; presumptive evidence of title; effect of false statements.**

(a) If any person dies who is the owner of personal or real property, including mineral interests, but whose entire estate including personal property does not exceed four hundred thousand dollars (\$400,000.00), less liens and encumbrances, the person or persons claiming to be the distributee or distributees of the decedent may file, not earlier than thirty (30) days after the decedent's death, an application for a decree of summary distribution of property.

(b) The application shall be sworn to and signed by any person claiming to be a distributee and shall state the facts required by W.S. 2-1-201(a)(i) through (v). The application shall also fully describe any real property, including any mineral interests, being claimed.

(c) The application shall have attached thereto a sworn report of value which may be based upon a broker's price opinion as defined by W.S. 33-28-102(b)(lxii), made by a person who has no legal interest in the estate, showing the value on the date of the decedent's death of all interests owned by the decedent in real property located in Wyoming, including mineral interests.

(d) Subject to subsection (j) of this section, a notice of application for a decree of summary distribution of property shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the application was filed. The notice of application shall be served by first class mail to the last known address, with copy of application attached, to the surviving spouse of the decedent, if any, and to all other distributees, so far as known, or to their guardians if any of them are minors, or to their personal representatives if any of them are deceased and to any reasonably ascertainable creditors not later than ten (10) days after the date of first publication.

(e) If the decedent received medical assistance pursuant to W.S. 42-4-101 through 42-4-114, the state department of health shall be provided a copy of the application for a decree within ten (10) days after the date of first publication.

(f) An objection to an application shall be filed before the expiration of the later of twenty (20) days after the mailing required by subsection (d) of this section or thirty (30) days after the date of first publication. An untimely objection is forever barred. If no timely objection is filed, the court shall enter a decree establishing the right and title to the property located in Wyoming. A certified copy of the decree shall be recorded in the office of the county clerk of each county in which the real property, including mineral interests, is located. Upon recording of the decree, the decree and the record thereof shall be presumptive evidence of title to the property. If an objection to the application is filed within the time provided in this subsection, the court shall set the matter for a hearing, after which the court shall enter an order either denying or granting the application.

(g) In the event that the decree is entered as the result of an application containing a materially false statement, title to the property which passes as a result of the decree shall not be affected but the person or persons signing as distributee or distributees and knowingly swearing to a materially false statement in the application shall be subject to the appropriate penalties for perjury. Any distributee who is damaged by an application containing a material false statement may file an action to amend the decree, and for damages. The action shall be filed in the court in which the application was filed. Any action under this paragraph is barred unless commenced within two (2) years from the entry of the decree.

(h) The procedure provided by this section may be used in addition to the affidavit procedure provided by W.S. 2-1-201.

(j) Notice to the agent or attorney of any party entitled to notice under this section is notice to that party.

(k) Distributions of property under this article to a person who claims title to the decedent's property through intervening estates is authorized if the person is a distributee as defined in W.S. 2-1-209.

(m) A distributee who has satisfied the requirements of this section and W.S. 2-1-201 is entitled to a decree of summary distribution and no further action under this title is required.

**2-1-206. Proof of publication and service; filing with clerk.**

(a) The proof of publication of the notice required under W.S. 2-1-205(d) shall be by affidavit of the publisher.

(b) The proof of service under W.S. 2-1-205(d) shall be signed by a distributee who signed the application or his attorney and shall state the name and address of the person served and the manner of service.

(c) The affidavit for proof of publication and the proof of service shall be filed with the clerk of court prior to the court taking action on the application.

(d) Proof of service by a distributee shall be signed under penalty of perjury.

**2-1-207. Missing distributees.**

(a) The person or persons claiming to be the distributee or distributees of the decedent who filed the application shall make reasonable efforts to identify and locate all living distributees of the decedent having a right to succeed to the interests of the decedent in the property described in the application. If all distributees are not located, the distributee or distributees filing the application shall advise the court of the efforts made to locate missing distributees. "Missing distributees" means distributees who were identified pursuant to this subsection but who could not be located. If a distributee cannot be located, the court shall grant the application as follows:

(i) In the case of an interest in real property, the interest shall be set over to the missing distributee or distributees if known; and

(ii) In the case of all other interests, the court may direct that the share of the missing distributee or distributees be paid to the state treasurer under the Uniform Unclaimed Property Act, W.S. 34-24-101 through 34-24-140.

(b) The person or persons claiming to be a distributee or distributees of the decedent who filed the application shall report to the court upon payment of the share of the missing distributee or distributees.

(c) The court may order the missing distributee's or distributees' share to be liquidated for value.

**2-1-208. Venue generally.**

(a) An application for a decree under W.S. 2-1-205 shall be filed as follows:

(i) If the decedent was a resident of Wyoming at the time of his death, in the county of which the decedent was a resident;

(ii) If the decedent was not a resident of Wyoming at the time of his death, in a county in which any part of the estate is located.

**2-1-209. "Distributee" defined.**

(a) As used in this article, "distributee" means as defined in W.S. 2-1-301(a)(xiii) and includes any person who is a successor in interest to the decedent:

(i) As an heir;

(ii) As a beneficiary;

(iii) Through the intervening estates of the decedent's heirs, beneficiaries, successors or assigns; or

(iv) Through an established record of ownership.

ARTICLE 3 - DEFINITIONS

**2-1-301. Generally.**

(a) When used in this code, unless otherwise defined or required by the context, the following words and phrases shall be construed as follows:

(i) "Administrator" means any person appointed by the court to administer an intestate estate;

(ii) "Bequeath" includes the word "devise" when used as a verb;

(iii) "Bequest" includes the word "devise" when used as a noun;

(iv) "Charges" include costs of administration, funeral expenses, cost of monument and federal and state estate taxes;

(v) "Child" includes an adopted child but does not include a grandchild or other more remote descendent;

(vi) "Clerk" means clerk of the district court in the county in which the matter is pending and includes the term clerk of the probate court;

(vii) "Conservator" means a person appointed by the court to have the custody and control of the property of a ward under the provisions of this code;

(viii) "Costs of administration" include court costs, fiduciary's fees, attorney fees, all appraisers' fees, premiums on corporate surety bonds, cost of continuation of abstracts of title, recording fees, transfer fees, agents' fees allowed by order of court, and all other fees and expenses allowed by order of court in connection with the administration of the estate;

(ix) "Debts" include liabilities of the decedent which survive, whether arising in contract, tort or otherwise;

(x) "Devise" when used as a noun, means the testamentary disposition of property, both real and personal;

(xi) "Devise" when used as a verb, means to dispose of property, both real and personal, by a will;

(xii) "Devisee" includes legatee;

(xiii) "Distributee" means a person entitled to any property of the decedent under his will or under the statutes of intestate succession;

(xiv) "Estate" means the real and personal property of a decedent, a ward or a trust, as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions, additions or substitutions, or diminished by any decreases and distributions therefrom;

(xv) "Executor" means any person appointed by the court to administer the estate of a testate decedent;

(xvi) "Fiduciary" means a personal representative, executor, administrator, guardian, conservator or trustee;

(xvii) "Full age" means the state of legal majority having attained the age of eighteen (18) years;

(xviii) "Guardian" means the person appointed by the court to have custody of the person of the ward under the provisions of this code;

(xix) "Guardian of the property" means "conservator" and may be used at the election of the person appointed by the court to have the custody and care of the property of a ward;

(xx) "Heir" means any person except the surviving spouse, who is entitled to property of a decedent under the statutes of intestate succession;

(xxi) "Incompetent" includes any person who has been adjudicated by a court to be incapable of managing his property, or caring for his own person, or both;

(xxii) "Issue" for the purposes of intestate succession, includes all lawful lineal descendants of a person, whether natural or adopted, except those who are the lineal descendants of his living descendants;

(xxiii) "Legacy" means a testamentary disposition of personal property;

(xxiv) "Legatee" means a person entitled to personal property under a will;

(xxv) "Letters" include letters testamentary, letters of administration, letters of guardianship, letters of conservatorship and letters of trusteeship;

(xxvi) "Minor" means a person who has not attained the age of eighteen (18) years;

(xxvii) "Person" includes natural persons and corporations;

(xxviii) "Personal representative" includes executor and administrator;

(xxix) "Property" includes both real and personal property;

(xxx) "Surviving spouse" means the surviving wife or husband, as the case may be;

(xxxi) "Temporary administrator" means any person appointed by the court to care for an estate pending the probating of a proposed will, or to handle any special matters designated by the court;

(xxxii) "Trustee" means any person appointed as trustee by the instrument creating the trust, or any person appointed by the court to administer the trust;

(xxxiii) "Trusts" include only testamentary trusts; express trusts where jurisdiction is specifically conferred on the court by the trust instrument; express trusts where the jurisdiction of the court is invoked by the trustee, beneficiary or any interested party; and trusts which are established by a judgment or a decree of court which results in administration of the trust by the court;

(xxxiv) "Will" includes a codicil, a testamentary instrument that merely appoints an executor, or a testamentary instrument that merely revokes or revives another will.

#### ARTICLE 4 - DISCLAIMERS

##### **2-1-401. Right to disclaim.**

(a) Any person may disclaim any interest in property which without a disclaimer he would receive by gift, bequest, devise,

inheritance, beneficiary designation, the exercise of a power of appointment or would pass by right of survivorship.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim any interest in property which without a disclaimer he would receive by gift, bequest, devise, inheritance, beneficiary designation, the exercise of a power of appointment or would pass by right of survivorship, whether acting in a personal or representative capacity. A fiduciary acting under a power of attorney shall have the right to disclaim an interest in property if expressly authorized to disclaim the interest under the terms of the instrument creating the power of attorney.

#### **2-1-402. Definitions.**

(a) As used in Article 4:

(i) "Any interest in property" includes, but is not limited to an undivided portion of an interest and a power with respect to property;

(ii) "Disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property;

(iii) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person.

#### **2-1-403. Qualification; effective date.**

(a) To qualify as a disclaimer:

(i) There shall be a written irrevocable and unqualified refusal by the disclaimant to accept an interest in property; and

(ii) The writing shall be received by the transferor of the interest, his legal representative or the holder of the legal title to the property to which the interest relates within nine (9) months after the later of:

(A) The day on which the transfer creating the interest in the person is made; or

(B) The day on which the person attains age twenty-one (21); and

(iii) The disclaimant has not accepted the interest or any of its benefits; and

(iv) As a result of a refusal under this subsection, the interest passes without any direction on the part of the person making the disclaimer and passes either:

(A) To the spouse of the decedent; or

(B) To a person other than the person making the disclaimer.

(b) A written transfer of the transferor's entire interest in the property shall be treated as a qualified disclaimer if the written transfer:

(i) Meets requirements similar to the requirements of paragraphs (a)(ii) and (iii) of this section; and

(ii) Is to a person who would have received the property if the transferor had made a qualified disclaimer within the meaning of subsection (a) of this section.

(c) Nothing in this section shall be construed to prevent the disclaimant from benefits as an income beneficiary of any trust established by the transferor's will.

(d) A written irrevocable disclaimer of an interest in property that does not otherwise qualify as a qualified disclaimer under subsection (a) or (b) of this section shall be effective to terminate and pass an interest in property if the disclaiming party acknowledges in a prior or contemporaneous writing that the disclaimer does not qualify as a disclaimer for federal or other tax purposes under this section.

#### **2-1-404. Disposition of disclaimed interest.**

(a) Unless otherwise expressly provided in the deed of gift or will:

(i) The interest disclaimed reverts to the transferor if he is living on the date of disclaimer; or

(ii) The interest disclaimed passes under the residuary clause of transferor's will if he died prior to the disclaimer. If the disclaimant is a residuary beneficiary under the will the interest disclaimed passes as though the disclaimant did not survive the transferor.

(b) If the transferor died intestate prior to the disclaimer, the interest disclaimed passes under the laws of descent and distribution as though the disclaimant did not survive the transferor.

(c) If the interest disclaimed would have passed by right of survivorship, the interest shall pass as though the disclaimant was not a survivor.

**2-1-405. Disclaimer on behalf of person under disability.**

A duly appointed, qualified and acting guardian of the property of an incompetent or a person under the age of twenty-one (21) years may make a disclaimer on behalf of his ward, upon a showing satisfactory to the court having jurisdiction over the guardianship that the disclaimer is in the best interests of the ward. A guardian of the property may be appointed by the court for the sole purpose of filing with the court an application for approval of a disclaimer.

ARTICLE 5 - DISPOSAL OF PROPERTY

**2-1-501. Disposal of controlled substances.**

A person is authorized to collect any controlled substances of the decedent for purposes of disposal in accordance with 21 C.F.R. part 1317.30 and 21 C.F.R. part 1317.35.

CHAPTER 2 - PROBATE COURT

ARTICLE 1 - IN GENERAL

**2-2-101. Exclusive jurisdiction conferred on district courts.**

The district courts of the state have exclusive original jurisdiction of all matters relating to the probate and contest of wills and testaments, the granting of letters testamentary

and of administration, and the settlement and distribution of decedents' estates. The court granting the letters has exclusive jurisdiction of all matters touching the settlement and distribution of the estates for which letters have been granted. The jurisdiction over subject matter of the district court sitting in probate, sometimes referred to in this Title 2 as the "probate court", is coextensive with the jurisdiction over subject matter of the district court in any civil action. A decree of distribution entered by the district court in probate, pursuant to W.S. 2-7-807 or 2-7-813, shall be a final determination of title as to assets described therein, as to all distributees served with notice, or who have waived notice, of the hearing provided for in W.S. 2-7-807 or 2-7-811, as the case may be. As to all other parties, an action may be brought and maintained at any time prior to the entry of final decree of distribution under W.S. 2-7-813, by or against the personal representative in the district court, sitting in probate, seeking any legal or equitable remedy as to any interest in property, real or personal, in which the estate asserts or claims any interest. In addition, all causes cognizable in the district court in any civil action may be brought and maintained, at any time prior to the entry of final decree of distribution under W.S. 2-7-813, by or against a personal representative in the district court sitting in probate which granted the letters to the personal representative.

**2-2-102. Venue generally.**

(a) Wills shall be proved and letters testamentary or of administration granted:

(i) In the county of which the decedent was a resident at the time of his death, regardless of where he may have died;

(ii) In the county in which the decedent died, leaving estate therein, if the decedent was not a resident of the state at the time of his death;

(iii) In the county in which any part of the estate may be, if the decedent died out of the state and was not resident thereof at the time of his death;

(iv) In the county in which any part of the estate may be, if the decedent was not a resident of the state and did not leave estate in the county in which he died;

(v) In all other cases, in the county in which the decedent died, and application for letters is made.

**2-2-103. Jurisdiction of estate of nonresident.**

When the estate of the decedent is in more than one (1) county, the decedent having died out of the state and not being a resident thereof at the time of his death, or being a nonresident and dying within the state but not leaving estate in the county where he died, the district court of that county in which application is first made for letters testamentary or of administration has exclusive jurisdiction of the settlement of the estate.

**2-2-104. Court to remain open.**

For the purpose of granting probate of wills, issuing letters testamentary and of administration, filing reports, accounts and petitions of personal representatives, filing claims against the estate and issuing process and notices required by the Probate Code, the court shall operate under the same term of court as specified in W.S. 5-3-101(b).

**2-2-105. Repealed by Laws 2019, ch. 54, § 2.**

**2-2-106. Powers and duties of court commissioners; generally.**

The court commissioner of each district court shall, upon a general order made for that purpose, examine the bonds filed by the personal representatives, with a view to ascertaining their sufficiency, and may approve the same. He may examine any inventory, sale bill, account current, except final accounts and vouchers filed therewith, or examine into the condition of an estate generally. Upon a specific order of the court, the commissioner may make orders for the sale of personal property at public or private auction, for the compounding of debts, for the settlement of an estate as insolvent, for the approval of bonds and all other orders of an ex parte nature as may facilitate the settlement of estates. The orders shall be in writing, signed by the judge or commissioner issuing the same, and shall be filed and recorded.

**2-2-107. Powers and duties of court commissioners; compelling attendance of witnesses; process.**

In order to make such examination, the court commissioner is entitled to process to compel the personal representative and other witnesses to appear and testify before him on the hearing, and for the production of books, papers, monies or other things pertinent to the matter to be heard.

**2-2-108. Powers and duties of court commissioners; compelling attendance of witnesses; failure to appear or testify.**

Any person refusing to appear or testify before a commissioner may be cited for contempt and held to bail to answer to the alleged contempt as soon as reasonably possible. The commissioner shall report his findings upon the matter in writing, to the court for its action. Exception may be filed to the report which shall be heard and determined as in other cases.

**2-2-109. Authority of other judges to act when district judge sick.**

Whenever any judge of the district court is absent from the state, sick or otherwise unable to attend to the duties of his office, any other district judge shall have the same powers as the original judge, including the power to examine into all matters, make all orders and direct the affairs of the administration of estates.

**2-2-110. When judge disqualified; exception.**

When the judge before whom probate matters are brought is interested as next of kin to the decedent, or as the legatee or devisee under the will, or has any other interest in the outcome of, or concerning the matters brought before him, he shall call in some other district judge to hear and determine all such matters. Being a witness to a will does not itself disqualify a district judge, after the will has been probated, from hearing any matters concerning the will or the estate being probated except matters relating to the admission of the will to probate and contests thereon, and the granting of letters testamentary or of administration thereunder.

**2-2-111. Presumption after ten years notices properly given.**

In any estate, wherein a decree of final settlement and distribution is or has been entered by any court of this state

it shall, after ten (10) years from the date of the decree, be conclusively presumed that all notices required by law have been made and for the times and in the manner required by law.

ARTICLE 2 - CLERK

**2-2-201. Records required to be kept; probate docket; reports to be made by commissioner.**

(a) The clerk of district court in each county shall maintain a system for the recording of wills and probate including:

(i) Proceedings of the guardianship of infants and incompetent persons;

(ii) All letters testamentary and of administration;

(iii) All inventories and records of sales of personal estate;

(iv) A general entry, claim and allowance docket.

(b) The clerk of district court shall maintain a system for the recording of each decedent's estate including all proceedings concerning the probate of each will, the entry of the inventory appraisement, all claims allowed, including costs of the final distribution of the estate, and the final settlement of the estate.

(c) The clerk of court shall prepare for the use of the court a probate docket containing:

(i) All appointments made;

(ii) All pending petitions for the sale of real estate, including the parties thereto;

(iii) All pending petitions for the release of sureties;

(iv) All pending petitions for the removal of personal representatives.

(d) The court commissioner is bound to furnish:

(i) The record of all reports and accounts filed;

(ii) All claims against the estate pending for trial;

(iii) All delinquencies of personal representatives to discharge any duty in the manner or within the time required by law or order of the court.

**2-2-202. Preparation and contents of probate docket; distribution of copies; call of docket.**

(a) At least once every six (6) months, the clerk of the district court in each county of the state shall make a docket of all estates of deceased persons pending in his county which shall include:

(i) Title of the estate;

(ii) Date of letters testamentary or letters of administration;

(iii) Name or names of the executors or administrators; and

(iv) The names of the attorneys of record.

(b) As soon as the docket is made, one (1) copy shall be furnished to the judge of the district court of his county and one (1) copy shall be furnished upon request to each attorney of record in the estates.

(c) The judge of the district court in each county shall, at least once every six (6) months, read the probate docket in open court and shall make an order in each estate as he deems necessary to expedite the progress and closing thereof.

**2-2-203. Authority to approve bonds.**

All bonds required by this act may be approved by the clerk of the district court wherein they are required to be filed.

ARTICLE 3 - PROCEDURE

**2-2-301. Contents of orders and decrees; recording.**

Orders and decrees of the court in probate proceedings need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but

need only contain the matters ordered or adjudged, except as otherwise provided in this chapter. All orders, judgments and decrees of the court shall be entered at length in the proper journal of the court. When a judgment or decree is made setting apart a homestead, confirming a sale, making a distribution of real property, or determining any other matter affecting the title to real property, a certified copy shall be recorded in the office of the county clerk of the county in which the property is situated.

**2-2-302. Notice imparted from date of recording.**

When it is provided in this chapter that any order or decree of the court shall be recorded in the office of the county clerk, notice is imparted to all persons from the time of recording.

**2-2-303. Citations; requirements generally; contents.**

(a) Citations shall be directed to the person to be cited, signed by the clerk, and issued under the seal of the court, and shall contain:

(i) The title of the proceeding;

(ii) A brief statement of the nature of the proceeding; and

(iii) A direction that the person cited appear at a time and place specified.

**2-2-304. Citations; issuance.**

The citation may be issued by the clerk upon the application of any party, without an order of the judge or commissioner, except in cases in which an order is expressly required by the provisions of this chapter.

**2-2-305. Citations; service.**

The citation shall be served in the same manner as a summons in a civil action.

**2-2-306. Citations; used to give personal notice.**

When a personal notice is required, and no mode of giving it is prescribed in this chapter, it shall be given by citation.

**2-2-307. Citations; when to be served.**

When no other time is specially prescribed in this chapter, citations shall be served at least five (5) days before the return day thereof.

**2-2-308. Provisions of Rules of Civil Procedure applicable; parties.**

Except as otherwise provided in the Probate Code, the provisions of the Wyoming Rules of Civil Procedure are applicable to and constitute the rules of practice for all proceedings, new trials or appeals. In all proceedings the party affirming is contestant and the one denying or avoiding is contestee.

**2-2-309. Trial by court or jury.**

If no jury is demanded, the court shall try the issues joined. If, on written demand, a jury is called for by either party in a matter triable under W.S. 2-2-308, one shall be had as in other civil cases.

**2-2-310. Appointment of attorney for minors or nonresidents; compensation; failure to appoint of no effect.**

At or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration, for sales of real estate and confirmation thereof, settlements, partitions, and distribution of estates, setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified, the court may appoint an attorney-at-law to represent the devisees, legatees, heirs or creditors of the decedent who are minors and have no general guardian in the county, or who are nonresidents of the state, and those interested who, though they are neither minors or nonresidents, are unrepresented. The order shall specify the names of the parties, so far as known, for whom the attorney is appointed. The attorney may receive a fee, to be fixed by the court, for his services, which shall be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If, for any cause, it becomes necessary, the court may substitute another attorney for the one first appointed, in which case the fee shall be proportionately divided. The failure to appoint an attorney will not affect the validity of any of the proceedings.

**2-2-311. Payment of costs.**

When it is not otherwise prescribed in this chapter, the district court, or the supreme court on appeal, may order costs to be paid by any party to the proceedings, or out of the assets of the estate. Execution for the costs may issue out of the court.

**2-2-312. Service of process on guardian; right of guardian to waive.**

Whenever an infant or incompetent person has a guardian of his estate residing in this state, personal service upon the guardian of any process, notice or order of the court concerning the estate of a deceased person in which the ward is interested is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. The guardian may also appear for his ward and waive any process, notice or order to show cause which an adult or a person of sound mind might waive.

ARTICLE 4 - FEES

**2-2-401. Schedule; additional charges.**

(a) For probate matters filed or commenced, the clerk of the district court shall collect fees as follows:

(i) Original filing fee                   \$110.00

(ii) When an inventory or appraisal is filed showing an estate or guardianship valued at five thousand dollars (\$5,000.00) or more, additional fees based upon value shall be collected as follows:

(A) Value five thousand dollars (\$5,000.00) to ten thousand dollars (\$10,000.00)   \$5.00

(B) Each additional ten thousand dollars (\$10,000.00) of value or portion thereof       \$5.00

(iii) In addition to the original filing fee under paragraph (a)(i) of this subsection, a court automation fee in the amount of forty dollars (\$40.00) which shall be deposited into the judicial systems automation account established by W.S. 5-2-120;

(iv) In addition to the original filing fee under paragraph (a)(i) of this subsection, an indigent civil legal services fee in the amount of ten dollars (\$10.00), which shall be deposited into the indigent civil legal services account established by W.S. 5-2-121.

(b) The original filing fee shall cover the general filing activity of the clerk's office and a certification of one (1) copy of any order, decree or judgment at the time of its filing for each party. Other copy charges and certification fees shall be assessed at the same amount as established for other business of the court.

(c) Additional fees or charges may be assessed for particular matters as ordered by the court.

**2-2-402. Responsibility of clerk for collection; distribution.**

The clerk of the district court of each county is responsible upon his bond for the collection or payment of any fees in probate matters which are to be collected by him or when the court orders fees to be paid to the clerk for fees not specially provided for in W.S. 2-2-401. All of the fees shall be paid to the county treasurer at the end of each month.

**2-2-403. Allowance where not specially provided.**

When there are no fees specially provided for the performance of any duty under the Probate Code, reasonable fees may be ordered and allowed as the court may deem best.

**2-2-404. Payment of court commissioner.**

(a) The court commissioner, in performing the duties prescribed by the Probate Code, shall receive the following fees in full payment for all services, which shall be taxed as costs against the estate:

(i) For attending any matter, five dollars (\$5.00) per day for the time actually employed in hearing the matter;

(ii) For each order made by him, three dollars (\$3.00);

(iii) For all other services he shall receive the same fees which clerks of courts receive for similar services.

## CHAPTER 3 - FIDUCIARIES

### ARTICLE 1 - IN GENERAL

#### **2-3-101. Oath.**

Before letters testamentary or of administration are issued, the personal representative shall take and subscribe an oath before some officer authorized to administer oaths, that he will perform according to law the duties of executor or administrator, which oath shall be attached to the letters.

#### **2-3-102. Bond required; sureties; form; amount; ascertaining value of property.**

Except as provided by W.S. 2-3-111, every person to whom letters testamentary or of administration are issued shall, before receiving them, execute a bond to the state of Wyoming with two (2) or more sufficient individual sureties or one (1) sufficient corporate surety approved by the district court or the commissioner or clerk. The bond shall be joint and several and the penalty shall not be less than the value of the personal property, and the probable value of the annual rents, profits and issues of real property belonging to the estate. The value shall be ascertained by the district court or the above named officers by examining on oath the party applying and any other person. The sureties shall justify on written oath attached to the bond in an amount equal in the aggregate to the penalty thereof.

#### **2-3-103. Letters and bonds to be recorded.**

All letters testamentary or of administration issued to, and all bonds executed by personal representatives, with the affidavits and certificates thereon, shall be recorded by the clerk of the court.

#### **2-3-104. Appointment orders to state qualification time; lapses.**

Whenever an order appointing a personal representative is made by any district court or officer having authority to make the appointment, the order shall state the time within which the personal representative shall qualify by giving the bond and taking the oath required by law. Upon failure of any personal

representative to qualify within the time fixed, his appointment shall lapse and another appointment shall be made.

**2-3-105. Additional bond required upon sale of real estate; when required.**

The district court may require an additional bond whenever the sale of any real estate belonging to the estate is ordered, unless it satisfactorily appears that the penalty of the bond given before receiving letters or any bond given in place thereof is equal to the value of the personal property remaining with or that will come into the possession of the personal representative, including the annual rents, profits and issues of real estate, and the probable amount to be realized on the sale of real estate ordered sold.

**2-3-106. Additional bond required upon sale of real estate; conditions.**

The additional bond shall be conditioned that the personal representative shall faithfully execute the duties of the trust according to law, and the sureties shall justify as provided in W.S. 2-3-102.

**2-3-107. Separate bond required from each personal representative.**

When two (2) or more persons are appointed personal representatives, a separate bond is required from each of them in the same amount as would be required from one.

**2-3-108. Several recoveries on same bond allowed.**

The bond shall not be void upon the first recovery. It may be used and recovered upon from time to time by any person aggrieved, in his own name, until the whole penalty is exhausted.

**2-3-109. Ordering sureties to appear for property value examination; notice to personal representatives; requiring additional security.**

Before any bond is approved and after its approval, the officer whose duty it is to approve the same, of his own motion or upon the motion of any person interested in the estate, supported by affidavit that the sureties or one (1) or more of them are not worth as much as they have justified to, may order the sureties

to appear before him at a designated time and place to be examined touching their property and its value. The officer shall, at the same time, cause a notice to be issued to the personal representative requiring his appearance at the examination. If, upon examination of the sureties and the witnesses who appear, the officer is satisfied that the bond is insufficient, he shall require additional security.

**2-3-110. When sufficient security not given in time.**

If sufficient security is not given within the time fixed by the order, the right of the personal representative to the administration shall cease, and the person next entitled to the administration of the estate, shall be appointed to the administration upon execution of a sufficient bond.

**2-3-111. When no bond required; generally.**

(a) When it is expressly provided in the will or by statute that no bond be required of the personal representative or when the distributees waive in writing the requirement that a bond be executed, letters testamentary or of administration may issue without the execution and filing of a bond as provided by W.S. 2-3-102.

(b) When a bond is waived by will, by statute or by the distributees, sales of real estate may be made and confirmed without a bond unless the court for good cause requires one to be executed.

(c) If it appears necessary for any reason at any time afterward, the personal representative may be required to file a bond as in other cases.

**2-3-112. When no bond required; suspension of powers upon allegation of waste.**

When a petition is presented praying that a personal representative be required to give further security, or to give bond, where by the terms of the will no bond was originally required, and it is alleged on oath that the personal representative is wasting the property of the estate, the judge or commissioner may by order suspend his powers until the matter can be heard and determined.

**2-3-113. Requiring further security; petition.**

Any person interested in any estate may, by verified petition, represent to the court or commissioner that the sureties of a personal representative have become or are becoming insolvent, or that they have removed or are about to remove from the state, or that from any other cause the bond is insufficient, and ask that further security be required.

**2-3-114. Requiring further security; citation to personal representative; service.**

If the court or commissioner is satisfied that the matter requires investigation, a citation shall be issued to the personal representative requiring him to appear at a time and place specified to show cause why he should not give further security. The citation shall be served personally on the personal representative at least five (5) days before the return day. If he has absconded or cannot be found it may be served by leaving a copy of it at his place of residence or by such publication as may be ordered.

**2-3-115. Requiring further security; hearing; order therefor or new bond.**

At the time appointed the court shall hear the proofs and allegations of the parties. If it satisfactorily appears that the security is insufficient, an order may be made requiring the personal representative to give further security, or to file a new bond in the usual form within a reasonable time, not less than five (5) days.

**2-3-116. Requiring further security; failure to comply.**

If the personal representative neglects to comply with the order within the time prescribed, the court shall revoke his letters and his authority shall cease.

**2-3-117. Ordering further security without application.**

When it comes to his knowledge that the bond of a personal representative is insufficient, the court or commissioner, without any application, shall cause him to be cited to appear and show cause why he should not give further security, and shall proceed as upon the application of any person interested.

**2-3-118. Relief of sureties; application; citation and service.**

When a surety of any personal representative desires to be released from responsibility on account of future acts, he may apply to the court or commissioner for relief. Citation shall be issued to the personal representative and served personally, requiring him to appear at a time and place specified, and to give other security. If he has absconded, left or removed from the state or if he cannot be found after due diligence and inquiry, service may be made as provided in W.S. 2-3-114.

**2-3-119. Relief of sureties; release order.**

If new sureties are given to the satisfaction of the court or commissioner, he may order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default or misconduct of the personal representative.

**2-3-120. Relief of sureties; revocation of letters.**

If the personal representative neglects or refuses to give new sureties to the satisfaction of the court or commissioner, unless the surety making the application shall consent to a longer extension of time, the court or commissioner shall by order revoke his letters.

**2-3-121. Revoking intestacy administration if will later allowed; generally.**

If, after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed, the letters of administration shall be revoked and the power of the administrator shall cease, and he shall render an account of his administration within the time directed.

**2-3-122. Revoking intestacy administration if will later allowed; authority of personal representative.**

In such case, the personal representative with the will annexed is entitled to demand, sue for, recover and collect all the rights, goods, chattels, debts and effects of the decedent remaining unadministered. He may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

**2-3-123. Remaining personal representatives to continue if one disqualified.**

If any one (1) of several personal representatives to whom letters are granted dies, becomes incompetent, is convicted of an infamous crime or otherwise becomes incapable of executing the trust, or if letters testamentary or of administration are revoked or annulled with respect to any one (1) personal representative, the remaining personal representative shall complete the execution of the will or administration.

**2-3-124. New appointment to be made if all personal representatives die; bond; authority.**

If all personal representatives die or become incapable, or the authority of all of them is revoked, letters testamentary or letters of administration then shall be issued in the same order of preference and manner as provided for the issuance of original letters testamentary or original letters of administration. The personal representative so appointed shall give bond in like penalty, with like sureties and conditions as required of personal representatives, and shall have like authority.

**2-3-125. Resignation of personal representative; revocation of letters for delay or other cause and new appointment; liability after discharge.**

Any personal representative may, by writing filed in the district court, resign his appointment at any time, having first settled his accounts and delivered up all the estate to the person appointed to receive the same. If by reason of any delays in such settlement and delivery of the estate or for any other cause the circumstances of the estate or the rights of those interested therein require it, the court may, before settlement of accounts and delivering up of the estate is completed, revoke the letters of the personal representative, and appoint another personal representative, either special or general, in the same manner as for original letters of administration. The personal representative discharged and released, and the sureties on his bonds are not responsible for any act or liability incurred after his discharge, but shall not be relieved of any liability occurring on his bonds prior to his discharge.

**2-3-126. Acts valid until power revoked.**

All acts of a personal representative before the revocation of his letters testamentary or of administration are as valid as if the personal representative had continued lawfully to execute the duties of his trust.

**2-3-127. Suspension of personal representative's powers for waste; order.**

Whenever the court, commissioner or clerk of court has reason to believe from his own knowledge or from credible information that any personal representative has wasted, embezzled or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, is incompetent to act, has permanently removed from the state, has wrongfully neglected the estate, or has long neglected to perform any act as personal representative, he shall by order suspend the powers of the personal representative until the matter is investigated.

**2-3-128. Suspension of personal representative's powers for waste; notice to show cause.**

When suspension is ordered, the personal representative shall be cited to appear and show cause why his letters should not be revoked. If he fails to appear or if upon appearance the court or officer is satisfied there exists cause for his removal, his letters shall be revoked and letters of administration granted anew as the case may require.

**2-3-129. Suspension of personal representative's powers for waste; hearing and determination.**

At the hearing any person interested in the estate or the officer making the charge may appear and file his allegations in writing, showing that the personal representative should be removed. The personal representative may answer. The issue raised shall be heard and determined by the court.

**2-3-130. Suspension of personal representative's powers for waste; notice by publication.**

If the personal representative has absconded, conceals himself or has absented himself from the state, notice by publication may be given him of the pendency of the proceedings.

**2-3-131. Suspension of personal representative's powers for waste; compelling attendance and answers.**

In the proceedings for the removal of a personal representative, the court may compel his attendance by attachment, and may compel him to answer questions on oath touching his

administration. Upon his refusal, the court may commit him until he obeys, revoke his letters, or both.

**2-3-132. Petition for revocation by prior claimant; generally.**

When letters of administration are granted to any person other than the surviving husband or wife, child, father, mother, brother or sister of the intestate, any one (1) of them who is competent, or any competent person at the written request of any one (1) of them, may obtain the revocation of the letters and be entitled to administration by presenting to the court a petition so praying.

**2-3-133. Petition for revocation by prior claimant; citation to personal representative.**

When such petition is filed, the clerk shall issue a citation to the personal representative to appear and answer at the time appointed for the hearing.

**2-3-134. Petition for revocation by prior claimant; hearing and disposition.**

At the time appointed, the citation having been duly served and returned, the court shall proceed to hear the allegations and proofs of the parties. If the right of the applicant is established and he is competent, letters of administration shall be granted to him and the letters of the former personal representative revoked.

**2-3-135. Petition for revocation by prior claimant; prior right of surviving spouse.**

When letters of administration have been granted to a child, father, brother or sister of the intestate, the surviving spouse may assert his or her prior right and obtain letters of administration and have the letters before granted revoked.

**2-3-136. Hearing upon affidavit of interested person; authority to order.**

When it appears by the affidavit of any person interested in the estate that any personal representative, guardian, receiver, assignee or trustee has failed to render his accounts in the manner prescribed by law or as required by the order of the

court, or has removed from the state, the court may order a hearing as hereinafter prescribed.

**2-3-137. Hearing upon affidavit of interested person; citation and service thereof.**

The court shall make an order fixing the time and place of the hearing. The clerk shall issue citation to be served upon the officer charged as delinquent and upon the heirs, ward, cestui que trust or bondsmen. The citation shall be served by the sheriff upon the person or persons to be served, or by registered mail if personal service cannot be made in the county. The citation shall notify the persons served of the time and place of the hearing.

**2-3-138. Hearing upon affidavit of interested person; proceedings and disposition.**

At the hearing the court shall proceed in a summary way to ascertain the facts and the course best calculated to protect the interests of all parties. Upon finding of default or removal from the state, the court may remove the personal representative, guardian, receiver, assignee or trustee and appoint another qualified person to administer the estate, who shall qualify according to law.

ARTICLE 2 - UNIFORM PROVISIONS

**2-3-201. Short title.**

W.S. 2-3-201 through 2-3-211 may be cited as the "Uniform Fiduciaries Act".

**2-3-202. Definitions.**

(a) In this act unless the context or subject matter otherwise requires:

(i) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking;

(ii) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, personal representative, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private,

public officer or any other person acting in a fiduciary capacity for any person, trust or estate;

(iii) "Person" includes a corporation, partnership or other association or two (2) or more persons having a joint or common interest;

(iv) "Principal" includes any person to whom a fiduciary as such owes an obligation;

(v) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not;

(vi) As used in the Uniform Fiduciaries Act, "this act" means W.S. 2-3-201 through 2-3-211.

**2-3-203. Responsibility and rights of persons dealing with fiduciaries.**

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of the payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

**2-3-204. Liability of bank; payment of checks signed by fiduciary.**

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge that its action in paying the check amounts to bad faith. If a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

**2-3-205. Liability of bank; when check drawn on principal by fiduciary.**

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay the check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check, or with knowledge that its action in paying the check amounts to bad faith. If a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

**2-3-206. Liability of bank; receiving deposit from fiduciary.**

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him, if he is empowered to endorse the checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving the deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the deposit or in drawing the check, or with knowledge that its action in receiving the deposit or paying the check amounts to bad faith.

**2-3-207. Liability of bank; when check drawn by trustee.**

When a deposit is made in a bank in the name of two (2) or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize the trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances are such that the action of the payee or other holder or the bank amounts to bad faith.

**2-3-208. Succession of fiduciary powers when bank consolidates with another.**

In the event of the merger or the consolidation of any bank, banking association, loan and trust company, named as personal representative, trustee under trust agreement, guardian of minors or incompetents, trustee for bond issue, escrow agent, holder of real estate titles, receiver or agent, the successor of the bank, banking association, or loan and trust company, shall by virtue of the merger, consolidation or succession, succeed to all the fiduciary powers, privileges, benefits, obligations, duties and liabilities of its predecessor, and shall carry out all the duties and obligations imposed upon its predecessor as the personal representative, trustee under trust agreement, guardian of minors or incompetents, trustee for bond issue, escrow agent, holder of real estate titles, receiver or agent, as if it had been originally named in the instrument or instruments creating the fiduciary relation.

**2-3-209. Applicability; generally.**

The provisions of this act shall not apply to transactions taking place prior to the time when it takes effect.

**2-3-210. Applicability; rules of law and equity.**

In any case not provided for in this act, the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

**2-3-211. Interpretation and construction.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

ARTICLE 3 - HANDLING OF PROPERTY AND INVESTMENTS

**2-3-301. Standard for fiduciaries; authority to acquire and retain property and investments.**

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care of a prudent investor as specified under W.S. 4-10-901 through 4-10-913.

(b) Within the limitations of the foregoing standard, a fiduciary may:

(i) Acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including bonds, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire or retain for their own account;

(ii) Retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

(c) Any bank as defined by W.S. 13-1-101 or any trust company formed under W.S. 13-5-102, that is acting as a fiduciary or agent may, in its discretion or at the direction of another person who is authorized to direct the investment of money held by the bank or trust company, invest in the securities of an open end or closed end management investment company or investment trust that is registered under the federal Investment Company Act of 1940, as amended. The bank or trust company, or any affiliate thereof, may provide services to the investment trust or investment company, including acting as an investment advisor, manager, sponsor, distributor, custodian, transfer agent or registrar, and may receive reasonable compensation for the services. Provided, however, that with respect to any funds invested, the bank or trust company or its affiliate shall disclose to the persons to whom statements of the account are rendered consistent with the requirements of W.S. 4-10-802(f).

**2-3-302. Departures from express terms of wills not authorized; "legal investment" or "authorized investment" construed.**

Nothing contained in W.S. 2-3-301 through 2-3-305 shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any instrument, shall be taken to mean any investment which is permitted by the terms of W.S. 2-3-301.

**2-3-303. Authority of court to allow deviation from terms.**

Nothing contained in this act shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

**2-3-304. Applicability; generally.**

The provisions of this act shall govern fiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made.

**2-3-305. Applicability; state funds excepted.**

Nothing contained in this act shall apply to any funds belonging to the state of Wyoming.

ARTICLE 4 - TRUST FUNDS

**2-3-401. Short title.**

W.S. 2-3-401 through 2-3-403 may be cited as the "Uniform Common Trust Fund Act".

**2-3-402. Authority to establish; purpose.**

(a) Any bank or trust company qualified to act as fiduciary in this state may establish and administer common trust funds composed of property permitted by law for investment in trust funds for the purpose of furnishing investments to:

(i) Itself as fiduciary;

(ii) Itself and others as cofiduciaries;

(iii) Any affiliated bank or trust company including any foreign affiliated bank or trust company as fiduciary;

(iv) Any affiliated bank or trust company including any foreign affiliated bank or trust company and others as cofiduciaries; or

(v) Any combination of the entities listed in paragraphs (i) through (iv) of this subsection.

(b) Any bank or trust company may as fiduciary or cofiduciary invest funds which it lawfully holds for investment in interests in common trust funds administered by itself or by any affiliated bank or trust company, if such investment is not prohibited by the instrument, judgment, decree, order, or statute creating or governing the fiduciary relationship, and if, in the case of a cofiduciary, the bank or trust company procures the consent of its cofiduciary in such investment.

**2-3-403. Accounting.**

Unless ordered by a court of competent jurisdiction, the bank or trust company operating common trust funds is not required to render a court accounting with regard to these funds, but it may by application to the court secure approval of an accounting on such conditions as the court may establish.

**2-3-404. Common trust fund distinct from participating fiduciaries.**

(a) Each common trust fund established hereunder is a separate and distinct entity from the fiduciaries participating in the fund. No fiduciary in administering its and other fiduciaries participation in a common trust fund may be required to make any apportionment or allocation between the principal and income of the fund between the participating fiduciaries different from that made for the common trust fund.

(b) No fiduciary participating in a common trust fund, or person having an interest in property invested in the common trust fund, may have or be considered to have any ownership in any particular property of the common trust fund. Each participating fiduciary shall have a proportionate undivided interest in the fund and its income. The ownership of all property of the common trust fund shall be in the trustee of the fund.

**2-3-405. "Affiliated" defined.**

For purposes of this article, two (2) or more banks or trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the United States Internal Revenue Code.

**2-3-406. Exemption.**

The establishment and maintenance of common trust funds under this article are exempt from the provisions of title 17, chapter 4.

ARTICLE 5 - MORTGAGE, LEASE OR SALE

**2-3-501. Authorization by court; generally.**

Whenever in any estate or guardianship now being administered or that may hereafter be administered, it appears to the court to be for the advantage of the estate or ward to raise money upon a note or notes secured by a mortgage of the real or personal property of any decedent or ward or to make a lease of such real property, or it appears to the court that the homestead of a minor or incompetent is mortgaged and the mortgage thereon is subject to foreclosure, and the guardian does not have sufficient money in the estate of the person to pay the mortgage, the court may as often as occasion therefor shall arise in the administration of the estate or guardianship, on petition, notice and hearing as provided in this article, authorize and direct the executor, administrator or guardian to mortgage the personal or real property, including release and waiver of homestead of the ward, and to execute a note or notes secured by the mortgage, or to lease the real estate, or any part thereof.

**2-3-502. Authorization by court; contents of petition; hearing; objections; terms, etc., of order.**

(a) A petition to mortgage or lease under W.S. 2-3-501, or a petition to transfer, sell or assign royalty, overriding royalty, leasehold or other mineral interest, or to lease the mineral interest in the property under W.S. 2-3-503, shall show:

(i) The advantage that may accrue to the estate from the lease, mortgage, transfer, sale or assignment;

(ii) A general description of the property to be leased, mortgaged, sold or assigned;

(iii) The term, rental and general conditions of the proposed lease, transfer, sale or assignment, or the amount, maturity and rate of interest of the proposed mortgage;

(iv) The names of the legatees and devisees, if any, and of the heirs of the deceased, or of the minor or incompetent

person, lessee, assignee or purchaser, so far as known to the petitioner.

(b) Upon the filing of the petition, the court, if it deems the petition sufficient, shall set the matter for hearing and shall direct to what persons and in what manner notice of the hearing shall be given. At the hearing any person interested in the estate may appear and present objections to the proposed lease, mortgage, sale or assignment. If objections are filed to the petition, the court may adjourn the hearing to enable the parties objecting to fully present their reasons and evidence for and against the proposed lease, mortgage, sale or assignment. If no objections are filed, or if upon hearing the objections are deemed insufficient, the court may order the lease, mortgage, transfer, sale or assignment of royalty, overriding royalty, lease or other mineral interest, or lease of the mineral interest in the property, upon the terms, in the amount and for the period as is deemed proper by the court.

**2-3-503. Authorization by court; transfer of mineral interests; terms.**

Proceedings may be had in the district court of each Wyoming county in which an estate in probate is being administered or a guardianship proceeding is pending, which involves real property, for authority to transfer, sell or assign royalty, overriding royalty, leasehold or other mineral interest and to lease the mineral content ownership interest in the property of any then deceased person or of any then minor or incompetent person, as distinguished from realty surface leases referred to in W.S. 2-3-501. If it appears to the court that the transfer, sale or assignment of royalty, overriding royalty, leasehold or other mineral interest or execution and delivery of a lease or contract for exploration and development of the affected real property mineral interest of the decedent, minor or incompetent person, will be advantageous to the estate of the decedent, minor or incompetent person the court, may authorize and direct the trustee, executor or administrator of the probate estate or the guardian of the estate of the minor or incompetent person, to transfer, sell or assign the royalty, overriding royalty, leasehold or other mineral interest or to lease the real estate interest or any part thereof for the mineral content purposes stated. Leases may be for primary terms of five (5) years or less as mutually agreed by the parties thereto and for so long thereafter as the mineral content, including but not restricted to oil, gas or other hydrocarbons, shall or can be produced in commercial quantities from the leasehold premises, or for the

term of each unit or cooperative agreement to which the lease may be committed with the consent and approval of the court. The lease is not invalid or voidable because its effectiveness may or will extend beyond the term in office of the lessor, trustee, executor, administrator or guardian, or beyond the time of final settlement of the probate estate, or beyond the minority of the minor or the period of incompetency of the incompetent involved. With the consent and approval of the court any royalty, overriding royalty or other mineral interest or a lease may be committed to a unit or cooperative agreement, or to a secondary recovery agreement, for a like term and with like effect.

**2-3-504. Authorization by court; transfer of mineral interests; prior leases validated.**

All proceedings of the type herein authorized, which have been heretofore concluded in any court aforesaid, substantially consistent with the procedure herein authorized, and all unexpired leases of the kind specified, previously executed and delivered pursuant to each prior proceeding, substantially in conformity with the provisions hereof, are hereby declared valid, as effectively as if this act had been in force upon the date of each prior proceeding and lease.

ARTICLE 6 - PRINCIPAL AND INCOME

- 2-3-601. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-602. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-603. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-604. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-605. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-606. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-607. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-608. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-609. Repealed By Laws 2001, Ch. 11, §2.
- 2-3-610. Repealed By Laws 2001, Ch. 11, § 2.
- 2-3-611. Repealed By Laws 2001, Ch. 11, § 2.

2-3-612. Repealed By Laws 2001, Ch. 11, § 2.

2-3-613. Repealed By Laws 2001, Ch. 11, § 2.

2-3-614. Repealed By Laws 2001, Ch. 11, § 2.

ARTICLE 7 - SECURITY TRANSFERS

2-3-701. Repealed By Laws 1996, ch. 65, § 4.

2-3-702. Repealed By Laws 1996, ch. 65, § 4.

2-3-703. Repealed By Laws 1996, ch. 65, § 4.

2-3-704. Repealed By Laws 1996, ch. 65, § 4.

2-3-705. Repealed By Laws 1996, ch. 65, § 4.

2-3-706. Repealed By Laws 1996, ch. 65, § 4.

2-3-707. Repealed By Laws 1996, ch. 65, § 4.

2-3-708. Repealed By Laws 1996, ch. 65, § 4.

2-3-709. Repealed By Laws 1996, ch. 65, § 4.

2-3-710. Repealed By Laws 1996, ch. 65, § 4.

2-3-711. Repealed By Laws 1996, ch. 65, § 4.

ARTICLE 8 - PRINCIPAL AND INCOME

2-3-801. Short title.

This act shall be known and may be cited as the "Wyoming Uniform Principal and Income Act".

2-3-802. Definitions.

(a) As used in this act:

(i) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends;

(ii) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary;

(iii) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function;

(iv) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in W.S. 2-3-811 through 2-3-825;

(v) "Income beneficiary" means a person to whom net income of a trust is or may be payable;

(vi) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion;

(vii) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;

(viii) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period;

(ix) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture; government, governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity;

(x) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates;

(xi) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends;

(xii) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct;

(xiii) "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by a court;

(xiv) "This act" means W.S. 2-3-801 through 2-3-834.

### **2-3-803. Fiduciary duties; general principles.**

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of W.S. 2-3-806 through 2-3-810, a fiduciary:

(i) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this act;

(ii) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this act, and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of this act;

(iii) Shall administer a trust or estate in accordance with this act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(iv) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under W.S. 2-3-804(a) or a discretionary power of administration regarding a matter within the scope of this act, whether granted by the terms of a trust, a will, or this act, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an

intention that the fiduciary shall or may favor one (1) or more of the beneficiaries. A determination in accordance with this act is presumed to be fair and reasonable to all of the beneficiaries.

**2-3-804. Trustee's power to adjust; liability of trustee.**

(a) Subject to subsections (b) and (c) of this section, a trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in W.S. 2-3-803(a), and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with W.S. 2-3-803(b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(i) The nature, purpose and expected duration of the trust;

(ii) The intent of the settlor;

(iii) The identity and circumstances of the beneficiaries;

(iv) The needs for liquidity, regularity of income and preservation and appreciation of capital;

(v) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(vi) The net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(vii) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(viii) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(ix) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(i) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(ii) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(iii) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(iv) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(v) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(vi) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(vii) If the trustee is a beneficiary of the trust;  
or

(viii) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If paragraph (c) (v), (vi), (vii) or (viii) of this section applies to a trustee and there is more than one (1) trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (c) (i) through (vi) or (viii) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

(g) Nothing in this section or in this act is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

(h) If a trustee elects to exercise the power to adjust under this statute, the trustee may, on an annual basis, include net realized capital gains in determining trust income and section 643(a) of the Internal Revenue Code distributable net income, if the allocation is reasonable and impartial.

**2-3-805. Notice of proposed action; objections of beneficiary; liability of trustee; proceedings.**

(a) Unless a trust instrument requires otherwise, a trustee may give notice of proposed action regarding a matter governed by this act as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(b) If a trustee elects to give notice under this section, the trustee shall mail notice of the proposed action to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

(i) The name and mailing address of the trustee;

(ii) The name and telephone number of a person who may be contacted for additional information;

(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;

(iv) The time within which objections to the proposed action can be made, which shall be at least thirty (30) days from the mailing of the notice of proposed action; and

(v) The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) Except for good cause shown, a trustee is not liable to a beneficiary for an action regarding a matter governed by this act if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section,

the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

**2-3-806. Determination and distribution of net income.**

(a) After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(i) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in W.S. 2-3-808 through 2-3-831 which apply to trustees and the rules in paragraph (v) of this subsection. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property;

(ii) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in W.S. 2-3-808 through 2-3-831 which apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

(B) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those

expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law.

(iii) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under paragraph (ii) of this subsection or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will;

(iv) A fiduciary shall distribute the net income remaining after distributions required by paragraph (iii) of this subsection in the manner described in W.S. 2-3-807 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust;

(v) A fiduciary may not reduce principal or income receipts from property described in paragraph (i) of this subsection because of a payment described in W.S. 2-3-826 or 2-3-827 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the

date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

**2-3-807. Distribution to residuary and remainder beneficiaries.**

(a) Each beneficiary described in W.S. 2-3-806(a)(iv) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(i) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations;

(ii) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust;

(iii) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(iv) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a

distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

**2-3-808. When right to income begins and ends.**

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(i) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(ii) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(iii) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

**2-3-809. Apportionment of receipts and disbursements when decedent dies or income interest begins.**

(a) A trustee shall allocate an income receipt or disbursement other than one to which W.S. 2-3-806(a)(i) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this act. Distributions to shareholders or other owners from an entity to which W.S. 2-3-810 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

**2-3-810. Apportionment when income interest ends.**

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

**2-3-811. Character of receipts.**

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which W.S. 2-3-811 applies, a business or activity to which W.S. 2-3-813 applies or an asset-backed security to which W.S. 2-3-825 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(i) Property other than money;

(ii) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(iii) Money received in total or partial liquidation of the entity; and

(iv) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(i) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(ii) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets,

as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under paragraph (d)(ii) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

**2-3-812. Distribution from trust or estate.**

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, W.S. 2-3-811 or 2-3-825 applies to a receipt from the trust.

**2-3-813. Business and other activities conducted by trustee.**

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee

shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(i) Retail, manufacturing, service and other traditional business activities;

(ii) Farming;

(iii) Raising and selling livestock and other animals;

(iv) Management of rental properties;

(v) Extraction of minerals and other natural resources;

(vi) Timber operations; and

(vii) Activities to which W.S. 2-3-824 applies.

**2-3-814. Principal receipts.**

(a) A trustee shall allocate to principal:

(i) To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payer under a contract naming the trust or its trustee as beneficiary;

(ii) Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to W.S. 2-3-811 through 2-3-825;

(iii) Amounts recovered from third parties to reimburse the trust because of disbursements described in W.S. 2-3-827(a)(vii) or for other reasons to the extent not based on the loss of income;

(iv) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to

an accounting period during which a current income beneficiary had a mandatory income interest is income;

(v) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(vi) Other receipts as provided in W.S. 2-3-818 through 2-3-825.

**2-3-815. Rental property.**

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

**2-3-816. Obligation to pay money.**

(a) An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one (1) year after it is purchased or acquired by the trustee, including an obligation the purchase price or value of which when it is acquired is less than its value at maturity. If the obligation matures within one (1) year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to obligations to which W.S. 2-3-819 through 2-3-822, 2-3-824 or 2-3-825 applies.

**2-3-817. Insurance policies and similar contracts.**

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to W.S. 2-3-813, loss of profits from a business.

(c) This section does not apply to a contract to which W.S. 2-3-819 applies.

**2-3-818. Insubstantial allocation not required.**

(a) If a trustee determines that an allocation between principal and income required by W.S. 2-3-819 through 2-3-822 or 2-3-825 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in W.S. 2-3-804(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in W.S. 2-3-804(d) and may be released for the reasons and in the manner described in W.S. 2-3-804(e). An allocation is presumed to be insubstantial if:

(i) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(ii) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

**2-3-819. Deferred compensation, annuities and similar payments.**

(a) As used in this section:

(i) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property

transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For the purposes of subsections (d) through (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment;

(ii) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b) To the extent that a payment is characterized by the separate fund as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

(c) If no part of a payment is characterized by the separate fund as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section shall apply, and subsection (b) and (c) of this section shall not apply in determining the allocation of a payment made from a separate fund to:

(i) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code has been made;

(ii) A trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code; or

(iii) A trust which requires payment of all trust income to the trust beneficiaries during the accounting period.

(e) Paragraph (d)(i) and subsections (f) and (g) of this section shall not apply if, and to the extent that, the series of payments would, without the application of paragraph (d)(i) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a separate trust fund subject to this act. Upon request of the surviving spouse or other trust beneficiaries with the right to all the trust income, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to or for the benefit of the surviving spouse or other trust beneficiaries with the right to all the trust income. The trustee shall allocate the balance of the payment to the principal. Upon request of the surviving spouse or other trust beneficiaries with the right to all the trust income, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal three percent (3%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to payments to which W.S. 2-3-820 applies.

**2-3-820. Liquidating asset.**

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one

(1) year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to W.S. 2-3-819, resources subject to W.S. 2-3-821, timber subject to W.S. 2-3-822, an activity subject to W.S. 2-3-824, an asset subject to W.S. 2-3-825 or any asset for which the trustee establishes a reserve for depreciation under W.S. 2-3-828.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

**2-3-821. Minerals, water and other natural resources.**

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(i) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

(ii) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

(iii) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, twenty-seven and one-half percent (27.5%) must be allocated to principal and the balance to income;

(iv) If an amount is received from a working interest or any other interest not provided for in paragraph (i), (ii) or (iii) of this subsection, twenty-seven and one-half percent (27.5%) of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, twenty-seven and one-half percent (27.5%) of the amount must be allocated to principal and the balance to income.

(c) This act applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water or other natural resources after the effective date of this act, the trustee shall allocate receipts as provided in this act.

### **2-3-822. Timber.**

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(i) To income to the extent that the amount of timber removed from the land does not exceed the estimated rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(ii) To principal to the extent that the amount of timber removed from the land exceeds the estimated rate of growth of the timber or the net receipts are from the sale of standing timber;

(iii) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (i) and (ii) of this subsection; or

(iv) To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (i), (ii) or (iii) of this subsection.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This act applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as

provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this act.

**2-3-823. Property not productive of income.**

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under W.S. 2-3-804 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by W.S. 2-3-804(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a) of this section, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

**2-3-824. Derivatives and options.**

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under W.S. 2-3-813 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is

required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

**2-3-825. Asset-backed securities.**

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which W.S. 2-3-811 or 2-3-819 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one (1) or more payments in exchange for the trust's entire interest in an asset-backed security in one (1) accounting period, the trustee shall allocate the payments to principal. If a payment is one (1) of a series of payments that will result in the liquidation of the trust's interest in the security over more than one (1) accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

**2-3-826. Disbursements from income.**

(a) A trustee shall make the following disbursements from income to the extent that they are not disbursements to which W.S. 2-3-806(a) (ii) (B) or (C) applies:

(i) Interest, except interest on taxes as provided in W.S. 2-3-827(a) (vi);

(ii) Ordinary repairs and maintenance of real estate;

(iii) Real estate taxes and other regularly recurring taxes assessed against principal; and

(iv) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

**2-3-827. Disbursements from principal.**

(a) A trustee shall make the following disbursements from principal:

(i) Extraordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income;

(ii) Extraordinary repairs;

(iii) Repealed by Laws 2015, ch. 79, § 3.

(iv) Expenses in connection with accountings and judicial or other proceedings to construe, modify or reform the trust or to protect the trust or its property;

(v) Premiums paid on a policy of insurance not described in W.S. 2-3-826(a)(iv) of which the trust is the owner and beneficiary;

(vi) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

(vii) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

**2-3-828. Transfers from income to principal for depreciation.**

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one (1) year and the purchase cost or value of such fixed asset is more than that amount provided by section 179 of the United States Internal Revenue Code or subsequent amendment to the Internal Revenue Code.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(i) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(ii) During the administration of a decedent's estate; or

(iii) Under this section if the trustee is accounting under W.S. 2-3-813 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

**2-3-829. Transfers from income to reimburse principal.**

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one (1) or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(i) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(ii) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(iii) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions;

(iv) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(v) Disbursements described in W.S. 2-3-827(a)(vii).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

### **2-3-830. Income taxes.**

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(i) From income to the extent that receipts from the entity are allocated to income; and

(ii) From principal to the extent that:

(A) Receipts from the entity are allocated to principal; and

(B) The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (i) and subparagraph (ii)(A) of this subsection.

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

**2-3-831. Adjustments between principal and income.**

(a) Subject to W.S. 2-3-826 and 2-3-827, a trustee may, in the discretion of the trustee, allocate to income, principal or partly to each, the ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income including the compensation of the trustee and of agents hired by the trustee including investment advisors, custodians or income tax preparation services.

(i) Repealed by Laws 2015, ch. 79, § 3.

(ii) Repealed by Laws 2015, ch. 79, § 3.

(iii) Repealed by Laws 2015, ch. 79, § 3.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

**2-3-832. Judicial control of discretionary powers.**

(a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by

this act unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) of this section applies include:

(i) A determination under W.S. 2-3-804(a) of whether and to what extent an amount should be transferred from principal to income or from income to principal;

(ii) A determination of the factors that are relevant to the trust and its beneficiaries, the extent to which they are relevant, and the weight, if any, to be given to the relevant factors, in deciding whether and to what extent to exercise the power conferred by W.S. 2-3-804(a).

(c) If a court determines that a fiduciary has abused its discretion, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused its discretion, according to the following rules:

(i) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to his appropriate position;

(ii) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one (1) or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust;

(iii) To the extent that the court is unable, after applying paragraphs (i) and (ii) of this subsection, to restore the beneficiaries, the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an

appropriate amount from its own funds to one (1) or more of the beneficiaries or the trust or both.

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

**2-3-833. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**2-3-834. Application of act to trusts and estates; principal place of administration.**

This act applies to every trust that has its principal place of administration in Wyoming and to every decedent's estate probated in Wyoming except where the trust or will expressly applies the principal and income act of another state or as otherwise expressly provided in this act.

**2-3-835. Trustee discretion to include capital gains in income.**

(a) To the extent a trustee is given the power to make mandatory or discretionary distributions of income, the trustee may, on an annual basis, include realized capital gains in trust income and in determining section 643(a) of the Internal Revenue Code distributable net income, if the allocation is reasonable and impartial.

(b) To the extent a trustee is given the power to make mandatory or discretionary distributions of principal, the trustee may, on an annual basis, include realized capital gains in determining Section 643(a) Internal Revenue Code

distributable net income, if the allocation is reasonable and impartial.

ARTICLE 9 - WYOMING UNITRUST ACT

**2-3-901. Short title.**

This act shall be known and may be cited as the "Wyoming Unitrust Act".

**2-3-902. Definitions.**

(a) As used in this act:

(i) "Beneficiary" means a person as defined in W.S. 2-3-802(a)(ii);

(ii) "Disinterested person" means a person who is not a "related or subordinate party" as defined in § 672(c) of the Internal Revenue Code, with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee;

(iii) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one (1) or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. Notwithstanding the foregoing, no trust that otherwise is an "income trust" shall qualify under this act, if it may be subject to taxation under Internal Revenue Code §§ 2001 or 2501, until the expiration of the period for filing the return therefore, including extensions;

(iv) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party", as defined in Internal Revenue Code § 672(c) with respect to the distributee;

(v) "Interested trustee" means:

(A) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;

(B) Any trustee who may be removed and replaced by an interested distributee; or

(C) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(vi) "Total return unitrust" means an income trust which has been created or converted under and meets the provisions of this act;

(vii) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or on the direction of one (1) or more persons acting in a fiduciary capacity;

(viii) "Settlor" means a person as defined in W.S. 4-10-103(a) (xviii);

(ix) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust;

(x) "This act" means W.S. 2-3-901 through 2-3-917.

**2-3-903. Unitrust election by trustee; requirements to make unitrust election.**

(a) A trustee, other than an interested trustee, or where two (2) or more persons are acting as trustees, a majority of the trustees who are not interested trustees may, in its sole discretion and without the approval of the district court:

(i) Elect to release the power to adjust described in W.S. 2-3-804 and to convert an income trust to a total return unitrust;

(ii) Reconvert a total return unitrust to an income trust and reinstate the power to adjust described in W.S. 2-3-804; or

(iii) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the following requirements are completed:

(A) The trustee adopts a written policy for the trust providing:

(I) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(II) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(III) That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(b) The trustee shall mail notice of the proposed action to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given assuming nonexercise of all powers of appointment.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The written notice of its intention to take action shall include the following:

(i) The name and mailing address of the trustee;

(ii) The name and telephone number of a person who may be contacted for additional information;

(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;

(iv) A copy of the trustee's written policy discussed in subparagraph (a)(iii)(A) of this section;

(v) The time within which objections to the proposed action can be made, which shall be at least thirty (30) days from the mailing of the notice of proposed action; and

(vi) The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee stating the objection and the basis or reason for the objection at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) If the trustee receives a written objection stating the basis or reason for the objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied.

(g) A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(h) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action shall not itself give rise to liability to any current or future beneficiary.

**2-3-904. Unitrust election where there is no trustee other than an interested trustee; requirements to make unitrust election.**

(a) If there is no trustee of the trust other than an interested trustee, the interested trustee, or where two (2) or more persons are acting as trustees and are interested trustees, a majority of the interested trustees, in its sole discretion and without the approval of the district court, may:

(i) Elect to release the power to adjust described in W.S. 2-3-804 and to convert an income trust to a total return unitrust;

(ii) Reconvert a total return unitrust to an income trust and reinstate the power to adjust described in W.S. 2-3-804; or

(iii) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the requirements of W.S. 2-3-903(a) through (f) are completed and the trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(A) The percentage to be used to calculate the unitrust amount;

(B) The method to be used in determining the fair market value of the trust; and

(C) Which assets, if any are to be excluded in determining the unitrust amount.

**2-3-905. Unitrust election by beneficiary; ability to request trustee action.**

(a) A beneficiary, who is receiving, or is entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated, may:

(i) Submit to the trustee a written request to convert an income trust to a total return unitrust;

(ii) Reconvert a total return unitrust to an income trust; or

(iii) Change the percentage used to calculate the unitrust amount pursuant to W.S. 2-3-904.

(b) If the trustee declines or fails to act within six (6) months of receipt of the written request, the beneficiary may petition the district court to order the conversion or adjustment.

**2-3-906. Settlor created unitrust.**

A settlor may create a trust instrument with terms providing that the trust shall be administered as a total return unitrust under this act. A settlor may also create a trust instrument with terms providing that the trust may be administered as either an income trust or as a total return unitrust under this act in the discretion of the trustee or a trust protector appointed in the trust instrument.

**2-3-907. Valuations.**

(a) The fair market value of a trust subject to this act shall be determined, at least annually, using a valuation date or dates or averages of valuation dates as are deemed appropriate except that:

(i) The trustee shall not include in the fair market value the value of any residential property or any tangible personal property that the income beneficiary has the right to occupy or use;

(ii) The trustee shall not limit or restrict any right of the beneficiary to use the excluded property in accordance with the governing instrument; and

(iii) Where the terms of the trust do not provide contrary direction, the trustee shall include in the fair market value the value of:

(A) The portion of any private or commercial annuity from which the trustee is receiving distributions as a designated beneficiary of the annuity; and

(B) The portion of any individual retirement account and pension, profit-sharing, stock bonus or stock ownership plan retirement account from which the trustee is receiving distributions as a designated beneficiary of the account.

(b) Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are deemed reasonable and appropriate as determined in the sole discretion of the trustee. The assets may be excluded from valuation in the sole discretion of the trustee, provided all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

#### **2-3-908. Unitrust percentages.**

The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

#### **2-3-909. Treatment and allocation of income.**

(a) Following the conversion of an income trust to a total return unitrust or upon creation of a total return unitrust by a settlor, the trustee:

(i) Shall treat the unitrust amount as net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and

(ii) May allocate to trust income for each taxable year of the trust, or portion thereof:

(A) Net short-term capital gain described in Internal Revenue Code § 1222(5) for the year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income for the year, or portion thereof does not exceed the unitrust amount for the year, a portion thereof; and

(B) Net long-term capital gain described in Internal Revenue Code § 1222(7) for the year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subparagraph (A) of this paragraph, allocated to trust income for the year, or portion thereof, does not exceed the unitrust amount for the year, or portion thereof.

**2-3-910. Administration.**

(a) In administering a total return unitrust, the trustee may, in its sole discretion, but subject to the provisions of the governing instrument, determine:

(i) The effective date of the conversion;

(ii) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

(iii) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(iv) If the trust is reconverted to an income trust, the effective date of the reconversion; and

(v) Other administrative issues as may be necessary or appropriate to carry out the purposes of this act.

**2-3-911. Treatment of underpayments or overpayments.**

In the event of an underpayment to a beneficiary, the trustee shall pay to a beneficiary within a reasonable time, and in the event of an overpayment to a beneficiary, the trustee shall recover from the beneficiary either by repayment by the beneficiary or by withholding from future distributions to the beneficiary, an amount equal to the difference between the amount properly payable and the amount actually paid.

**2-3-912. Effect of conversion on governing instrument.**

Conversion to a total return unitrust under the provisions of this act shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

**2-3-913. Situs.**

(a) This act shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Wyoming under Wyoming law unless:

(i) The governing instrument reflects an intention that the beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(ii) The trust is a trust described in Internal Revenue Code §§ 170(f)(2)(B), 664(d), 2702(a)(3) or 2702(b); or

(iii) The governing instrument expressly prohibits use of this act by specific reference to this act.

**2-3-914. Trustee's liability.**

Any trustee or disinterested person who in good faith takes or fails to take any action under this act shall not be liable to any person affected by the action or inaction, regardless of whether the person received written notice as provided in this act and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The person's exclusive remedy shall be to obtain an order of the district court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

**2-3-915. Judicial control of discretionary powers.**

(a) A court shall not change a trustee's decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of the trustee's discretion. A court shall not determine that a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) Where a beneficiary elects to challenge an action or nonaction by a trustee or disinterested party under the powers and authority granted in the party under this act, the beneficiary has the burden of establishing, by a preponderance of the evidence, that the actions or nonactions by a trustee or a disinterested party abused the trustee's or the party's discretion. A beneficiary who fails to state a basis or reason for an objection or fails to prove by a preponderance of the evidence the proposed action should be taken or should not be taken shall be liable to all other beneficiaries for damages and costs associated with the objection.

**2-3-916. Limitation of election.**

An action shall not be taken under W.S. 2-3-903, 2-3-904 or 2-3-905 more frequently than every two (2) years, unless the district court orders otherwise.

**2-3-917. Application.**

This act applies to every trust or decedent's estate existing on July 1, 2007 or created thereafter except as otherwise expressly provided in the will or terms of the trust or in this act.

ARTICLE 10 - UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

**2-3-1001. Uniform Fiduciary Access to Digital Assets Act; short title.**

This act shall be known and may be cited as the "Uniform Fiduciary Access to Digital Assets Act."

**2-3-1002. Definitions.**

(a) As used in this act:

(i) "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains,

processes, receives or stores a digital asset of a user or provides goods or services to a user;

(ii) "Agent" means an attorney in fact granted authority under a power of attorney;

(iii) "Carries" means engages in the transmission of an electronic communication;

(iv) "Catalogue of electronic communications" means information that identifies a person with which a user has had an electronic communication, including the person's electronic address, and the time and date of the communication;

(v) "Content of electronic communications" means information concerning the substance or meaning of an electronic communication that:

(A) Has been sent or received by a user;

(B) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(C) Is not readily accessible to the public.

(vi) "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user through the internet as defined in W.S. 9-2-3219(a)(iii);

(vii) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user;

(viii) "Digital asset" means an electronic record in which a person has a right or interest. "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record;

(ix) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(x) "Electronic communication" means an electronic communication as defined in section 2510 of title 18 of the United States Code, as amended;

(xi) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication;

(xii) "Fiduciary" means a personal representative, trustee, executor, administrator, guardian, agent, conservator or other person performing substantially these same functions. To be a fiduciary under this act a person must be authorized to act as a fiduciary with respect to the digital assets of a user or a user's estate. A fiduciary shall have those privileges, powers and obligations granted under this act which are not inconsistent with other privileges, powers or obligations imposed by this act on specific types of fiduciaries;

(xiii) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases or the like;

(xiv) "Online tool" means an electronic service provided by a custodian that allows a user, in an agreement distinct from a terms of service agreement between the custodian and the user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

(xv) "Principal" means a person who grants authority to an agent in a power of attorney;

(xvi) "Record" means information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form;

(xvii) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in section 2510 of title 18 of the United States Code, as amended;

(xviii) "Terms of service agreement" means an agreement that controls the relationship between a user and a custodian;

(xix) "User" means a person that has an account with a custodian;

(xx) "Ward" means a person for whom a conservator has been appointed, including a person for whom an application for the appointment of a conservator is pending;

(xxi) "This act" means W.S. 2-3-1001 through 2-3-1017.

**2-3-1003. Applicability.**

(a) This act applies to:

(i) A fiduciary acting under a will, power of attorney or other authorization to act as a fiduciary with respect to the digital assets of a user entered or executed before, on or after July 1, 2016;

(ii) A personal representative acting for a decedent who died before, on or after July 1, 2016;

(iii) A conservatorship proceeding commenced before, on or after July 1, 2016; and

(iv) A trustee acting under a trust created before, on or after July 1, 2016.

(b) This act applies to a custodian of digital assets of a user who resides in the state or resided in the state at the time of the user's death.

(c) This act does not apply to digital assets of an employer used by an employee in the ordinary course of the employer's business.

**2-3-1004. User direction for disclosure of digital assets.**

(a) A user may use an online tool to direct a custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications sent or received by the user. If the online tool at all times allows a user to modify or delete a direction to a custodian to disclose some or all of the user's digital assets, the direction regarding disclosure overrides a contrary direction by the user in a will, trust, power of attorney or other like record.

(b) If a user has not used an online tool to direct a custodian under subsection (a) of this section or if a custodian

has not provided an online tool, the user may direct in a will, trust, power of attorney or other like record the disclosure or nondisclosure to a fiduciary some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under subsection (a) or (b) of this section overrides a contrary provision in a terms of service agreement if the agreement did not require the user to act affirmatively and distinctly from the user's assent to the agreement.

**2-3-1005. Terms of service agreement.**

(a) This act does not change or impair a right of a custodian or a user under a terms of service agreement to access and use digital assets of the user.

(b) This act does not give a fiduciary or designated recipient new or expanded rights other than those rights held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, federal law or a terms of service agreement if the user has not provided direction under W.S. 2-3-1004.

**2-3-1006. Procedure for disclosing digital assets.**

(a) When disclosing digital assets of a user under this act, a custodian may:

(i) Grant a fiduciary or designated recipient full access to the user's account;

(ii) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(iii) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative fee for the cost of disclosing digital assets under this act.

(c) A custodian is not required to disclose under this act a digital asset deleted by a user.

(d) A custodian is not required to disclose under this act a user's digital assets if the user directs or a fiduciary requests a custodian to disclose some, but not all, of the user's digital assets and the segregation of the assets would impose an undue burden on the custodian. If a custodian finds that a direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the circuit court or other court of competent jurisdiction to disclose:

(i) A subset of the user's digital assets limited by date to the fiduciary or designated recipient;

(ii) All of the user's digital assets to the fiduciary or designated recipient;

(iii) None of the user's digital assets to the fiduciary or designated recipient; or

(iv) All of the user's digital assets to the court for an in camera review.

**2-3-1007. Disclosure of the content of electronic communications of a deceased user.**

(a) A custodian shall disclose to a personal representative of the estate of a deceased user the content of electronic communications sent or received by the user if the user directed disclosure as specified in W.S. 2-3-1004 or a court directs disclosure of the content of electronic communications of the user and if the representative provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certified copy of the death certificate of the user;

(iii) A certified copy of the court order appointing the personal representative;

(iv) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other like record evidencing the user's consent to disclosure of the content of electronic communications; and

(v) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user; or

(C) A finding by a circuit court or other court of competent jurisdiction that:

(I) The user had a specific account with the custodian identifiable by the information specified in subparagraph (A) of this paragraph;

(II) Disclosure of the content of electronic communications of the user would not violate section 2701 et seq. of title 18 of the United States Code, as amended, or section 222 of title 47 of the United States Code, as amended, or other applicable law;

(III) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications as specified in W.S. 2-3-1004; or

(IV) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

**2-3-1008. Disclosure of other digital assets of a deceased user.**

(a) Unless otherwise directed by a court order or a user as specified in W.S. 2-3-1004, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets of the user, other than the content of electronic communications, if the representative provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certified copy of the death certificate of the user;

(iii) A certified copy of the court order appointing the personal representative; and

(iv) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user;

(C) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(D) A finding by a circuit court or other court of competent jurisdiction that:

(I) The user had a specific account with the custodian identifiable by the information specified in subparagraph (A) of this paragraph; or

(II) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

**2-3-1009. Disclosure of content of electronic communications of a principal.**

(a) To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by a principal and unless otherwise directed by a court order or the principal as specified in W.S. 2-3-1004, a custodian shall disclose to the agent the content of electronic communications sent or received by the principal if the agent provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(iii) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(iv) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(B) Evidence linking the account to the principal.

**2-3-1010. Disclosure of other digital assets of a principal.**

(a) Unless otherwise directed by a court order, a principal as specified in W.S. 2-3-1004 or a power of attorney, a custodian shall disclose to an agent a catalogue of electronic communications sent or received by the principal and digital assets of the principal, other than the content of electronic communications, if the agent provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) An original or a copy of the power of attorney that gives the agent specific authority over digital assets of the principal or general authority to act on behalf of the principal;

(iii) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(iv) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(B) Evidence linking the account to the principal.

**2-3-1011. Disclosure of digital assets held in trust when trustee is original user.**

Unless otherwise directed by a court order or a trust, a custodian shall disclose to a trustee who is an original user of an account of the trust digital assets of the account, including a catalogue of electronic communications of the trustee and the content of electronic communications sent or received by the trustee and carried, maintained, processed, received or stored by the custodian in the account.

**2-3-1012. Disclosure of the content of electronic communications held in trust when trustee not original user.**

(a) Unless otherwise directed by a court order, a user as specified in W.S. 2-3-1004 or a trust, a custodian shall disclose to a trustee who is not an original user of an account of the trust the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account if the trustee provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certification or affidavit of trust as provided in W.S. 4-10-1014 that includes consent to disclosure of the content of electronic communications to the trustee;

(iii) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(iv) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) Evidence linking the account to the trust.

**2-3-1013. Disclosure of other digital assets held in trust when trustee not original user.**

(a) Unless otherwise directed by a court order, a user as specified in W.S. 2-3-1004 or a trust, a custodian shall

disclose to a trustee who is not an original user of an account of a trust a catalogue of electronic communications sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account and digital assets in which the trust has a right or interest, other than the content of electronic communications, if the trustee provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certification or affidavit of trust as provided in W.S. 4-10-1014 that includes consent to disclosure of the content of electronic communications to the trustee;

(iii) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(iv) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) Evidence linking the account to the trust.

**2-3-1014. Disclosure of digital assets to conservator of a ward.**

(a) After an opportunity for a hearing under title 3, chapter 2 of the Wyoming statutes, the court may grant a conservator access to the digital assets of a ward.

(b) Unless otherwise directed by a court order or a user as specified in W.S. 2-3-1004, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a ward and digital assets in which the ward has a right or interest, other than the content of electronic communications, if the conservator provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certified copy of the court order that gives the conservator authority over the digital assets of the ward; and

(iii) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward; or

(B) Evidence linking the account to the ward.

(c) A conservator with general authority to manage the assets of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this subsection shall be accompanied by a certified copy of the court order that gives the conservator authority over the ward's property.

#### **2-3-1015. Fiduciary duty and authority.**

(a) The legal duties imposed on a fiduciary charged with managing tangible, personal property of a decedent, ward, principal or settlor apply to the management of digital assets, including the duty of care, loyalty and confidentiality.

(b) A fiduciary's or designated recipient's authority with respect to digital assets of a user:

(i) Unless otherwise directed by a user as specified in W.S. 2-3-1004, is subject to the applicable terms of service agreement;

(ii) Is subject to other applicable law;

(iii) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(iv) Shall not be used to impersonate the user.

(c) A fiduciary with authority over the tangible, personal property of a decedent, ward, principal or settlor has the right to access digital assets in which the decedent, ward, principal or settlor had a right or interest and which are not carried, maintained, processed, received or stored by a custodian or subject to a terms of service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the tangible, personal property of the decedent, ward, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including W.S. 40-25-101.

(e) A fiduciary with authority over the tangible, personal property of a decedent, ward, principal or settlor:

(i) Has the right to access the property and any digital asset stored in the property; and

(ii) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including W.S. 40-25-101.

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination under this subsection shall be in writing or electronic form and accompanied by:

(i) A copy of the death certificate of the user if the user is deceased;

(ii) A certified copy of the court order appointing the personal representative or a certified copy of the court order, power of attorney, trust or other authorization giving the fiduciary authority over the account; and

(iii) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user; or

(C) A finding by a circuit court or other court of competent jurisdiction that the user had a specific account with the custodian identifiable by the information specified in subparagraph (A) of this paragraph.

**2-3-1016. Custodian compliance and immunity.**

(a) Not later than sixty (60) days after receipt of the information required under W.S. 2-3-1007 through 2-3-1015, a custodian shall comply with a request from a fiduciary or designated recipient under this act to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated representative may apply to the circuit court or other court of competent jurisdiction for an order directing compliance.

(b) An order under subsection (a) of this section directing compliance shall contain a finding that compliance is not in violation of section 2702 of title 18 of the United States Code, as amended.

(c) A custodian may notify the user that a request for disclosure of digital assets or to terminate an account was made under this act.

(d) A custodian may deny a request from a fiduciary or designated representative under this act to disclose digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's or personal representative's request.

(e) This act does not limit a custodian's ability to obtain or require a fiduciary or designated representative requesting disclosure of digital assets or termination of an account under this act to obtain a court order that:

(i) Specifies the account belongs to the ward or principal;

(ii) Specifies there is sufficient consent from the ward or principal to support the requested disclosure; and

(iii) Contains a finding required by law in addition to any finding required under this act.

(f) A custodian and any officers, employees or agents of the custodian are immune from liability for an act or omission done in good faith to comply with the provisions of this act.

**2-3-1017. Relation to Electronic Signatures in Global and National Commerce Act.**

This act modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, section 7001 et seq. of title 15 of the United States Code, as amended, but does not modify, limit or supersede section 7001(c) of title 15 of the United States Code, as amended, or authorize electronic delivery of any of the notices described in section 7003(b) of title 15 of the United States Code, as amended.

#### CHAPTER 4 - INTESTATE SUCCESSION

##### ARTICLE 1 - IN GENERAL

#### **2-4-101. Rule of descent; generally; dower and curtesy abolished.**

(a) Whenever any person having title to any real or personal property having the nature or legal character of real estate or personal estate undisposed of, and not otherwise limited by marriage settlement, dies intestate, the estate shall descend and be distributed in parcenary to his kindred, male and female, subject to the payment of his debts, in the following course and manner:

(i) If the intestate leaves husband or wife and children, or the descendants of any children surviving, one-half (1/2) of the estate shall descend to the surviving husband or wife, and the residue thereof to the surviving children and descendants of children, as hereinafter limited;

(ii) If the intestate leaves husband or wife and no child nor descendants of any child, then the real and personal estate of the intestate shall descend and vest in the surviving husband or wife.

(A) Repealed by Laws 1985, ch. 135, § 2.

(B) Repealed by Laws 1985, ch. 135, § 2.

(iii) Repealed by Laws 1985, ch. 135, § 2.

(b) Dower and the tenancy by the curtesy are abolished and neither husband nor wife shall have any share in the estate of the other dying intestate, save as herein provided.

(c) Except in cases above enumerated, the estate of any intestate shall descend and be distributed as follows:

(i) To his children surviving, and the descendents of his children who are dead, the descendents collectively taking the share which their parents would have taken if living;

(ii) If there are no children, nor their descendents, then to his father, mother, brothers and sisters, and to the descendents of brothers and sisters who are dead, the descendents collectively taking the share which their parents would have taken if living, in equal parts;

(iii) If there are no children nor their descendents, nor father, mother, brothers, sisters, nor descendents of deceased brothers and sisters, nor husband nor wife, living, then to the grandfather, grandmother, uncles, aunts and their descendents, the descendents taking collectively, the share of their immediate ancestors, in equal parts.

**2-4-102. Repealed by Laws 2019, ch. 125, § 2.**

**2-4-103. Posthumous persons.**

Persons conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

**2-4-104. Kindred of half blood; stepchildren; foster children.**

Persons of the half-blood inherit the same share they would inherit if they were of the whole blood, but stepchildren and foster children and their descendents do not inherit.

**2-4-105. Alienage not to affect inheritance; exception; burden of proof; when property to escheat to state.**

(a) The alienage of the legal heirs shall not invalidate any title to real estate which shall descend or pass from the decedent, except that no nonresident alien who is a citizen of any country foreign to the United States of America, shall by any manner or means acquire real property in this state by succession or testamentary disposition if the laws of the country of which the nonresident alien is a citizen do not allow citizens of the United States of America to take real property by succession or by testamentary disposition.

(b) If a decedent leaves no heirs, devisees or legatees entitled to take real property under the terms of this act, the

decedent's property shall escheat to the state of Wyoming as now provided by law for escheat property.

(c) The burden of proof is upon a nonresident alien to establish the existence of reciprocal rights asserted by him.

**2-4-106. Divorce not to affect children's rights.**

Divorces of husband and wife do not affect the right of children to inherit their property.

**2-4-107. Determination of relationship of parent and child.**

(a) If for purposes of intestate succession, a relationship of parent and child shall be established to determine succession by, through or from a person:

(i) An adopted person is the child of an adopting parent for inheritance purposes, but the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent for inheritance purposes;

(ii) An adopted person shall inherit from all other relatives of an adoptive parent as though he was the natural child of the adoptive parent and the relatives shall inherit from the adoptive person's estate as if they were his relatives;

(iii) In cases not covered by paragraph (i) of this subsection, a person born out of wedlock is a child of the mother. That person is also a child of the father, if the relationship of parent and child has been established under the Uniform Parentage Act, W.S. 14-2-401 through 14-2-907.

**2-4-108. Advancements generally; exceptions; determination.**

(a) If a person dies intestate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be

received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

(b) The maintenance, education or supply of money to a minor, without any view to apportion or settlement in life, is not deemed an advancement under this section.

(c) When any heir of the intestate receives in his lifetime any real or personal estate by way of advancement, and the other heirs desire it to be charged to him, the judge shall cite the parties to appear before him, shall hear proof upon the subject, and shall determine the amount of such advancement or advancements to be thus charged.

## ARTICLE 2 - PROCEDURE FOR ADMINISTRATION

### **2-4-201. Persons entitled to administer.**

(a) Administration of the estate of a person dying intestate shall be granted to one (1) or more of the persons mentioned in this section. The relatives of the deceased are entitled to administer only when they are entitled to succeed to his personal estate or some portion thereof. They are entitled to administer in the following order:

(i) The surviving husband or wife, or some competent person whom he or she may request to have appointed;

(ii) The children;

(iii) The father or mother;

(iv) The brothers or sisters;

(v) Repealed by Laws 1987, ch. 129, §§ 1, 2.

(vi) The grandchildren;

(vii) The next of kin entitled to share in the distribution of the estate;

(viii) The creditors;

(ix) Any person legally competent.

(b) If the decedent was a member of a partnership at the time of his death, the surviving partner shall not be appointed

administrator of the estate if he is competent only by reason of paragraphs (a) (viii) and (ix) of this section.

(c) No nonresident of the state of Wyoming shall be appointed as administrator unless a resident of Wyoming is appointed as coadministrator.

**2-4-202. Appointment of administrator(s).**

Where there are several persons equally entitled to administer, the court, or commissioner in vacation may grant letters to one (1) or more of them. When a creditor is claiming letters, the court, or commissioner in vacation, may at the request of another creditor grant letters to any other person legally competent.

**2-4-203. Persons incompetent to administer.**

(a) No person is competent or entitled to serve as administrator, who is:

(i) Under the age of majority;

(ii) Not a bona fide resident of the state unless a resident of Wyoming is appointed coadministrator; or

(iii) Adjudged by the court or commissioner incompetent to execute the duties of the trust.

**2-4-204. Married woman may be administratrix.**

A married woman may be appointed and serve as administratrix the same in every respect as a femme sole. When an unmarried woman appointed administratrix marries her authority is not extinguished.

**2-4-205. Petition for letters of administration; contents; effect of want of jurisdictional averments.**

A petition for letters of administration shall be in writing, signed by the applicant or his counsel and filed with the clerk of the court. The petition shall state the facts essential to give the court jurisdiction of the case, and when known to the applicant, shall state the names, ages and residences of the heirs of the decedent, the value and character of the property and where the same is situated. If the jurisdictional facts existed but are not fully set forth in the petition, and are

afterwards proved in the course of administration, the decree or order of administration and subsequent proceedings are not void on account of such want of jurisdictional averments.

**2-4-206. Contest of petition; assertion of own rights to administer.**

Any person interested may contest the petition by filing written opposition on the ground of the incompetency of the applicant, or may assert his own rights to the administration and pray that letters be issued to himself. In the latter case the contestant shall file a petition and submit evidence in support thereof, taken and reduced to writing before the clerk or commissioner of the court, and the court shall hear the two (2) petitions together.

**2-4-207. Hearing of contest; issuance of letters.**

After hearing the allegations and proofs of the parties, the court shall order the issuing of letters of administration to the party best entitled thereto.

**2-4-208. When letters granted.**

Letters of administration may be granted at any time appointed for the hearing of the application, or at any time to which the hearing is continued or postponed.

**2-4-209. Letters granted to any applicant if not contested.**

Letters of administration shall be granted to any applicant, though it appears there are other persons having better rights to the administration, when those persons fail to appear either in person or by agent or attorney and claim the issuing of letters themselves.

**2-4-210. Letters granted on request of person entitled.**

Administration may be granted to one (1) or more competent persons, although not otherwise entitled to the same, at the written request of the person entitled, filed in court.

**2-4-211. Creditors; right to apply for letters.**

If letters testamentary or of administration have not been issued upon the request of any other person, any creditor of the

decedent may apply for letters of administration at any time within two (2) years after the death of decedent, but not afterwards.

**2-4-212. Creditors; when claims barred; effect on liens.**

If the letters are not issued within the time specified, all claims of creditors are forever barred and the purchasers of the property of the decedent from the heirs of the decedent shall take the title free from any claim of creditors. This act does not affect the lien upon encumbered property secured by valid mortgage or deed of trust in the case of real property, or by security agreement or interest valid under the Wyoming Uniform Commercial Code, but the secured creditor is not entitled to any deficiency judgment.

**2-4-213. Transcript of court minutes to be evidence of appointment.**

A transcript from the minutes of the court showing the appointment of any person as administrator, together with the certificate of the clerk under his hand and the seal of the court, that the person has given bond and been qualified and that letters of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

**2-4-214. Form of letters of administration .**

Letters of administration shall be signed by the clerk under the seal of the court, and substantially in the following form:

State of Wyoming        )

                              )ss

County of ....         )

C. D. is hereby appointed administrator of the estate of A. B., deceased. Witness, G. H., clerk of the district court within and for the county of .... with the seal thereto affixed, the .... day of .... A. D. ....

.... Clerk.

**2-5-101. Elective share of property.**

(a) If a married person domiciled in this state shall by will deprive the surviving spouse of more than the elective share, as hereafter set forth, of the property which is subject to disposition under the will, reduced by funeral and administration expenses, homestead allowance, family allowances and exemption, and enforceable claims, the surviving spouse has a right of election to take an elective share of that property as follows:

(i) One-half (1/2) if there are no surviving issue of the decedent, or if the surviving spouse is also a parent of any of the surviving issue of the decedent; or

(ii) One-fourth (1/4), if the surviving spouse is not the parent of any surviving issue of the decedent.

(b) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

(c) If the surviving spouse of a married person domiciled in this state dies or becomes incompetent within three (3) months after the will is admitted to probate or before being advised of the right of election as in W.S. 2-5-104 provided, a personal representative or guardian of the estate of the deceased or incompetent surviving spouse has the same right of election as the surviving spouse would have had if living or competent.

(d) If the surviving spouse or his personal representative or guardian fails to exercise the right of election within the time provided in W.S. 2-5-105, the will shall govern and control the distribution of the estate.

**2-5-102. Waiver of right of election and homestead allowance.**

The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived totally or partially before or after marriage, by a written contract, agreement or waiver signed by the party waiving, after fair disclosure. Unless it provides to the contrary a waiver of "all rights" (or equivalent language) in the property or estate of a

present or prospective spouse, or a complete property settlement entered into after or in anticipation of separation or divorce, is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to one from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

**2-5-103. Homestead allowance, exempt property and family allowance; exception.**

A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse is intended to be in lieu of these rights, he is not so entitled if he does not renounce the provisions made for him in the will.

**2-5-104. Duty of court to advise as to right of election.**

(a) If the surviving spouse has a right of election under W.S. 2-5-101, then at any time after the filing of an inventory and not more than three (3) months after the admission of the will to probate, the court shall advise the surviving spouse of his right of election and shall explain fully the right and that in the event of the failure to exercise the right of election the will shall govern and control the distribution of the estate.

(b) If the surviving spouse dies or becomes incompetent before the court has advised him of his right of election and has not, prior to death or incompetency, filed a waiver or renunciation of the right of election, the court shall advise the personal representative or guardian of the estate of the deceased or incompetent surviving spouse of the right of election as provided in subsection (a) of this section.

**2-5-105. Time limit and procedure for elective share.**

(a) The surviving spouse, or a personal representative or guardian of the estate of a deceased or incompetent surviving spouse, may elect to take his elective share in the estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within

three (3) months after the admission of the will to probate or within thirty (30) days after being advised of the right of election, whichever limitation last expires. In the event of a failure to file a petition within the foregoing time limitation the will governs and controls the distribution of the estate.

(b) After the filing of a petition to elect to take an elective share, the court shall set the petition for hearing and the surviving spouse, or his personal representative or guardian, shall give notice by certified mail not less than twenty (20) days before the date of hearing of the time and place set for hearing to all persons whose interest will be adversely affected by the taking of the elective share.

(c) After notice and hearing the court shall determine the right to the elective share and shall order its payment from assets of the estate. An assignment or allotment of assets by the personal representative to the elective share need not be made until the entry of a decree of distribution or such other time as may be designated by the court.

(d) The surviving spouse or his personal representative or guardian may withdraw his demand for an elective share at any time before entry of a final determination by the court of the right to an elective share.

(e) Any time after having been advised of the right of election, the surviving spouse or his personal representative or guardian may file with the court a renunciation or waiver of the right of election in which event the will shall govern and control the distribution of the estate.

## CHAPTER 6 - WILLS

### ARTICLE 1 - IN GENERAL

#### **2-6-101. Right to make and dispose; exception.**

Any person of legal age and sound mind may make a will and dispose of all of his property by will except what is sufficient to pay his debts, and subject to the rights of the surviving spouse and children.

#### **2-6-102. All property deemed passed; "property" defined.**

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of

the will, unless a contrary intention is indicated by the will. "Property", as used in this section, includes both real and personal property, or any interest therein, and means anything that may be the subject of ownership.

**2-6-103. Property passed may be governed by trust instrument.**

By a will signed and attested as provided in this article a testator may devise and bequeath real and personal estate to a trustee of a trust which is evidenced by a written instrument in existence when the will is made and which is identified in the will, even though the trust is subject to amendment, modification, revocation or termination. Unless the will provides otherwise the estate so devised and bequeathed is governed by the terms and provisions of the instrument creating the trust including any amendments or modifications in writing made before or after the making of the will and before the death of the testator.

**2-6-104. Law governing meaning and effect.**

The meaning and legal effect of a disposition in a will is determined by the law of the state in which the will was executed, unless the will otherwise provides or unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

**2-6-105. Rules of construction and intention.**

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this article apply unless a contrary intention is indicated by the will.

**2-6-106. Antilapse; deceased devisees; class gifts.**

If a devisee who is a grandparent or a lineal descendent of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take per stirpes. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for

purposes of this section whether his death occurred before or after the execution of the will.

**2-6-107. Failure of a testamentary provision.**

(a) Except as provided in W.S. 2-6-106, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in W.S. 2-6-106, if the residue is devised to two (2) or more persons and the share of one (1) of the residuary devisees fails for any reason, his share passes to the residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

**2-6-108. Specific devise of securities; accessions; nonademption.**

(a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(i) As much of the devised securities as are a part of the estate at time of the testator's death;

(ii) Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(iii) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(iv) Any additional securities of the entity owned by the testator as a result of a plan of reinvestment.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) of this section are not part of the specific devise.

**2-6-109. Nonademption of specific devises where sold by conservator; exception; rights of specific devisee.**

(a) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of a condemnation, fire or

casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award or the insurance proceeds. This subsection does not apply if after the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one (1) year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (b) of this section.

(b) A specific devisee has the right to the remaining specifically devised property and:

(i) Any balance of the purchase price together with any security interest owing from a purchaser to the testator at death by reason of sale of the property;

(ii) Any amount of a condemnation award for the taking of the property unpaid at death;

(iii) Any proceeds unpaid at death on a fire or casualty insurance on the property; and

(iv) Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

#### **2-6-110. Exercise of power of appointment.**

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

#### **2-6-111. Nonexoneration.**

A specific devise passes subject to any mortgage, security, interest or lien existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

**2-6-112. Will to be in writing; number and competency of witnesses; signature of testator; subscribing witness not to benefit; exception.**

(a) Except as provided in W.S. 2-6-113, all wills to be valid shall be in writing, or typewritten, witnessed by two (2)

competent witnesses and signed by the testator or by some person in his presence and by his express direction. If the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency shall not prevent the probate and allowance of the will. No subscribing witness to any will can derive any benefit therefrom unless there are two (2) disinterested and competent witnesses to the same, but if without a will the witness would be entitled to any portion of the testator's estate, the witness may still receive the portion to the extent and value of the amount devised.

(b) Witnesses to a will may appear in person or by the use of audio-video communication technology, provided that the witnesses can see and hear the testator in real time, have the opportunity to judge the competency of the testator, have the ability to securely sign the will electronically and can determine that the testator is freely and voluntarily signing and executing the will.

#### **2-6-113. Holographic will.**

A will which does not comply with W.S. 2-6-112 is valid as an holographic will, whether or not witnessed, if it is entirely in the handwriting of the testator and signed by the hand of the testator himself.

#### **2-6-114. Self-proving wills.**

(a) Any will may be simultaneously executed, attested and made self-proven, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate under official seal, in form and content substantially as follows:

I, ....., the testator, sign my name to this instrument this .... day of ....., (year), and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am an adult person, of sound mind, and under no constraint or undue influence.

Testator.....

We, ....., .... the witnesses, sign (or electronically sign by secure means) our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that he executes it as his free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator (or appearing through the use of audio-video communication technology and able to see and hear the testator in real time), hereby signs this will (or electronically signs this will by secure means) as witnesses to the testator's signature and that to the best of our knowledge the testator is an adult person, of sound mind, and under no constraint or undue influence.

Witness .....

Witness .....

STATE OF WYOMING )

) ss

COUNTY OF )

Subscribed, sworn to and acknowledged before me by ....., the testator, and subscribed and sworn to before me by .... and ....., witnesses, this .... day of .... .

(SEAL) (Signed) .....

(Official Capacity of Officer) .....

(b) The execution of the acknowledgment by the testator and the affidavits of the witnesses as provided for in this section shall be sufficient to satisfy the requirements of the signing of the will by the testator and the witnesses under W.S. 2-6-112.

(c) An attested will may at the time of its execution or at any subsequent date be made self-proven by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs, and evidenced by the officer's certificate under official seal, attached or annexed to the will in form and contents substantially as follows:

STATE OF WYOMING )

) ss

COUNTY OF )

We, ....., ....., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly or willingly directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator (or appearing through the use of audio-video communication technology and able to see and hear the testator in real time), signed the will (or electronically signed the will by secure means) as witness and that to the best of our knowledge the testator was at that time an adult person, of sound mind and under no constraint or undue influence.

Testator .....

Witness .....

Witness .....

Subscribed, sworn to and acknowledged before me by ....., the testator, and subscribed and sworn to before me by .... and ....., witnesses, this .... day of ....., ... .

(SEAL) (Signed) .....

(Official Capacity of Officer)

**2-6-115. Who may witness.**

Any person generally competent to be a witness may act as a witness to a will.

**2-6-116. Validity of execution.**

A written will is valid if executed in compliance with W.S. 2-6-112 or 2-6-113 or if its execution complies with the law at the time of execution of the place where the will is executed,

or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

**2-6-117. Revocation by writing or by act.**

(a) A will or any part thereof is revoked:

(i) By a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(ii) By being burned, torn, cancelled, obliterated or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

**2-6-118. Repealed by Laws 2023, ch. 140, § 2.**

**2-6-119. Duty of custodian to deliver will; failure to comply; order to third persons.**

(a) Every custodian of a will, within ten (10) days after receipt of information that the maker thereof is dead, shall deliver the same to the clerk of the district court having jurisdiction of the estate or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by anyone injured thereby.

(b) If it is brought to the attention of the court that any will is in the possession of a third person, and the court or the commissioner is satisfied that the information is correct, an order shall be issued and served upon the person having possession of the will, and if he neglects or refuses to produce it in obedience to the order he may be punished by the court for contempt.

**2-6-120. Notification of executor; disposition where no petition filed.**

Upon receipt of a will for filing, with information that the maker thereof is dead, the clerk shall notify the party, if any, named as executor of the will, and as many of the distributees named therein as may be readily located. If no action pursuant to W.S. 2-6-121, 2-6-122 or 2-6-201 is taken by any party within thirty (30) days after the giving of such notice, the clerk

shall report the matter to the court and the court may make orders as it deems appropriate for the disposition of the will.

**2-6-121. Petition and procedure for filing of will without probate or administration.**

(a) Concurrently with the filing with the clerk of a will of a deceased person, or at any time thereafter, the executor or any distributee named therein may file a sworn petition for filing of the will without probate or administration. The petition shall show:

(i) The date and place of death of the decedent, and county and state of last residence of the decedent;

(ii) The names, ages and residences of the heirs and devisees of the decedent, so far as known to the petitioner;

(iii) That a true copy of the will and a true copy of the petition have been mailed to each of the heirs and devisees; and

(iv) That, pending possible subsequent action, the petition and the will are to be filed and indexed by the clerk, without further proceedings.

(b) The clerk shall receive, file and index the petition, and annex the will thereto, and maintain same as part of the permanent files. No filing fee shall be charged.

(c) No proceedings under this section may be commenced after the filing of a petition under W.S. 2-6-122 or 2-6-201, nor after the entry of an order by the court pursuant to W.S. 2-6-120 making other provisions for the disposition of the will.

**2-6-122. Petition and procedure for filing and probate of will without administration.**

(a) Concurrently with the filing with the clerk of a will of a deceased person, or at any time thereafter prior to the filing of a petition pursuant to W.S. 2-6-201 and prior to the entry of any order by the court pursuant to W.S. 2-6-120 making other provisions for the disposition of the will, any party who would be entitled to letters testamentary under the provisions of W.S. 2-6-208 may file with the clerk a sworn petition for probate of will without administration. The petition shall show:

(i) The date and place of death of the decedent, and county and state of last residence of the decedent;

(ii) The names, ages and residences of the heirs and devisees of the decedent;

(iii) That a true copy of the will and a true copy of the petition have been mailed to each of the heirs and devisees; and

(iv) That the petition prays for probate of the will, without administration.

(b) A filing fee for the petition shall be charged, equal to the minimum fee applicable to proceedings under W.S. 2-6-203.

(c) Upon the filing of the petition, proceedings shall be had as provided in W.S. 2-6-203 through 2-6-206, and order shall issue and notices be given as provided in W.S. 2-6-209 if the will is found entitled to probate, except that the order shall not include the appointment of an executor, but recite that the will is admitted to probate without administration.

(d) After the entry of the order admitting the will to probate, the petitioner shall, at his own expense, cause to be published once a week for three (3) consecutive weeks in a daily or weekly newspaper of general circulation in the county in which the probate was granted a notice in substantially the following form:

State of Wyoming	)	
	)	In the District Court
	)	....Judicial District
County of....	)	Probate No. ....
In the Matter of the)		Notice of Proof of
Estate of	)	Will Without
	)	Administration
....., Deceased.	)	

TO ALL PERSONS INTERESTED IN SAID ESTATE:

You are hereby notified that on the .... day of ....., (year), the Last Will and Testament of Decedent was admitted to probate by the above named court and there will be no present administration of the estate. Any action to set aside the Will shall be filed in the Court within three (3) months from the date of the first publication of this notice, or thereafter be forever barred.

Dated ....., (year).

Proponent .....

PUBLISH: (once a week for three (3) consecutive weeks)

(e) The provisions of W.S. 2-6-301 through 2-6-306 apply to proceedings under this section.

(f) In the event administration of the estate is desired at any later date, any party designated in W.S. 2-6-208, in the order of preference set forth therein, may petition the court for the issuance of letters testamentary.

**2-6-123. Filing of will, with or without probate not to bar collection by affidavit.**

No proceedings pursuant to W.S. 2-6-120 through 2-6-122 shall bar any proceedings pursuant to W.S. 2-1-201 through 2-1-203.

**2-6-124. Written statement referred to in will disposing of certain personal property.**

(a) A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, securities and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing shall:

(i) Be dated;

(ii) Be in the handwriting of the testator or signed by him; and

(iii) Include a description of the items and devisees with reasonable certainty.

(b) The written statement or list may be prepared before or after execution of the will, and may be altered by the testator after its preparation which alteration shall be signed and dated by the testator.

(c) The written statement or list may be a writing which has no significance apart from the effect upon the disposition made by the will.

**2-6-125. Revocation of probate and nonprobate transfers by divorce or annulment; effect; revival; other changes excluded.**

(a) As used in this section:

(i) "Divorce" or "annulment" means any dissolution of marriage through a divorce or annulment that results in the exclusion of the spouse as a surviving spouse for purposes of probate and nonprobate transfers upon death of the spouse. A decree of separation that does not terminate the status of spouses is not a divorce or annulment for purposes of this section;

(ii) "Divorced person" means a person who has divorced from the person's spouse or whose marriage has been annulled;

(iii) "Governing instrument" means an instrument executed by a divorced person before the divorce or annulment of the marriage to the person's former spouse that the divorced person could have revoked or amended;

(iv) "Relative of the divorced person's former spouse" or "former spouse's relative" means any person who is related to the divorced person's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced person by blood, adoption or affinity;

(v) "Revocable" means a disposition, appointment, provision or nomination under which the divorced person, at the time of the divorce or annulment, was alone empowered by law or under the terms of a governing instrument to cancel the designation in favor of the divorced person's former spouse or former spouse's relative regardless of whether the divorced person was then empowered to designate himself in place of his former spouse or former spouse's relative and regardless of

whether the divorced person then had the capacity to exercise the power of designation.

(b) Unless the express terms of a governing instrument provide for the disposition to a former spouse after divorce or unless a governing law, court order or contract relating to the division of the marital estate made between two (2) divorced persons before or after the marriage, divorce or annulment states otherwise, the divorce or annulment of a marriage shall immediately:

(i) Revoke any revocable:

(A) Disposition or appointment of property made by a divorced person to the former spouse in a governing instrument;

(B) Disposition or appointment created by law or in a governing instrument to a relative of the divorced person's former spouse;

(C) Provision in a governing instrument that confers a general or special power of appointment on the divorced person's former spouse or on a relative of the divorced person's former spouse;

(D) Nomination in a governing instrument that nominates the divorced person's former spouse or a relative of the divorced person's former spouse to serve in any fiduciary or representative capacity including a personal representative, executor, trustee, conservator, agent or guardian.

(ii) Sever the interests of the former spouse in property held by the divorced person and the former spouse at the time of the divorce or annulment as joint tenants with the right of survivorship and property held as tenants by the entirety. Property interests of the divorced person and former spouse severed under this paragraph shall become tenancies in common.

(c) A severance of interests under paragraph (b) (ii) of this section shall not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor or in the name of the survivor of the former spouse of the divorced person unless a writing declaring the severance has been noted, registered, filed or recorded prior to the third party gaining an interest

in the property in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving property that are evidence of ownership.

(d) Upon entry of an order of a divorce or annulment, provisions of a governing instrument shall be given effect as if the former spouse and relatives of the former spouse disclaimed all interests revoked by this section. For nominations in a fiduciary or representative capacity revoked by this section, provisions of a governing instrument shall be given effect as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) Provisions that are revoked solely by operation of this section shall be revived upon the divorced person's remarriage to the former spouse unless revival is specifically prohibited by a prenuptial or other written agreement signed by both parties.

(f) No change of circumstances other than as described in this section revokes a will.

(g) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, unless the payor or other third party received reasonable written notice of the divorce, annulment or remarriage. A payor or other third party shall not have a duty or obligation to inquire as to the continued marital relationship between a divorced person and a beneficiary or to seek any evidence with respect to a marital relationship. Nothing in this subsection shall be construed to deprive the rightful owner of any funds, item of property or other benefit from seeking to recover the payment, item of property or other benefit from the wrongful recipient of that payment, item of property or other benefit.

## ARTICLE 2 - PROCEDURE FOR PROBATE

### **2-6-201. Contents of petition; defect in jurisdictional statement inconsequential.**

(a) A petition for the probate of a will shall show:

(i) The jurisdictional facts;

(ii) Whether the person named as executor consents to act, or renounces his right to letters testamentary;

(iii) The names, ages and residences of the heirs and devisees of the decedent, so far as known to the petitioner;

(iv) The probable value and character of the property of the estate;

(v) The name of the person for whom letters testamentary are prayed.

(b) No defect of form or in the statement of jurisdictional facts actually existing shall make void the probate of a will.

**2-6-202. Failure of executor to petition; appointment of administrator.**

If the person named in a will as executor, for thirty (30) days after he has knowledge of the death of the testator and that he is named as executor, fails to petition the proper court for probate of the will and that letters testamentary be issued to him, he may be held to have renounced his right to letters and the court may appoint any other competent person administrator unless good cause for delay is shown.

**2-6-203. Hearing upon petition; notice not required.**

(a) Upon the filing of a petition for probate of a will, the court or the clerk may hear it forthwith or at such time and place as the court or clerk may direct, with or without requiring notice, and upon proof of due execution of the will, admit the same to probate.

(b) Notice is not required and there shall be no delay in the hearing, unless good cause appears.

**2-6-204. Proof; self-proving will.**

A will executed in compliance with W.S. 2-6-114 shall be probated without further proof.

**2-6-205. Proof; wills not self-proving.**

(a) If the will is not self-proving, proof of a will may be made by the oral or written testimony of one or more of the subscribing witnesses to the will. If the testimony is in writing, it shall be substantially in the following form, executed and sworn to contemporaneously with the execution of the will or at any time thereafter, whether before or after the date of death of the testator:

In the District Court of Wyoming

In and for ..... County

In the Matter of the Estate of) Probate No. ....  
.... Deceased ) Testimony of Subscribing  
State of )ss Witness on Probate of Will  
.... County )

I, ....., being first duly sworn, state:

I reside in the County of ....., State of .....; I knew the testator on the ... day of ..., (year), the date of the instrument, the original or exact reproduction of which is attached hereto, now shown to me, and purporting to be the last will and testament of the said .....; I am one of the subscribing witnesses to said instrument; and on the said date of said instrument, I knew ....., the other subscribing witness; and said instrument was exhibited to me and to the other subscribing witness by the testator, who declared the same to be his last will and testament, and was signed by the testator at ....., in the County of ....., State of ....., on the date shown in said instrument, in the presence of myself and the other subscribing witness; and the other subscribing witness and I then and there, at the request of the testator, in the presence of said testator and in the presence of each other, subscribed our names thereto as witnesses.

Name of witness ....

Address ....

Subscribed and sworn to before me this .... day of....., (year).

Notary Public in and for ....

County of ....

State of ....

(SEAL)

(b) If it is desired to prove the execution of the will by deposition rather than by use of the affidavit form provided in subsection (a) of this section, upon application the clerk shall issue a commission to some officer authorized by the law of this state to take depositions, with the will annexed, and the officer taking the deposition shall exhibit it to the witness for identification, and, when identified by him, shall mark it as "Exhibit ...." and cause the witness to connect his identification with it as such exhibit. Before sending out the commission the clerk shall make and retain in his office a true copy of the will.

(c) If all of the witnesses are deceased or otherwise not available, it is permissible to prove the will by the sworn testimony of two (2) credible disinterested witnesses that the signature to the will is in the handwriting of the person whose will it purports to be, and that the signatures of the witnesses are in the handwriting of the witnesses, or it may be proved by other sufficient evidence of the execution of the will.

**2-6-206. Proof; holographic wills.**

An holographic will may be proved the same as any other private writing.

**2-6-207. Proof; lost or destroyed will; court may restrain personal representatives pending disposition.**

(a) Whenever any will is lost or destroyed, the district court shall take proof of the execution and validity thereof to establish the same. All the testimony shall be reduced to writing and signed by the witnesses.

(b) No will shall be proved as a lost or destroyed will unless it is proved to have been in existence at the time of death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions are clearly and distinctly proved by at least two (2) credible witnesses.

(c) When a lost will is established, the provisions thereof shall be distinctly stated and certified by the judge, under his hand and the seal of the court, and the certificate shall be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed, shall be issued thereon in the same manner as upon wills produced and duly proved.

(d) If before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator or letters testamentary of any previous will of the testator are granted, the court may restrain the personal representatives so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

**2-6-208. Order of preference for appointment of executor.**

(a) Letters testamentary may be granted to one or more persons found to be qualified. Preference for appointment shall be in the following order:

(i) The person designated in the will;

(ii) Any beneficiary named in the will, or a person nominated by the beneficiaries;

(iii) Any creditor of the decedent, or a person nominated by such creditor;

(iv) Such other person as the court may find to be qualified.

**2-6-209. Order admitting or disallowing probate; mailing of copies.**

The court or the clerk shall enter an order either admitting the will to probate or disallowing probate because of insufficient proof. An order admitting a will to probate shall include the appointment of an executor. The clerk, personal representative or attorney shall transmit by certified mail a copy of the order admitting the will to probate, together with a copy of the will, to each named beneficiary and to each heir of the decedent.

**2-6-210. Form of letters testamentary.**

Letters testamentary must be substantially in the following form:

State of Wyoming )

)ss

County of .... )

The last will of A. B., deceased, a copy of which is hereto attached, having been proved and recorded in the district court within and for the county of ...., C. D. is hereby appointed executor. Witness, G. H., clerk of the district court of the .... district within and for the county of .... with the seal of the court affixed, the .... day of .... A.D. ....

.....Clerk.

**2-6-211. Authority of executor not designated in will.**

Executors who are not designated in the will have the same authority over the estates which executors named in the will have.

ARTICLE 3 - ACTIONS TO SET ASIDE OR CONTEST

**2-6-301. Filing and contents of petition to revoke.**

After a will has been admitted to probate, any person interested may, within the time designated in the notice provided for in W.S. 2-6-122 or 2-7-201, contest the will or the validity of the will. For that purpose he shall file in the court in which the will was proved a petition in writing containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate be revoked.

**2-6-302. Summons and notification; proceedings governed by civil rules.**

Upon filing the petition, a summons shall be served upon the executors of the will and the clerk shall send notice by certified mail, with copy of petition attached, to all the legatees and devisees mentioned in the will and all the heirs, so far as known to the petitioner, or to their guardians if any of them are minors, or to their personal representatives if any of them are dead. The summons, service and proceedings shall be governed by the Wyoming Rules of Civil Procedure.

**2-6-303. Annulment and revocation.**

If upon trial, the jury, or if no jury, the court decides the will is invalid or that it is not sufficiently proved to be the last will of the testator, the probate shall be annulled and revoked.

**2-6-304. Cessation of executor's powers; immunity.**

Upon the revocation being made, the powers of the executor cease, but the executor is not liable for any act done in good faith previous to the revocation.

**2-6-305. Liability for payment of contest costs.**

The fees and expenses shall be paid by the party contesting the validity or probate of the will if the will in probate is affirmed. If the probate is revoked, the costs shall be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

**2-6-306. When probate deemed conclusive.**

If no person within the time designated in the notice provided for in W.S. 2-6-122 or 2-7-201 files a petition to contest the will or its validity, the probate of the will is conclusive.

CHAPTER 7 - ADMINISTRATION OF ESTATES

ARTICLE 1 - IN GENERAL

**2-7-101. Presumption of death; how estate handled.**

When any person leaves his usual place of abode and is not seen or heard from by his relatives or other persons reasonably expected to hear from him for a period of seven (7) years, the person is presumed to be dead. If the person owned real or personal property in Wyoming, administration of the estate of the person may be had in the manner provided by law.

**2-7-102. Penalty for administering without proving will or taking letters of administration.**

Any person, except one acting under the provisions of W.S. 2-1-201 and 2-1-202, who administers the personal estate of any person dying after the passage of this act, or any part thereof,

without proving the will of the deceased or taking out letters of administration of such personal estate, shall be punished by imprisonment in the county jail not more than one (1) year or by a fine not exceeding five hundred dollars (\$500.00) or both.

**2-7-103. Personal representative to take possession of estate.**

The personal representative shall take possession of all of the estate of the decedent, real and personal, and collect all debts due the decedent or the estate. For the purpose of bringing suit to quiet title or for partition of the estate, the possession of the personal representative is the possession of the distributees. Possession by the distributees is subject to the possession of the personal representative for the purposes of administration as applied to this chapter.

**2-7-104. Actions maintainable by or against personal representatives; right generally.**

Actions for the recovery of any property, real or personal, or for the possession thereof, or for the destruction, wasting, conversion, injury, taking or carrying away thereof, or to quiet title thereto, or to determine any adverse claim thereon, and all actions founded upon contract, may be maintained by and against the personal representative in all cases in which the action might have been maintained by or against their respective testators or intestates.

**2-7-105. Actions maintainable by or against personal representatives; actions for waste by representatives.**

Personal representatives may maintain actions against any person who has wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

**2-7-106. Actions maintainable by or against personal representatives; actions for waste by representatives; against representatives.**

Any person or his personal representative may maintain an action against the personal representative of any testator or intestate who in his lifetime has wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any person, or committed any trespass on the real estate of the

person, provided the person claiming to be damaged by the tortious acts of the decedent files a claim for the amount of the damages within the time limited in the notice to creditors, and the claim is rejected.

**2-7-107. Disposition of partnership business.**

When a partnership exists between the decedent at the time of his death and any other person or persons, the surviving partner or partners may continue in possession of the partnership and settle its business, but the interest of the decedent in the partnership shall be included in the inventory and appraised as other property. The surviving partner or partners shall settle the affairs of the partnership without delay, account to the personal representative and pay the funds as from time to time are payable to him, in the right of the decedent.

**2-7-108. Actions on bond of former representatives.**

A personal representative may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of any former personal representative or special order for the same estate.

**2-7-109. Compromise of claims; owed to estate.**

When it appears for the best interest of the estate, the fiduciary may, subject to approval of the court, effect a compromise with any debtor or other obligor, or extend, renew or in any other manner modify the terms of any obligation owing to the estate. If the fiduciary holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of the encumbered assets from the owner thereof in satisfaction of the indebtedness secured by the lien, if it appears for the best interests of the estate and if the court so orders.

**2-7-110. Compromise of claims; against estate.**

When a claim against an estate has been filed, or suit thereon is pending, the creditor and the fiduciary may, if it appears for the best interests of the estate, subject to approval of the court, compromise the claim, whether it is due or not due, absolute or contingent, liquidated or unliquidated.

**2-7-201. Admission of will or estate to probate and appointment of personal representative; contents; form.**

Upon admission of a will or an estate of an intestate decedent to probate and issuance of letters, the personal representative shall cause to be published once a week for three (3) consecutive weeks in a daily or weekly newspaper of general circulation in the county in which the probate is pending, a notice of admission of the will or estate to probate and of the appointment of the personal representative. The notice shall state that any action to set aside the probate of the will shall be brought within three (3) months from the date of the first publication of the notice or thereafter be barred. The publication shall include a notice to debtors to make payment and to creditors having claims against the decedent to file them with the necessary vouchers in the office of the clerk of court from which the letters were issued within three (3) months from the date of the first publication of the notice, or thereafter be forever barred. The notice required by this section shall be substantially in the following form:

State of Wyoming                    )                   In the District Court  
  ) ss               ....Judicial District  
County of ....                    )                   Probate No. ....  
In the Matter of the Estate )  
  )  
of                                    )                   Notice of Probate  
  )  
...., Deceased.                    )

TO ALL PERSONS INTERESTED IN SAID ESTATE:

You are hereby notified that on the .... day of ....., (year), the estate of the above named decedent was admitted to probate by the above named court, and that .... was appointed personal representative thereof.

or-

You are hereby notified that on the .... day of ....., (year), the Last Will and Testament of decedent was admitted to probate by the above named court, and .... was appointed personal representative thereof. Any action to set aside the Will shall be filed in the Court within three months from the date of the first publication of this notice, or thereafter be forever barred.

Notice is further given that all persons indebted to the decedent or to his Estate are requested to make immediate payment to the undersigned at ....., Wyoming.

Creditors having claims against the decedent or the estate are required to file them in duplicate with the necessary vouchers, in the office of the Clerk of said Court, on or before three months after the date of the first publication of this notice, and if such claims are not so filed, unless otherwise allowed or paid, they will be forever barred.

Dated ....., (year).                      Personal Representative ....

PUBLISH: (once a week for 3 successive weeks).

**2-7-202. Public auction of real or personal property; contents.**

(a) When a sale of real or personal property of a decedent is ordered and is to be made at public auction, notice of the time and place of sale shall be published in a daily or weekly newspaper of general circulation in the county in which the probate is pending and in the county in which such property is situate once a week for three (3) consecutive weeks next before the sale, except in the case of perishable and other personal property likely to depreciate in value or which will incur loss by being kept, and as much other personal property as may be necessary to pay the allowance made to the family of the decedent.

(b) Notice shall set forth the time and place of sale and a description of the property offered for sale, and may provide that any and all bids may be rejected by the personal representative.

(c) A copy of the notice shall also be mailed as provided in W.S. 2-7-205.

**2-7-203. Order to show cause for setting off exempt property; form.**

(a) The order to show cause shall be published once in a newspaper of general circulation in the county in which the probate is pending, and a copy of the order shall be mailed by the personal representative to each heir and beneficiary. The publication and mailing shall be not less than ten (10) days prior to the date set for hearing.

(b) The publication and notice may be combined with the notice opening the probate but the hearing on the order shall not be held prior to ten (10) days after the filing of the appraisalment.

(c) The notice shall be substantially in the following form:

State of Wyoming                    )                   In the District Court  
  )ss  
County of ....                    )                   .... Judicial District  
  )                   Probate No. ...  
In the Matter of the Estate)  
  )  
of                                        )                   Order to Show Cause  
...., Deceased.                    )

Petition having been filed in this Court praying to have the exempt property of the Estate, including homestead, set over to the person or persons entitled thereto.

Now, therefore, it is hereby ordered that all persons interested appear before this Court sitting in ...., Wyoming, on the .... day of ...., (year), at the hour of .... o'clock in the .... room, to show cause why the exempt property should not be set over to the person or persons entitled thereto.

It is further ordered that a copy of this Order be published on the .... day of .... (year), in a newspaper of general circulation and that copies of this Order be mailed to

the heirs and beneficiaries of the decedent not less than ten (10) days prior to the date set for said hearing.

Dated this .... day of ....., (year). BY THE COURT:

PUBLISH: Judge ....

**2-7-204. Final account and petition for distribution; form.**

(a) When an estate is in condition for final settlement, but not less than three (3) months after the date of the first publication of the notice of opening the probate, the personal representative shall give notice that he has filed in the office of the clerk of court a final account and petition for distribution, where anyone interested may examine and file objections thereto in writing at any time within ten (10) days after the day mentioned in the notice, naming the last day on which any objections may be filed. The notice shall state if no objections are filed within the time allowed, he shall make final settlement of the estate on the day following the last day for filing objections or as soon thereafter as the matter may be heard.

(b) The notice shall be substantially in the following form:

NOTICE OF FINAL SETTLEMENT OF ESTATE

State of Wyoming )

)ss Probate No. ....

County of .... )

To all persons interested in the Estate of ....., deceased, take notice that the undersigned Personal Representative did, on the .... day of ....., (year), file in the office of the Clerk of the District Court, .... Judicial District, in said County and State, his Final Account and Petition for Distribution of the Estate, a copy of which is hereby delivered to you, and upon examination of the Account and Petition you may file objections thereto in writing with the Clerk at any time on or before the .... day of ....., (year).

If no objections are filed thereto, the Personal Representative will make final settlement of the Estate on the

.... day of ....., (year), or as soon thereafter as the matter may be heard.

Dated the .... day of ....., (year).

Personal Representative ....

**2-7-205. Parties entitled to receive.**

(a) Subject to subsection (d) of this section, a true copy of the notice required in W.S. 2-7-201 shall be mailed by ordinary United States mail, first class, to:

(i) The surviving spouse, if any, and to all of the heirs at law of the decedent and to all of the beneficiaries named in the will of the decedent. The mailings shall be made not later than one (1) week after the first publication of the notice in the newspaper;

(ii) Each creditor of the decedent whose identity is reasonably ascertainable by the personal representative within the time limited in the notice to creditors. The mailing shall be made not later than thirty (30) days prior to the expiration of three (3) months after the first publication of the notice in the newspaper;

(iii) The state department of health if the decedent received medical assistance pursuant to W.S. 42-4-101 through 42-4-114; and

(iv) The department of family services if the decedent or any heir at law of the decedent, if known, is the obligor on a child support order being enforced by the department.

(b) Unless waived in writing by the parties entitled thereto, the notices required in W.S. 2-7-202, 2-7-203, 2-7-204, 2-7-615, 2-7-806, 2-7-807 and 2-7-811 shall be mailed not less than ten (10) days prior to the day of hearing, the date for filing objections, or sale, as the case may be, to the surviving spouse, if any, and to all of the heirs of a decedent dying intestate or to all of the beneficiaries named in the will of a decedent dying testate.

(c) Notice of all intended sales of real property not requiring an order of the court shall be mailed or delivered not less than ten (10) days prior to the sale to the surviving

spouse, if any, and to the heirs of a decedent dying intestate or to all of the beneficiaries named in the will of a decedent dying testate.

(d) Notice to the agent or attorney of any party entitled to notice under this section is notice to that party.

**2-7-206. Proof by affidavit; filing thereof.**

(a) The proof of publication of the notices required in W.S. 2-7-201, 2-7-202 and 2-7-203 shall be by affidavit of the publisher.

(b) The proof of mailing or delivery of all notices required in W.S. 2-7-201, 2-7-202, 2-7-203, 2-7-204 and 2-7-205 shall be by affidavit of the personal representative or his attorney.

(c) The affidavits for proof of publication and mailing notices shall be filed with the clerk of court from which the letters were issued.

ARTICLE 3 - TEMPORARY ADMINISTRATION

**2-7-301. Appointment of special administrator; when to be made.**

When there is delay in granting letters from any cause, or when the letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for letters, or when a personal representative dies or is suspended or removed, the district court shall appoint a special administrator to collect and take charge of the estate of the decedent in whatever county or counties the estate assets may be found, and to exercise all powers necessary for the preservation of the estate.

**2-7-302. Appointment of special administrator; entry of order and issuance of letters.**

The appointment may be made at any time without notice. Appointment shall be made by entry upon the minutes of the court specifying the powers to be exercised by the special administrator. Upon entry of the order and filing of the required bond, the clerk shall issue letters to the person in conformity with the order.

**2-7-303. Appointment of special administrator; preferences; appeal precluded.**

In making the appointment of a special administrator, the court or officer shall give preference to the person entitled to letters but no appeal to the supreme court shall be allowed from the appointment.

**2-7-304. Special administrator; surety and oath.**

Before any letters are issued to any special administrator, he shall provide such surety as the court or officer directs. He shall take the usual oath and have the oath endorsed on his letters.

**2-7-305. Special administrator; powers and duties; no liability to creditors.**

The special administrator shall collect and preserve for the personal representative all goods, chattels, debts and effects of the decedent, and all incomes, rents, issues and profits, claims and demands of the estate. He shall take the charge and management of, enter upon, and preserve from damage, waste and injury, the real estate. For any and all necessary purposes he may commence and maintain or defend suits and other legal proceedings as an administrator. He may sell the perishable property as the court or officer may order to be sold, and exercise such other powers as are conferred upon him by his appointment, but in no case is he liable to any creditor on a claim against the decedent.

**2-7-306. Special administrator; cessation of powers.**

When letters on the estate of the decedent have been granted, the powers of the special administrator cease, and he shall forthwith deliver to the personal representative all the property and effects of the decedent in his hands, and the personal representative may prosecute to final judgment any suit commenced by the special administrator.

**2-7-307. Special administrator; rendition of account.**

The special administrator shall render an account, on oath, of his proceedings, in like manner as other personal representatives are required to do.

**2-7-401. Personal representative entitled to possession of all property; duty to repair; actions by heirs for possession or to quiet title.**

The personal representative is entitled to possession of all real and personal estate of the decedent, and to receive the rents and profits of the real estate until the estate is settled or until delivery by order of the court to the heirs or beneficiaries. He shall keep in good repair all houses, buildings and fixtures under his control. The heirs or beneficiaries may themselves or jointly with the personal representative maintain an action for possession of the real estate or for quieting title to the same, against anyone except the personal representative, but this section shall not be so construed as requiring them to do so.

**2-7-402. Title to decedent's property; subject to administration and payment of debts; priorities.**

Except as otherwise provided in this code, when a person dies the title to his property, real and personal, passes to the person to whom it is devised by his last will, or in the absence of such disposition to the persons who succeed to his estate as provided in this code. However all of his property is subject to the possession of the personal representative and to the control of the court for the purposes of administration, sale or other disposition under the provisions of law, and his property, except homestead and other exempt property, is chargeable with the payment of debts and charges against his estate. There is no priority between real and personal property, except as provided in this code or by the will of the decedent.

**2-7-403. Return of inventory of estate by representative; failure to comply; disposition of fines.**

(a) Every personal representative shall make and return to the court within one hundred twenty (120) days after his appointment a true inventory upon his oath, of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge. If the personal representative does not file such inventory within one hundred twenty (120) days, he shall show the court good cause for his delay and the court shall determine whether or not an extension of time shall be allowed. For failure to comply in good faith with the time limitations set forth, the personal representative shall be adjudged in contempt of court, and a fine imposed and other

enforcement entered as the court in its discretion determines. Any fine assessed shall be paid into the corpus of the estate.

(b) Anything herein to the contrary notwithstanding, in all cases to which W.S. 2-5-101 applies, the inventory shall be filed not more than seventy-five (75) days after the will has been admitted to probate.

**2-7-404. Report of appraisal; verification of values of estate assets.**

(a) Within one hundred twenty (120) days after the timely filing by the personal representative of the inventory of assets of the estate of the decedent, pursuant to W.S. 2-7-403, the personal representative shall file under oath a report of appraisal of values of estate assets listed in the inventory. The report shall be in compliance with such of the following requirements as may be applicable:

(i) As to all assets listed in the inventory which have a readily determinable market value, the value of each asset as of date of death shall be stated in writing by one (1) disinterested person;

(ii) As to all assets listed in the inventory that do not have a readily determinable market value, the personal representative shall employ disinterested persons to determine the fair market value of each such asset, as of the date of death. A separate written report as to the value of each asset, showing the appraiser's basis for arriving at the value, shall be attached to the report.

(b) Different persons may be employed to appraise or determine the value of different assets included in the estate.

(c) The report, with any attachments required by this section, shall be filed with the clerk of court.

(d) The amount of the fee to be paid to any appraiser, or any person making the required statement, shall be within the discretion of the personal representative, subject only to the provisions of W.S. 2-7-802(a) as to reasonableness and approval at the hearing of the final report and accounting of the personal representative.

**2-7-405. Repealed by Laws 1985, ch. 15, § 2.**

**2-7-406. Repealed by Laws 1985, ch. 15, § 2.**

**2-7-407. Effect of naming debtor as personal representative.**

The naming of a debtor as personal representative does not discharge him from any just claim which the testator has against him. The claim shall be included in the inventory and the personal representative is liable for the same when the debt or demand becomes due.

**2-7-408. Discharge or bequest of debt or demand not valid against creditors.**

The discharge or bequest in a will of any debt or demand of the testator against the personal representative named or any other person is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It shall be included in the inventory and if necessary applied in the payment of the debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

**2-7-409. Failure to file inventory or appraisement.**

If a personal representative neglects or refuses to file either the inventory or appraisement within the time prescribed or within such further time which the court shall for reasonable cause allow, the court or commissioner may, upon notice, in addition to all other remedies and penalties provided in this code, revoke the letters and the personal representative is liable on his bond for any injury to the estate or rights of any person interested therein arising from such failure.

**2-7-410. Appraisement of after-discovered property; filing; enforcement.**

Whenever property not mentioned in any inventory comes to the possession or knowledge of the personal representative, he shall cause the same to be appraised in the manner prescribed and an appraisement thereof filed within one (1) month after the discovery. The making of the appraisement may be enforced, after notice, by any and all remedies provided by this code.

**2-7-411. Liability for embezzlement or alienation of monies before letters granted.**

If any person, before the granting of letters embezzles or alienates any of the monies, goods, chattels or effects of a decedent he is chargeable therewith and liable to an action by the personal representative of the estate for double the value of the property embezzled or alienated, for the benefit of the estate.

**2-7-412. Citation to persons suspected of having concealed monies; generally.**

If any personal representative or other person interested in the estate of a decedent complains to the court in writing, verified by oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away or disposed of any monies, goods or chattels of the decedent or in which he had an interest, or has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings which contain evidence of or tend to disclose the right, title, interest or claim of the decedent to any real or personal estate or any claim or demand, or any lost will, the court shall cite the person to appear before the court and shall examine him on oath upon the matter of the complaint. If the person is not in the county where the decedent died or where letters have been granted he may be cited and examined either before the court of the county where he is found or before the court of the county where the decedent died or where letters have been granted. But if in the latter case he appears and is found innocent his necessary expenses shall be allowed him out of the estate.

**2-7-413. Citation to persons suspected of having concealed monies; failure to appear or answer; disclosure order; proceedings generally.**

(a) If the person cited refuses to appear and submit to an examination or to answer interrogatories put to him touching the matters of complaint, the court may commit him to the county jail until he submits to the order of the court or is discharged according to law. If upon examination it appears that he has concealed, embezzled, smuggled, conveyed away or disposed of any monies, goods or chattels of the decedent or has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings containing evidence of or tending to disclose the right, title, interest or claim of the decedent to any real or personal estate, claim or demand, or any lost will of the decedent, an order may be made requiring the person to disclose his knowledge thereof to the personal representative and he may

be committed to the county jail until the order is complied with or he is discharged according to law.

(b) All interrogatories and answers shall be in writing, signed by the party examined and filed in the court. The order for disclosure made upon the examination is prima facie evidence of the right of the personal representative to the property in any action brought for the recovery thereof. Any judgment recovered shall be for double the value of the property as assessed by the court, or for return of the property and damages in addition thereto equal to the value of the property. In addition to the examination of the party, witnesses may be produced and examined on either side.

**2-7-414. Citation of persons entrusted with monies for accounting.**

Upon the complaint on oath of any personal representative, the court shall cite any person who has been entrusted with any part of the estate of the decedent to appear before the court and require him to render a full account of any monies, goods, chattels, bonds, accounts or other property or papers belonging to the estate which have come to his possession in trust for the personal representative, and of his proceedings thereon. If the person cited refuses to appear and render the account he shall be proceeded against as provided in W.S. 2-7-413.

ARTICLE 5 - PROPERTY ALLOWANCE FOR SURVIVING  
SPOUSE AND MINOR CHILDREN

**2-7-501. Right to homestead and support; "homestead" defined.**

(a) When a person dies leaving a spouse or minor children, the spouse or minor children are entitled to remain in possession of the homestead, all wearing apparel of the family, and all household furniture of the decedent until letters are granted and the inventory is returned. The widow or minor children are also entitled to a reasonable provision for their support, to be allowed by the court.

(b) When any person dies seized of a homestead, leaving a spouse or minor children, the spouse or minor children are entitled to the homestead. If there is neither spouse nor minor children the homestead is liable for the debts of the decedent.

(c) "Homestead" includes that property referred to in W.S. 2-7-507 to the extent in value stated in W.S. 2-7-508.

**2-7-502. Extra allowance for maintenance of family.**

If the amount set apart is insufficient for the support of the widow and children, or either, the court shall make such reasonable allowance out of the estate as is necessary for the maintenance of the family according to their circumstances during the settlement of the estate.

**2-7-503. Preference and payment of allowances; exceptions.**

Allowances made shall be paid in preference to all other charges except funeral expenses and cost of administration. Any such allowance, whenever made, may in the discretion of the court take effect from the death of the decedent. This section shall not be construed so as to invalidate any mortgage or lien of record against decedent's property.

**2-7-504. Absolute property of surviving spouse and minor children; exceptions; renouncement of will of no effect.**

When any resident of this state dies leaving a spouse or minor children, the court shall set over to the spouse, and if none to the minor children, as their absolute property, all property of the decedent exempt from execution under the exemption laws of this state including the homestead. Such property shall not be subject to the payment of debts of the decedent, except expenses of administration or funeral expenses of the decedent in cases in which there is not other property in the estate sufficient to pay the expenses. If [the] decedent does not have any or all of the property specified under the exemption laws, the spouse or minor children are entitled to the value of the exempt property either in money or other property as they may prefer. If the surviving spouse is not the parent of all or any minor children, one-half (1/2) of the property shall be set over to the surviving spouse and the other one-half (1/2) to the minors who are not children of the survivor. A conservator shall be appointed for the children as in any other cases of estate property descending to a minor. The right of a surviving spouse to any of the exempt property is not affected by his or her renouncing or failing to renounce the benefit of the provisions made for him or her in the will of the decedent.

**2-7-505. Procedure for setting off exempt property.**

Any time during the administration of an estate and after the first publication of notice of opening the probate and the filing of the appraisement, any person interested may file a petition showing the necessary facts and praying to have the exempt property of the estate including the homestead set over to the person or persons entitled thereto. Upon filing of the petition, the court shall require all persons interested to appear on a day certain to show cause why the exempt property should not be set over to the person or persons entitled thereto. The order shall be published once in a newspaper of general circulation in the county in which the probate is pending and a copy of the order to show cause shall be mailed by the personal representative to each heir and beneficiary. The publication and mailing shall be not less than ten (10) days prior to the date set for the hearing. At the time set for the hearing or to which the hearing is continued, the court shall hear the evidence and make such order as the facts and law require. If the whole estate of the decedent is found to be exempt and is set over to the person or persons entitled thereto, no further proceeding is required in the administration of the estate unless further estate is discovered. The publication and notice may be combined with and included in the notice of opening the probate, but the hearing shall not be held less than ten (10) days after the filing of the appraisement.

**2-7-506. Homestead to be set apart by court; payment of liens or encumbrances.**

If the homestead held prior to the death of the decedent is returned in the appraisement at a value not exceeding the value of the homestead exemption provided in W.S. 2-7-508, the court shall order it set off to the persons entitled thereto. If there are liens or encumbrances on the homestead and if the funds of the estate are adequate to pay all claims against the estate, all claims against the estate and any liens or encumbrances on the homestead, whether filed or presented or not, if known or made known to the personal representative, shall be paid out of the funds. If the funds of the estate are not sufficient for that purpose, liens or encumbrances shall be paid proportionately with other claims allowed, and the liens or encumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after the payment.

**2-7-507. Duty of appraisers to appraise and divide homestead.**

If the homestead is returned in the appraisal at more than the value of the homestead exemption set forth in W.S. 2-7-508, the appraisers shall determine whether the premises can be divided without material injury. If they can be divided, the appraisers shall admeasure and set apart to the parties entitled thereto the portion of the premises, including the dwelling house, as will amount in value to the homestead exemption and make report thereof giving the metes, bounds and full description of the portion set apart as a homestead. If the appraisers find that the premises exceed in value the homestead exemption and the premises cannot be divided without material injury, they shall report the finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

**2-7-508. Amount of homestead exemption.**

Wheresoever in the Probate Code the limit of the homestead exemption is established or referred to, the exemption is thirty thousand dollars (\$30,000.00).

**2-7-509. Costs of proceedings; homestead exempt from claims against estate.**

The costs of all proceedings provided for in W.S. 2-7-501 through 2-7-508 shall be paid by the estate as expenses of administration. Persons succeeding by purchase or otherwise to the interests, rights and title of successors to homesteads or to the right to have homesteads set apart to them, shall take the homestead exempt from claims against the estate of the decedent.

ARTICLE 6 - SALE AND OTHER DISPOSITION OF PROPERTY

**2-7-601. When conveyance required; generally.**

When a person who is bound by contract in writing to convey any real estate dies before making the conveyance, and in all cases when the decedent, if living, might be compelled to make the conveyance, the court may order his personal representative to convey the real estate to the person entitled thereto.

**2-7-602. When conveyance required; time and place for hearing; notice.**

On presentation of a verified petition by any person claiming to be entitled to the conveyance from a personal representative

setting forth the facts upon which the claim is predicated, the court shall appoint a time and place for hearing the petition and notice thereof shall be personally served on the personal representative.

**2-7-603. When conveyance required; hearing.**

At the hearing all persons interested in the estate may appear and contest the petition by filing their objections in writing. The court may examine, on oath, the petitioner and all before him for that purpose.

**2-7-604. When conveyance required; order for conveyance; journal entry.**

If after hearing and examination of the claim the court is satisfied the petitioner is entitled to a conveyance of the real estate described in the petition, an order directing the personal representative to execute a conveyance thereof to the petitioner shall be made and entered on the journal of the court.

**2-7-605. When conveyance required; execution.**

The personal representative shall execute the conveyance according to the directions of the order.

**2-7-606. When conveyance required; dismissal of petition; specific performance.**

If upon hearing the right of the petitioner to have specific performance of the contract is found to be doubtful, the court shall dismiss the petition without prejudice to the right of the petitioner, who may at any time within two (2) months thereafter proceed by action to enforce specific performance thereof.

**2-7-607. When conveyance required; title to pass.**

Every conveyance made in pursuance of an order or decree as provided in W.S. 2-7-601 or 2-7-604 shall pass title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance.

**2-7-608. When conveyance required; right of successor to enforce.**

If the person entitled to the conveyance dies before the commencement or completion of proceedings therefor, any person entitled to succeed to his rights in the contract, or the personal representative of the decedent, may, for the benefit of the person so entitled, commence the proceedings or prosecute any already commenced. The conveyance shall be so made as to vest the estate in the person entitled to it or in the personal representative for his benefit.

**2-7-609. When power given in will.**

When power to sell, mortgage, lease, pledge or exchange property of the estate is given to any personal representative under the terms of a will, the statutory requirements for such purposes do not apply.

**2-7-610. Equitable conversion; effect thereof.**

A testamentary direction to sell real property, or the exercise of a testamentary power of sale of real property constitutes an equitable conversion of real estate into personal property, but shall not affect distribution of the estate under the provisions of the will.

**2-7-611. When real property deemed personalty; when personalty deemed real property.**

(a) Real property acquired by the personal representative by the completion of foreclosure proceedings or by the forfeiture of real estate contracts after the death of the decedent is deemed to be personal property for the purpose of administration and distribution of the estate.

(b) In all cases of sale of real property by a personal representative under order of court, the surplus of the proceeds of sale remaining after the payment of debts and charges is deemed to be real property and shall be disposed of in the same proportions as the real property would have been if it had not been sold.

**2-7-612. Purposes for which realty or personalty may be sold; exempt personal property and homestead.**

(a) Any real or personal property belonging to the decedent except exempt personal property and the homestead may be sold, mortgaged, pledged, leased or exchanged by the personal representative for any of the following purposes:

(i) The payment of debts and charges against the estate;

(ii) The distribution of the estate or any part thereof;

(iii) Any other purpose in the best interests of the estate.

(b) Exempt personal property under such provisions as the court may direct, if not set off to the surviving spouse or issue may be sold, mortgaged, pledged, leased, or exchanged, if the surviving spouse or issue consents thereto.

(c) The homestead, under such provisions as the court may direct, if not set off to the surviving spouse or issue, may be sold, mortgaged, pledged, leased or exchanged.

(d) The proceeds from the sale of any exempt personal property or from the sale of the homestead shall be held by the personal representative subject to the rights of the surviving spouse or issue unless the surviving spouse or issue has expressly waived his rights to the proceeds.

**2-7-613. Sale of personalty without court order.**

Personal property of a perishable nature and personal property for which there is a regularly established market may be sold by the personal representative without order of court.

**2-7-614. Petition to sell; generally.**

A petition to sell, mortgage, exchange, pledge or lease any real or personal property shall set forth the reasons for the petition and describe the property involved. It may apply for different authority as to separate parts of the property, or it may apply in the alternative for authority to sell, mortgage, exchange, pledge or lease. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged, exchanged, pledged or leased as a unit.

**2-7-615. Petition to sell; notice and hearing; exception; court order.**

Upon filing of the petition, the court shall fix the time and place of hearing of the petition, and the personal

representative shall give notice of the hearing as provided in W.S. 2-7-205, but as to personal property and as to the lease of real property not specifically devised for a period of not to exceed one (1) year, the court may hear the petition without notice. In those instances where notice is required, the notice shall state briefly the nature of the petition. At the hearing and upon satisfactory proof the court may order the sale, mortgage, exchange, pledge or lease of the property described or any part thereof at such price and upon such terms and conditions as the court may authorize.

**2-7-616. Sale subject to mortgage.**

When a claim is secured by a mortgage on property, the court, with the consent of the mortgagee, may order the sale of the property subject to the mortgage, and the consent shall release the estate should a deficiency later appear.

**2-7-617. Extension of credit in sales.**

In all sales of property, the court may authorize credit to be given by the personal representative on such terms as the court may prescribe. Credit for more than twelve (12) months shall be extended only after hearing pursuant to notice to interested parties.

**2-7-618. Purchase by holder of lien.**

At any sale of real or personal property upon which there is a mortgage, pledge or other lien, the holder of the lien may become the purchaser, and may apply the amount of his lien on the purchase price. If no claim thereon has been filed or allowed, the court, at the hearing on the report of sale and for confirmation of the sale, may examine into the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby, and may authorize the personal representative to accept the receipt of the purchaser for the amount due thereunder and secured thereby as payment pro tanto. If the mortgage, pledge or other lien is a valid claim against the estate and has been allowed, the receipt of the purchaser for the amount due him from the proceeds of the sale is a payment pro tanto. If the amount for which the property is purchased, whether or not a claim for it has been filed or allowed, is insufficient to defray the expenses and discharge his mortgage, pledge or other lien, the purchaser shall pay an amount sufficient to pay the balance of the expenses. Nothing

permitted under this section shall be deemed to be an allowance of a claim based upon such mortgage, pledge or other lien.

**2-7-619. Bond to prevent sale; liability for breach; effect of compliance.**

(a) Any person interested in the estate may prevent a sale, mortgage, pledge, exchange or lease of the whole or any part of the real estate or personal property for any purpose by giving bond to the satisfaction of the court, conditioned that he will pay such demands against the estate as the court shall require not to exceed the value of the property thus kept from sale, mortgage, pledge, exchange or lease as soon as called upon by the court for that purpose.

(b) If the conditions of the bond are broken the property will be liable for the debts unless it has passed into the hands of innocent purchasers, and the personal representative may take possession thereof and sell it under the direction of the court, or he may prosecute the bond, or pursue both remedies at the same time if the court so directs.

(c) If the conditions of the bond are complied with the property shall pass by devise, bequest, distribution or descent as though there had been no debts against the estate.

**2-7-620. Collateral attacks precluded.**

No proceedings for sale, mortgage, pledge, lease, exchange or conveyance by a personal representative of property belonging to the estate is subject to collateral attack on account of any irregularity in the proceedings which do not deprive the court of jurisdiction.

**2-7-621. Order for sale, generally.**

The order shall describe the property to be sold, mortgaged, pledged, exchanged or leased and may designate the sequence in which the several parcels shall be sold, mortgaged, pledged, exchanged or leased. An order for sale may direct whether the property shall be sold at private sale or public auction, and the place or places of sale. The order of sale may prescribe the terms, conditions and manner of sale. The court may provide for appraisal for its guidance as to value of the property, and determine whether or not additional bond shall be deposited by the personal representative. If real property is to be mortgaged, the order may fix the maximum amount of principal,

the earliest and latest dates of maturity and the purposes for which the proceeds shall be used. An order for sale, mortgage, pledge, exchange or lease shall remain in force until terminated by the court.

**2-7-622. Notice of auction required.**

In all sales of property at public auction the personal representative shall give notice as provided in W.S. 2-7-202.

**2-7-623. Adjournment of sale.**

The personal representative may adjourn any sale when in his discretion it is deemed for the best interests of the estate, but no adjournment shall be to a time more than three (3) months from the date first fixed for the sale. Every adjournment shall be announced publicly at the time and place at which adjournment is made.

**2-7-624. Verified report required; confirmation of sale, by court; hearing may be ordered.**

(a) After making any sale, mortgage, exchange or lease of real property, the personal representative shall make a verified report thereof to the court. The court shall examine the report and if satisfied that the sale, mortgage, exchange or lease has been at a price and upon terms advantageous to the estate and in all respects made in conformity with law, and that it ought to be confirmed, shall confirm the sale, mortgage, exchange or lease and order the personal representative to deliver a deed, mortgage, lease or other proper instruments to the person entitled thereto.

(b) If the real property has been sold at private sale without an appraisal for purpose of sale, or if it has been appraised and has been sold at private sale for less than the appraised value, upon filing of the report the court may enter an order fixing a time and place for [a] hearing and a notice of the hearing shall be served upon all interested persons. Prior to the time fixed for the hearing, any person receiving notice may file written objections to the entry of an order approving the sale. If the court is not satisfied that the sale, mortgage, exchange or lease has been made in conformity with law and that it is in the best interests of the estate, it may reject the sale, mortgage, exchange or lease and enter an order it deems advisable.

**2-7-625. Joining report with petition.**

The report of any private sale, mortgage, exchange or lease of real property, as provided in W.S. 2-7-624 may be joined with the petition provided in W.S. 2-7-614.

**2-7-626. Recording.**

When real property is conveyed, encumbered or leased, the personal representative shall file a certified copy of the order of court entered under W.S. 2-7-624 together with the instrument of conveyance, encumbrance or lease in the office of the county clerk of the county or counties in which the real estate is located.

**2-7-627. Optional procedure.**

In those instances to which W.S. 2-3-501 through 2-3-504 are applicable, the personal representative may proceed thereunder or proceed under W.S. 2-7-612 to 2-7-626.

ARTICLE 7 - CLAIMS AGAINST ESTATE

**2-7-701. Debts and charges; classification.**

(a) In any estate in which the assets are or appear to be insufficient to pay in full all debts and charges of the estate, the personal representative shall classify debts and charges as follows:

- (i) Court costs;
- (ii) Other costs of administration;
- (iii) Reasonable funeral and burial expenses;
- (iv) Allowances payable under W.S. 2-7-503 and 2-7-504;
- (v) All debts and taxes having preference under the laws of the United States;
- (vi) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him at his last illness;

(vii) All taxes having preferences under the laws of this state;

(viii) All debts owing to employees for labor performed during the ninety (90) days next preceding the death of the decedent;

(ix) All claims allowed under W.S. 2-7-707;

(x) All other claims allowed.

**2-7-702. Debts and charges; order of payment.**

Payment of debts and charges of the estate shall be made in the order provided in the preceding section without preference of any claim over another of the same class. If the assets of the estate are insufficient to pay in full all of the claims of a class, then the claims shall be paid on a pro rata basis without preference between claims then due and those of the same class not due.

**2-7-703. Filing required; failure to do so constitutes bar; exceptions.**

(a) Except as otherwise provided in this section, all claims whether due, not due or contingent, shall be filed in duplicate with the clerk within the time limited in the notice to creditors and any claim not so filed is barred forever. Any claimant to whom the personal representative has mailed a notice pursuant to W.S. 2-7-205(a)(ii) shall file his claim within three (3) months after the date of first publication of the notice in the newspaper, or before the expiration of thirty (30) days after the mailing, whichever date is later, and any claim not so filed is barred forever. If only one (1) copy of a claim is filed, the clerk shall make a duplicate and shall charge the claimant a reasonable fee not to exceed two dollars (\$2.00) per page.

(b) The clerk shall forthwith transmit to the personal representative one (1) copy of each claim when and as filed.

(c) This section shall not bar:

(i) Claimants entitled to equitable relief due to peculiar circumstances, if so found by the court in adversary proceedings; or

(ii) A claimant to whom no notice was mailed pursuant to W.S. 2-7-205(a)(ii), if the court in adversary proceedings finds that the identity of the claimant was reasonably ascertainable by the personal representative within the time limited in the notice to creditors published pursuant to W.S. 2-7-201.

(d) Any claim not in excess of two hundred dollars (\$200.00) may be allowed by the personal representative without the filing of the claim by the creditor, but the personal representative is answerable for the propriety thereof upon hearing on his final report and accounting.

**2-7-704. Affidavit and other required supporting documentation.**

(a) Every claim which is due, when filed with the clerk shall be supported by the affidavit of the claimant or someone in his behalf, that the account is justly due, that no payments have been made thereon which are not credited and there are no offsets to the same to the knowledge of the affiant. If the claim is not due when filed or is contingent the particulars of the claim shall be stated. The personal representative may also require satisfactory vouchers or proofs to be produced in support of the claim.

(b) If the claim is founded on a bond, bill, note or any other instrument, a copy of the instrument shall accompany the claim. The original instrument shall be exhibited to the personal representative, if demanded, unless it is lost or destroyed, in which case the claimant shall accompany his claim by his affidavit containing a copy or particular description of the instrument and stating its loss or destruction. If the claim or any part thereof is secured by a mortgage or other lien which has been recorded in the office of the county clerk of the county in which the land affected by it lies, it is sufficient to describe the mortgage or lien and refer to the date, volume and page of its record.

**2-7-705. Future, contingent and unliquidated claims.**

(a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases the personal representative, or on petition of the personal representative or the claimant in a special proceeding the court, may provide for payment as follows:

(i) If the claimant consents he may be paid the present or agreed value of the claim taking any uncertainty into account;

(ii) Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

**2-7-706. Claim based on cause of action surviving decedent's death.**

Where a cause of action against the decedent survives his death under W.S. 1-4-101 and 1-4-102, before an action may be brought thereon in any court, a claim based thereon shall be filed and shall have been rejected by the personal representative. The running of the applicable statute of limitations on the cause of action shall be tolled from the time the claim is filed until five (5) days after the date of mailing of notice of rejection by the personal representative. Any judgment rendered by any court with respect to which compliance with this section has not been accomplished, if sought to be enforced, shall be deemed to be a claim not timely filed under W.S. 2-7-703.

**2-7-707. Repayment of public assistance.**

If any recipient of assistance under statutes of Wyoming governing programs of public welfare dies possessed of money or property and a claim for repayment of such assistance is filed against the estate of the deceased, the court in which the estate is being probated shall order the claim to be paid out of the assets of the estate after the claims in W.S. 2-7-701 (a) (i) through (viii) are paid and satisfied. No claim for repayment of assistance shall be enforced against any property of the estate that may be necessary for the support, maintenance or education of the decedent's surviving spouse, minor child or other dependent.

**2-7-708. Personal claims of personal representatives.**

(a) If the personal representative is a creditor of the decedent he shall file his claim as other creditors, and the

court shall appoint a competent person as temporary administrator to represent the estate in the matter of allowing or disallowing the claim. The same procedure shall be followed in the case of co-representatives where all the representatives are creditors of the estate. If one of the co-representatives is not a creditor of the estate, the disinterested representative shall represent the estate in the matter of allowing or disallowing the claim against the estate by a co-representative.

(b) The temporary administrator, after investigation, shall file a report with the court recommending the allowance or disallowance of the claim. Unless the court allows the claim, it shall be disposed of as a contested claim in accordance with W.S. 2-7-717 through 2-7-719.

**2-7-709. Actions pending against decedent at time of death.**

Any action, including any counterclaim in any pending action, pending against the decedent at the time of his death that survives shall be filed as a claim within the time provided in W.S. 2-7-703 by filing with the clerk in duplicate a certified copy of the order of the court in which the action is pending substituting the personal representative for the decedent, together with a certified copy of any pleading asserting contentions against the decedent. Any judgment thereafter rendered in the pending action shall be subject to the provisions of W.S. 2-7-719. If no claim is filed as provided in this section, any judgment rendered in the pending action, if sought to be enforced, shall be deemed to be a claim not timely filed under W.S. 2-7-703.

**2-7-710. Judgments rendered against decedent before death; execution thereon limited.**

When any judgment has been rendered against the decedent in his lifetime, no execution shall issue thereon after his death unless the judgment is for the recovery of real or personal property or the enforcement of a lien thereon. A judgment against the decedent for the recovery of money shall be filed with the clerk like any other claim. If execution is levied upon any property of the decedent before his death, the property may be sold for the satisfaction thereof, and the officer making the sale shall account to the personal representative for any surplus in his hands.

**2-7-711. Judgments rendered against decedent after death.**

A judgment rendered against a decedent who dies after verdict or decision on an issue of fact but before judgment is rendered thereon shall be filed with the clerk like any other claim. The time within which the judgment shall be filed shall not expire until ten (10) days from and after the date final judgment is entered if the date is later than the time for filing claims provided in W.S. 2-7-703.

**2-7-712. Allowance and rejection of claims.**

(a) When a claim, accompanied by the affidavit required in W.S. 2-7-704, has been filed with the clerk, the personal representative shall allow or reject it and his allowance or rejection shall be in writing and filed with the clerk within thirty (30) days after the expiration of the time for filing claims.

(b) If the claim is filed with the clerk before the expiration of the time limited for the filing of claims, the same is filed in time though acted upon by the personal representative after the expiration of such time.

(c) Every claim allowed by the personal representative shall be ranked among the acknowledged debts of the estate to be paid in due course of administration.

(d) When a claim has been filed with the clerk and is rejected in whole or in part, the personal representative shall immediately upon rejection notify the claimant by certified mail.

**2-7-713. Claims allowed in part.**

Whenever the personal representative allows a claim in part, he shall state in his report to the clerk the amount he allows. If the creditor refuses to accept the amount allowed in full satisfaction of his claim, he shall recover no costs in any action brought against the personal representative unless he is granted judgment for a greater amount than that allowed.

**2-7-714. Claims barred by statute of limitations precluded.**

No claim shall be allowed by the personal representative which is barred by the statute of limitations.

**2-7-715. Adjudication of propriety in handling claims prior to final report.**

At any time the personal representative may file an application with the court for an adjudication binding upon all distributees as to the propriety of the personal representative's past or proposed allowance or rejection of any or all claims. Upon such filing the court shall order a hearing. Notice shall be served by the personal representative on each distributee by certified mail not less than twenty (20) days before the date set for hearing. Upon the hearing, an adjudication shall be rendered which is final and binding upon all distributees served with notice and shall not be questioned upon hearing on the final report and accounting.

**2-7-716. Stay of probate proceedings pending final disposition of claims and litigation.**

Pending final adjudication of all claims and litigation as to which claims have been timely filed, the personal representative shall proceed with the administration of the estate to the extent possible without prejudicing the possible rights of creditors, but the estate shall not be closed and no payment of claims or distributions to distributees shall be made which would impair the ability of the estate to honor the claims as finally adjudicated, in accordance with their priority. The personal representative may obtain extensions of time in which to file tax returns and pay taxes, and incur interest charges with respect to the payment of those taxes, until all claims, the payment of which would affect the amount of the taxes due, and litigation is adjudicated.

**2-7-717. Action precluded until claim rejected; exception.**

No holder of any claim against an estate shall maintain any action thereon unless the claim is first rejected in whole or in part by the personal representative and the rejection filed with the clerk, except an action may be brought by any holder of a mortgage or lien, including liens under W.S. 42-4-207, to enforce the same against the property of the estate subject thereto where all recourse against the other property of the estate is expressly waived in the complaint or no claim for deficiency is made in proceedings for foreclosure by advertisement and sale under W.S. 34-4-101 through 34-4-113.

**2-7-718. Action on rejected claim; limitations.**

When a claim is rejected and notice given as required, the holder shall bring suit in the proper court against the personal representative within thirty (30) days after the date of mailing the notice, otherwise the claim is forever barred.

**2-7-719. Certified copy of judgments to be filed; effect thereof.**

(a) A certified copy of any judgment rendered as contemplated by W.S. 2-7-709, 2-7-710, 2-7-711 or 2-7-717 shall be filed upon its rendition with the clerk.

(b) Any judgment rendered upon any claim for money only establishes the claim as if it had been allowed by the personal representative. The judgment shall be that the personal representative pay, to the extent of assets available to satisfy claims of that class augmented by any liability insurance proceeds available as to the claim, in due course of administration the amount ascertained to be due. No execution shall issue upon the judgment, nor shall it create any lien upon the property of the estate or give to the judgment creditor any priority of payment.

(c) If judgment is for the recovery of real or personal property or the enforcement of a lien thereon, no execution shall issue until ten (10) days after a certified copy of the judgment has been filed pursuant to W.S. 2-7-719(a).

**2-7-720. Short title; citation.**

(a) This act may be cited as the "Disposition of Community Property Rights at Death Act".

(b) As used in W.S. 2-7-720 through 2-7-729 "this act" means W.S. 2-7-720 through 2-7-729.

**2-7-721. Application of act.**

(a) This act applies to the disposition at death of the following property acquired by a married person:

(i) All personal property, wherever situated which was acquired as or became, and remained, community property under the laws of another jurisdiction, and:

(A) All or the proportionate part of any property acquired with the rents, issues or income of, or the proceeds from, or in exchange for, that community property; or

(B) Any property otherwise traceable to that community property.

(ii) All or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

**2-7-722. Presumptions as to applicability of act.**

(a) In determining whether this act applies to specific property the following rebuttable presumptions apply:

(i) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under the laws of which property could then be acquired as community property, is presumed to have been acquired as or to have become and remained property to which this act applies; and

(ii) Real property situated in this state and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under the laws of which property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this act applies.

**2-7-723. Distribution of property upon death of a married person.**

Upon death of a married person, one-half (1/2) of the property to which this act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half (1/2) of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. With respect to property to which this act applies, the one-half (1/2) of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will.

**2-7-724. Claim to community property; perfection of title in surviving spouse.**

(a) If the title to any property to which this act applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the court or by execution of an instrument by the personal representative with the approval of the court. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this act applies.

(b) If the surviving spouse or the spouse's successor in interest claims that there is any property to which this section applies, then a claim in writing with respect thereto shall be filed in duplicate with the clerk of court within the time limited in the notice to creditors and any such claim not so filed is barred forever.

(c) When such a claim is so filed, the personal representative shall proceed as provided in W.S. 2-7-712(a) and (d), and if such claim is rejected, the provisions of W.S. 2-7-717 and 2-7-718 will apply.

**2-7-725. Claim to community property; perfection of title to decedent's interest in community property.**

(a) If the title to any property to which this act applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this act applies unless a written demand is made by an heir, devisee or creditor of the decedent.

(b) If an heir, devisee or creditor of the decedent claims that there is any property to which this section applies, the party shall file a written demand in duplicate with the clerk of court within the time limited in the notice to creditors, demanding that the personal representative investigate such matter and report thereon to the court. Any demand not filed within the time limited shall be forever barred, and all claims

and causes of action arising out of such demand shall likewise be forever barred.

**2-7-726. Rights of a purchaser for value; duty to inquire; rights to proceeds from sale or security interest.**

(a) If a surviving spouse has apparent title to property to which this act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(b) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(c) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(d) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

**2-7-727. Rights of creditors not affected.**

This act does not affect rights of creditors with respect to property to which this act applies.

**2-7-728. Rights of spouses to alter interests in community property.**

This act does not prevent married persons from severing or altering their interests in property to which this act applies.

**2-7-729. Testamentary disposition limited.**

This act does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

**ARTICLE 8 - FINAL REPORT, ACCOUNTING, DISTRIBUTION AND DISCHARGE**

**2-7-801. Declaration of policy; clerk to maintain calendar; administration to be completed within one year; exception.**

(a) It is the policy of the state of Wyoming that the administration of estates of decedents be completed as rapidly as possible consistent with due protection of the interests of creditors, taxing authorities and distributees. To effectuate this policy, this code shall be so construed.

(b) The clerk shall maintain a calendar as to each estate opened and shall bring to the attention of the court for appropriate action by the court on its own motion, any failure of any personal representative to meet any time deadlines provided by this code.

(c) The administration of each estate of a decedent shall be completed within one (1) year from the date of appointment of the personal representative unless good cause is demonstrated to the court by a verified report filed by the personal representative, and a court order approving continuance is entered. Failure to comply with this provision may be dealt with by the court by citation for contempt, order of removal and replacement of the personal representative, or any other remedy the court deems appropriate to bring about prompt closing of the estate.

**2-7-802. Expenses of administration; standard; how paid.**

(a) The personal representative is authorized to incur and pay at any time, subject to approval upon hearing his final report and accounting, all reasonable and necessary expenses in the care, management and settlement of the estate. The personal representative's authorization shall be exercised with the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs. Subject to the foregoing standard, the expenses may include but are not limited to services relating to:

(i) Bank accounts and safekeeping facilities;

(ii) Appraisals;

(iii) Surveys;

(iv) Title and lien searches and certifications as to real or personal property;

(v) Sales of real property and personal property, including broker's commissions, premiums for title insurance, services in connection with abstracts of title and auctioneer's fees;

(vi) Maintenance, repair, care and protection of estate assets, including such expenses as are normally incident to crops and livestock;

(vii) Property insurance of all types and liability insurance;

(viii) Events incident to distribution of estate assets, such as stock transfer fees and other normal expenses incident to transfer of title;

(ix) Preparation of all necessary tax returns and reports, and audit proceedings in connection therewith, relating to the decedent and the estate and the distribution of the estate;

(x) Publications and mailings;

(xi) Location and identification of heirs and beneficiaries; and

(xii) Expenses, fees and costs of ancillary administration in a state other than Wyoming.

(b) Except as otherwise directed by the decedent's will, the expenses shall be paid first out of income of the estate received by the personal representative, then from the residue of the estate.

**2-7-803. Fees of personal representative; schedule.**

(a) If the court determines that by reason of unusual circumstances the fee computed hereafter is not equitable after considering the time and effort reasonably expended and the responsibility with which the personal representative was charged, the court may allow such additional fee as the court determines proper. The court shall allow the personal representative fees for ordinary services rendered to the estate unless the personal representative files a written waiver as to a part or all thereof. The fees shall be computed on the basis of the amount of the decedent's probate estate accounted for as follows:

(i) For the first one thousand dollars (\$1,000.00) of the basis, ten percent (10%);

(ii) For all sums over one thousand dollars (\$1,000.00) but not exceeding five thousand dollars (\$5,000.00) of the basis, five percent (5%);

(iii) For all sums over five thousand dollars (\$5,000.00) but not exceeding twenty thousand dollars (\$20,000.00) of the basis, three percent (3%);

(iv) For all sums over twenty thousand dollars (\$20,000.00) of the basis, two percent (2%).

(b) In addition, further fees as are just and reasonable may be allowed by the court to the personal representative for extraordinary expenses or services actually incurred or rendered by the personal representative and necessary to the proper administration and distribution of the estate. Extraordinary services shall include but not be limited to services rendered by the personal representative relative to any tax matters and services rendered by the personal representative in connection with any litigation to which the decedent or the estate is a party.

(c) The amount of the decedent's probate estate accounted for shall:

(i) Include items with which the personal representative is chargeable at their inventory value;

(ii) Deduct any loss or add any increase shown by any reappraisal or actual sale occurring during administration;

(iii) Add all accretions to the estate which have come into the possession of the personal representative such as interest, dividends and profits on sales, not including money borrowed or refunds of amounts paid by the personal representative;

(iv) Deduct the value of property lost or destroyed without fault of the personal representative; and

(v) Include accretions in net income, and not the gross income, of any business operated or conducted during administration of the estate.

**2-7-804. Fees of attorney for estate; schedule.**

(a) If the court determines that by reason of unusual circumstances the fee computed hereafter is not equitable after considering the time and effort reasonably expended and the responsibility with which the personal representative was charged, the court may allow such additional fee as the court determines proper. The court shall allow the attorney for the estate fees for ordinary services rendered to the estate unless the attorney files a written waiver as to a part or all thereof. The fees shall be computed on the basis of the amount of the decedent's probate estate accounted for as follows:

(i) For the first one thousand dollars (\$1,000.00) of the basis, ten percent (10%);

(ii) For the amount over one thousand dollars (\$1,000.00) and not exceeding five thousand dollars (\$5,000.00) of the basis, five percent (5%);

(iii) For the amount over five thousand dollars (\$5,000.00) and not exceeding twenty thousand dollars (\$20,000.00) of the basis, three percent (3%);

(iv) For all sums over twenty thousand dollars (\$20,000.00) of the basis, two percent (2%).

(b) In addition, further fees as are just and reasonable may be allowed by the court to the attorney for the estate for extraordinary expenses or services actually incurred or rendered by the attorney and necessary to the proper administration and distribution of the estate. Extraordinary services shall include but not be limited to services rendered by the attorney relative to any tax matters and services rendered by the attorney in connection with any litigation to which the decedent or the estate is a party.

(c) The amount of the decedent's probate estate accounted for shall be determined pursuant to W.S. 2-7-803(c).

(d) Nothing herein shall prevent the personal representative and the attorney from negotiating lower fees.

**2-7-805. Allowance and payment of personal representative's fees and attorney fees; limitations.**

(a) No fees shall be paid to the personal representative or the attorney for the estate except upon order of the court. At any time during the administration of the estate the personal representative or the attorney for the estate or both may submit a written, verified application to the court for an order allowing partial or total fees and expenses for ordinary services, or partial or total fees and expenses for extraordinary services, or both. Any application for expenses shall be supported by a written itemization of the expenses. Any application for fees for extraordinary services shall be supported by a written itemization showing the kind, nature, extent and time spent in connection with the services. If satisfied that the fees and expenses applied for or as limited by the court may be allowed and paid without detriment to any party interested in the estate or to the administration and conclusion of the estate, the court may enter an order allowing fees and expenses and authorizing payment from the estate. Any fees and expenses allowed by any order entered ex parte are subject to timely objection upon hearing of the final report and accounting.

(b) Only one (1) total fee for ordinary services of a domiciliary personal representative, computed as provided in W.S. 2-7-802, shall be allowed for any estate. Where more than one (1) person serves as a domiciliary personal representative either as co-fiduciaries or as a successor domiciliary personal representative, the court shall apportion the total fee among the parties in accordance with their agreement with each other, or absent any agreement as the court deems fair and just. The same rule shall prevail as to attorneys' fees for ordinary services in domiciliary administration, computed in accordance with W.S. 2-7-803, where more than one (1) attorney renders ordinary services to the domiciliary estate.

(c) Where one (1) person, or a partner or employee of the same professional corporation as that person, serves both as personal representative and as attorney for the estate, no fee shall be allowed as to the estate for ordinary services of a personal representative.

(d) No contingent fee shall be allowed against an estate or paid by an estate for legal services rendered to or for or on behalf of an estate, except in a proceeding for recovery for wrongful death under W.S. 1-38-101 and 1-38-102, unless before commencement of the services a written contract is entered into by the personal representative and the attorney with respect thereto and the contract is submitted to the court upon written,

verified application of the personal representative and is approved by the court. No contract shall be approved if it violates any statute or rule of court. No contract shall be approved unless it appears to the court, upon due consideration of the size of the estate and the nature and extent of the legal services to be rendered, that adequate compensation of the attorney cannot be assured by allowance of fees for extraordinary services pursuant to W.S. 2-7-803.

(e) The provisions of W.S. 2-7-801 through 2-7-804 apply to personal representatives and attorneys serving in ancillary administration in Wyoming, except as the probate court in which the ancillary administration is pending may otherwise determine for good cause shown.

(f) Any contract between the personal representative or the attorney for the estate and any party interested in the estate in contravention of W.S. 2-7-802 through 2-7-804 is void.

**2-7-806. Verified interim report and accounting.**

(a) The personal representative may at any time file a verified interim report and accounting with the court showing the condition of the estate, its debts and property, the amount of money received and the disposition made of any assets of the estate.

(b) If the final report and accounting is not filed by the personal representative within one (1) year from the date of his appointment, then a verified interim report and accounting shall be filed at the end of one (1) year and annually thereafter until the final report and accounting is filed.

(c) On application of any creditor or distributee or upon its own motion, the court may order an interim report and accounting at any time embracing all matters directed by the court. The court may order reports and accountings from time to time as it determines to be in the best interests of the estate.

(d) All interim reports and accountings shall be subject to the provisions of W.S. 2-7-807(c).

(e) No interim report and accounting is binding upon any creditor or distributee unless it has been set down for hearing by the court and notice thereof given to the creditors and distributees by certified mail not less than twenty (20) days before the date of hearing.

**2-7-807. Distribution before final settlement; notice; hearing; costs.**

(a) Any time after thirty (30) days from expiration of time for filing claims the personal representative or any distributee may file a petition with the court for partial or complete distribution of any share of the estate.

(b) Notice of the petition and the time set by the court for hearing shall be given to the personal representative and to all persons entitled to notice as provided in W.S. 2-7-205. At the hearing any other distributee may resist the petition or make a similar petition for himself.

(c) If it appears to the court there is property ready for distribution held by the personal representative over and above the amount necessary to pay the costs of administration and all just claims and taxes of the estate, the court shall direct the personal representative to distribute to each distributee his proportion of the property ready for distribution. The court may require each distributee to give bond to secure payment of his proportion of the debts and taxes of the estate.

(d) All costs, expenses and fees incurred in this proceeding shall be paid by the estate unless the court determines the proceeding was instituted capriciously and without merit, whereupon the court shall order all costs, expenses and fees be paid into the estate by the party instituting the same.

**2-7-808. Order of abatement.**

(a) Except as provided in the will, shares of the distributees shall abate for the payment of debts and charges, federal and state taxes, legacies and the share of the surviving spouse who elects to take against the will without any preference or priority as between real and personal property, in the following order:

(i) Property not disposed of by the will;

(ii) Property devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

(iii) Property disposed of by the will but not specifically devised and not devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

(iv) Property specifically devised, except property devised to a surviving spouse who takes under the will;

(v) Property devised to a surviving spouse who takes under the will.

(b) If the provisions of the will, the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of distributees shall abate in the manner necessary to give effect to the intention of the testator.

**2-7-809. Contribution among legatees.**

When property specifically given by will has been sold for the payment of debts, taxes or expenses of administration, all of the distributees shall contribute according to their respective interests, subject to W.S. 2-7-808, to the distributee whose devise or legacy has been sold. When distribution is made, the court shall settle the amount of the several liabilities, decree the amount each person shall contribute and reserve that amount from their distributive shares for the purpose of paying the contribution.

**2-7-810. Federal capital gains tax; minimum preference tax; apportionment.**

(a) Unless otherwise provided by will, when as a consequence of sale of property by the personal representative a federal capital gains tax or federal minimum preference tax is owed by the estate, the tax shall be apportioned as follows:

(i) That portion of the tax attributable to the percentage of net sale proceeds used to pay debts and costs of administration shall be charged and allocated in accordance with W.S. 2-7-808;

(ii) That portion of the tax attributable to the percentage of net sale proceeds used to pay federal estate tax shall be charged and allocated and collected in accordance with W.S. 2-10-101 through 2-10-110;

(iii) The remaining portion of the tax shall be allocated to the distributee who would have received the property had it not been sold;

(iv) The distributee of the property had it not been sold shall be credited for distribution before the allocation of other debts, costs and taxes, with the net proceeds after capital gains and preference taxes plus the contributions required from other parties.

**2-7-811. Final report and accounting and petition for distribution; contents; notice and hearing thereon.**

(a) When the estate is ready to be closed, the personal representative shall file with the clerk of court, under oath, his final report and accounting and petition for distribution.

(b) The final report and accounting and petition for distribution shall set forth the following:

(i) An accurate description of all the real estate of which the decedent died seized, stating the nature and extent of his interest therein, which has not been sold and conveyed by the personal representative;

(ii) Whether the deceased died testate or intestate;

(iii) The name and place of residence of the surviving spouse, or that none survived the deceased;

(iv) In intestate estates, the name and place of residence of each of the heirs and their relationship to the deceased;

(v) In testate estates, the name and place of residence of each of the devisees and their relationship to the deceased;

(vi) Whether any legacy or devise remains in charge on the real estate, and the nature and amount thereof;

(vii) Whether any distributee is under any legal disability;

(viii) The name of the conservator or trustee for any distributee and the court from which his letters were issued;

(ix) An accounting of all the monies and personal property coming into the hands of the personal representative unless such accounting is waived by all interested parties;

(x) A statement as to whether or not all statutory requirements pertaining to taxes, including the requirements of W.S. 2-7-812(a), have been complied with;

(xi) The personal representative's proposed distribution of the estate.

(c) The final report and accounting and petition for distribution shall be set down for hearing before the court. A copy thereof together with a notice of hearing shall be served as provided in W.S. 2-7-204 and 2-7-205.

(d) At or prior to the time fixed in the notice of hearing, any interested party who wishes to object shall file his objections in writing, in duplicate, with the clerk.

(e) Upon the hearing, any matter appearing in the final report and accounting and petition for distribution and any matter improperly omitted therefrom may be called in question by written objection timely filed except only such matters as to which there has previously been a final adjudication. The personal representative shall have the burden of proof as to any issue of fact or law raised at the hearing. Upon conclusion of the hearing the court shall make and enter such order as the facts and the law require.

**2-7-812. Payment of all taxes prerequisite; filing of documents.**

(a) Before a final decree of distribution is entered the court shall be satisfied by presentation of receipts, cancelled checks, certificates, closing letters and other proof that all federal, state, county and municipal taxes legally levied upon the property of the estate or due on account of the estate or death of the decedent have been fully paid. The court shall not discharge any personal representative nor release his bond nor issue a decree of final distribution of the estate until:

(i) Repealed by Laws 2017, ch. 125, § 2.

(ii) All inheritance and estate taxes and interest have been paid; or

(iii) The court finds that no inheritance tax or estate tax is chargeable against the estate.

(b) All documents presented to the court shall be filed with the clerk to be preserved as a permanent part of the court file relating to the estate.

**2-7-813. Final decree of distribution.**

Upon approval by the court of the final report and accounting and petition for distribution with any changes, corrections, amendments or supplements as may be required, the court shall enter a final decree of distribution. In the decree the court shall name the persons and the proportions or parts of the estate to which each is entitled. The personal representative shall proceed forthwith to make the distributions. The distributees may demand, sue for and recover their respective shares from the personal representative or any person having the same in possession.

**2-7-814. Discharge of personal representative.**

When the estate has been fully administered the personal representative may petition the court for his final discharge. Upon showing proof of payment or receipt that he has paid all sums of money due from him and delivered under order of the court all property of the estate to the parties entitled, and upon showing that he has performed all the acts lawfully required of him, the court shall make a decree discharging him and his bondsman, if any, from all further liability.

**2-7-815. Closing of estates.**

The court, upon its own motion, or upon the application of any party, may enter an order closing any pending estate when it appears from the court files or otherwise that no known assets belonging to the estate remain for administration or distribution. Such order shall not be deemed to exonerate the personal representative or his surety unless the order specifically so provides.

CHAPTER 8 - REOPENING ESTATES

**2-8-101. After-discovered property or correction of property description.**

The final settlement of an estate shall not prevent the reopening thereof for the purpose of administering after-discovered property or for the correction of the description of the property administered, and final settlement shall not prevent the subsequent issue of letters if it becomes necessary for any cause that letters be issued again.

**2-8-102. Contents of petition; notice of hearing.**

Any heir at law, devisee or creditor whose claim was allowed but not satisfied in the original administration or other person interested may petition for the reopening of the estate upon the grounds specified in W.S. 2-8-101. The petition shall set forth the names of all heirs at law, devisees and creditors and their address, if known. If the address is unknown to the petitioner he shall so state in the petition. Upon filing of the petition, the clerk shall appoint a day for hearing the petition and give notice thereof by mailing by certified mail, return receipt requested, a copy of the notice to the heirs at law, devisees and creditors named in the petition. Where an address is unknown notice shall be served as provided in the Wyoming Rules of Civil Procedure.

**2-8-103. Proceedings upon hearing; supplemental orders or decrees.**

Upon hearing the petition, if due cause is shown, the court may reopen the estate and administer any after-discovered property and make any necessary orders correcting descriptions as to the estate administered therein. No proceedings shall be taken by the court after the reopening of an estate except as necessary to administer after-discovered property or to correct errors made in the description of the estate previously administered. Any orders or decrees of the court made necessary by the reopening of the estate shall be designated as supplemental orders or decrees.

CHAPTER 9 - PROCEEDINGS TO ESTABLISH TITLE WITHOUT  
ADMINISTRATION

ARTICLE 1 - SURVIVING REMAINDERMAN OR JOINT TENANTS

**2-9-101. Petition to establish rights upon death of owner of life estate or joint interest in realty; notice; decree; recording and effect thereof.**

If any person dies seized of a life estate which terminates by reason of his death, or of an estate by the entirety, or of an estate by joint tenancy or joint estate with another, any person interested in the property or in the title thereto may file in the district court of the county in which the property is situated a verified petition setting forth such facts. After two (2) weeks notice by publication in a newspaper of general circulation in the county, or otherwise as the court may order, the court shall hear the petition and the evidence offered in support thereof. If upon hearing it appears to the court that such life estate, estate by entirety, estate by joint tenancy or joint estate was created and vested, and that the life estate of the deceased person terminated by reason of death, or that the estate by entirety remains vested solely in the surviving spouse by reason of death, or that the estate by joint tenancy or joint estate remains vested solely in the surviving joint tenant or joint tenants, the court shall so decree. A certified copy of the decree shall be recorded in the office of the county clerk and thereafter the decree and the record thereof together with the record of the instrument or instruments purporting to create the life estate, estate by entirety, estate by joint tenancy or joint estate, shall be presumptive evidence of the creation of such estate, the termination thereof and the survivorship of the estate by entirety, estates by joint tenancy or joint estate.

**2-9-102. Affidavit of survivorship; recordation; copy of death certificate to be attached.**

If any person dies who is the owner of a life estate which terminates by reason of his death, or if any person dies who is the owner with his surviving spouse of an estate by entirety, or if any person dies who is the owner with another of a joint estate or an estate in joint tenancy, any person interested in the affected property or the title thereto may make the death a matter of record by recording in the office of the county clerk of the county in which the property is situated an affidavit describing the property, the instrument under which the estate was vested with appropriate references to its recording data if the instrument was recorded, and certifying under oath to the death of the decedent as the party who was named in and whose death terminated his previous estate in the property under the vesting instrument. The affidavit shall have attached thereto a copy of the official death certificate of the decedent, certified to by the public authority in which the original death certificate is a matter of record.

**2-9-103. Affidavit of survivorship; prima facie evidence; procedure deemed independent.**

Each affidavit signed, sworn to and recorded substantially in compliance with the provisions of W.S. 2-9-102, constitutes prima facie evidence that all facts recited therein are true. The permissive and nonjudicial procedure provided by W.S. 2-9-102 and 2-9-103 shall be independent of and shall not affect or be affected by the procedure provided under W.S. 2-9-101.

ARTICLE 2 - DETERMINATION OF HEIRSHIP

**2-9-201. Application by petition two years after death; where filed.**

When more than two (2) years have elapsed since the death of a person residing in this state, or residing outside of this state but owning real estate or any interest therein situated within this state, or who has made entry on any government lands and has not received patent therefor, and there has been no previous, record judicial determination of the decedent's heirs or the right of descent of the real property interest, any heir of the deceased or other person having derived title to any real property or any interest therein from the deceased or from any of his heirs either by direct or mesne conveyances, may make application by petition to the court or commissioner of the county in which the deceased was a resident at the time of his death, or if a nonresident of the state at the time of his death then in the district court of the county where the real estate or some part thereof belonging to the deceased in his lifetime is situated, for determination of the time of death of the decedent and a determination of the heirs of the deceased, the degree of kinship and the right of descent of the real property belonging to the deceased.

**2-9-202. Application by petition two years after death; fixing time for hearing; notice thereof; contents.**

Upon filing the petition the court shall fix a time for hearing the petition not less than thirty (30) days after the filing thereof. Notice of the time and place of hearing shall be given to all persons interested in the proceeding including creditors, heirs and devisees, setting forth the filing of the petition, the date of the supposed death of the deceased, his place of residence, a description of the real property or interest therein of which he died seized or a description of the real property on which he had made an entry but had not yet received

patent and the interest in the real estate of the petitioner. The notice shall be published once a week in a newspaper of general circulation in the county for four (4) consecutive weeks prior to the hearing, and shall be mailed simultaneously with the first publication to those persons designated in W.S. 2-7-205.

**2-9-203. Application by petition two years after death; hearing; determination and decree.**

(a) Upon hearing, if it appears to the court that more than two (2) years have elapsed since the death of the deceased, that he died seized of an interest in lands in this state or that he died intestate having entered government lands and not having received a patent therefor, and there has been no previous record judicial determination of the decedent's heirs or the right of descent of the real property interest, the court shall determine the date of the decedent's death, who were the heirs of the deceased upon the date of death, their degree of kinship, the right of descent of the real property or interest therein of which the deceased died seized or on which he had made an entry but had not yet received a patent therefor and the distribution each heir is entitled to receive from the known and unknown real property interests of the decedent based on the determination of the right of descent, and shall make and enter its decree accordingly.

(b) The findings of the court relating to a decedent's date of death, intestacy, heirs, degree of kinship and right of descent shall apply to any other real property in this state subsequently discovered in which the decedent had a property interest at the time of his death as identified by an affidavit recorded pursuant to W.S. 34-11-101, provided that:

(i) A copy of the judicial determination of the decedent's heirs or right of descent shall be included with an affidavit filed under W.S. 34-11-101 for the subsequently discovered property;

(ii) No other recorded judicial determination has been made relating to the right of descent for that property.

**2-9-204. Procedure when applicant for public land dies and patent issued to heirs.**

(a) Whenever any person makes entry on any land in the United States and dies before patent for the same is issued and

patent thereafter is issued to the heirs at law of the decedent, any person interested in the lands as heir at law or devisee or as grantee or assignee of such heirs at law or devisee, or the personal representative of any of them if deceased, may file a petition in the district court in and for the county wherein the land or any part thereof is situate, setting forth the date of death of the decedent, the date of issuance of the patent and that the patent was issued to the heirs at law of the deceased person, the land described therein, the names, ages and residence if known of the heirs at law of the deceased persons and a request that a decree be entered by the court establishing who are the heirs at law of the deceased person. Upon filing of the petition the clerk of court shall make an order fixing the time and place of hearing of the petition not less than thirty (30) days from the filing of the petition.

(b) Notice of the time and place for hearing the petition shall be given by publishing notice thereof at least once each week for three (3) successive weeks in some newspaper of general circulation in the county and the mailing of true copies to all known heirs of the deceased person at least ten (10) days prior to the date fixed for the hearing. Proof of publication and mailing shall be made to the court upon the hearing. Any time before the date fixed for the hearing any person interested in the lands as heir at law or devisee of the decedent or as the grantee of any such heir at law or devisee, may answer the petition and deny any of the matters contained therein. At the time fixed for the hearing or at such time thereafter as may be fixed by the court, the court shall hear the proofs offered by petitioner and any person answering the same, and shall make a decree conformable to the proofs. The decree shall have the same force and effect as decrees entered in accordance with the provisions of the Code of Civil Procedure.

## CHAPTER 10 - TAX APPORTIONMENT

### **2-10-101. Short title.**

This act may be cited as the "Uniform Estate Tax Apportionment Act".

### **2-10-102. Definitions.**

(a) As used in W.S. 2-10-101 through 2-10-110:

(i) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax;

(ii) "Fiduciary" means executor, administrator of any description, and trustee;

(iii) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision of a government, governmental agency or local governmental agency;

(iv) "Person interested in the estate" means any person entitled to receive or who has received from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, guardian and trustee;

(v) "State" means any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico;

(vi) "Tax" means the federal estate tax and interest and penalties imposed in addition to the tax;

(vii) "This act" means W.S. 2-10-101 through 2-10-110.

**2-10-103. Among all persons interested in estate; exception.**

Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

**2-10-104. Probate court to determine; discretion allowed; presumption of correctness.**

(a) The probate court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the probate court of the county wherein the decedent was domiciled at death upon the application of the person required to pay the tax shall determine the apportionment of the tax.

(b) If the probate court finds that it is inequitable to apportion interest and penalties in the manner provided in W.S. 2-10-103 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(c) If the probate court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(d) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act, the determination of the probate court in respect thereto shall be prima facie correct.

**2-10-105. Withholding upon distribution of estate; right to recover deficiency; security required if distribution made prior to final apportionment.**

(a) The fiduciary or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon his distribution to him, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act.

(b) If property held by the fiduciary is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the probate court having jurisdiction of the administration of the estate.

**2-10-106. Allowances for exemptions or deductions and credits.**

(a) In making an apportionment, allowances shall be made for any exemptions granted and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift shall inure to the benefit of the person bearing such relationship or receiving the gift; except that when an interest is subject to a prior present interest which is now allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in W.S. 2-10-103 and to that extent no apportionment shall be made against the property. The sentence immediately preceding shall not apply to any case where the result will be to deprive the estate of a deduction otherwise allowable under applicable gift and estate laws, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

**2-10-107. Charging temporary interest and remainder.**

No interest in income and no estate for years or for life or other temporary interest in any property or fund shall be subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder shall be chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

**2-10-108. Institution of actions or proceedings to recover tax; generally; apportionment of amounts not collected.**

Neither the fiduciary nor other person required to pay the tax shall be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three (3) months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three (3) months period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

**2-10-109. Institution of actions or proceedings to recover tax; actions by nonresidents.**

(a) Subject to the conditions in subsection (b) of this section a fiduciary acting in another state or a person required to pay the tax resident in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either resident in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state shall be prima facie correct.

(b) The provisions of subsection (a) of this section shall apply only:

(i) If such other state affords a remedy substantially similar to that afforded in subsection (a) of this section;

(ii) With respect to federal estate tax, if apportionment thereof is authorized by congress.

**2-10-110. Interpretation and construction.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

CHAPTER 11 - FOREIGN WILLS

ARTICLE 1 - IN GENERAL

**2-11-101. Short title and construction.**

W.S. 2-11-101 through 2-11-105 may be cited as the "Uniform Foreign Probate Act", and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

**2-11-102. Where allowed and recorded.**

A will duly proved, allowed and admitted to probate outside of this state may be allowed and recorded in the proper court of any county in this state in which the testator shall have left any estate.

**2-11-103. When to be filed.**

When a copy of the will and the probate thereof duly authenticated is presented by the executor or by any other person interested in the will with a petition for probate, the same shall be filed.

**2-11-104. Admission to probate; effect.**

If upon presentation it appears to the satisfaction of the court that the will has been duly proved, allowed and admitted to probate outside of this state and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this state, it shall be admitted to probate, which probate has the same force and effect as the original probate of a domestic will.

**2-11-105. Procedure when foreign law does not require probate; filing, recording and effect.**

(a) When a duly authenticated copy of a will from any state or country where probate is not required by the laws of

the state or country, with a duly authenticated certificate of the legal custodian of the original will that the same is a true copy and that the will has become operative by the laws of the state or country, and when a copy of a notarial will in possession of a notarial officer in a foreign state or country entitled to the custody thereof (the laws of which state or country require that the will remain in the custody of the notarial officer), duly authenticated by the notarial officer, is presented by the executor or other persons interested to the proper court in this state, the court shall take the proofs as may be appropriate.

(b) If it appears to the court that the instrument should be allowed in this state as the last will and testament of the deceased, the copy shall be filed and recorded and the will has the same effect as if originally proved and allowed in the court.

## ARTICLE 2 - ANCILLARY ADMINISTRATION

### **2-11-201. Probate of estates of nonresidents.**

In case of a nonresident's estate having property in this state not exceeding in value the sum of four hundred thousand dollars (\$400,000.00), which estate has been duly probated and settled in another state, the probate of the estate in this state may be dispensed with upon filing with the district judge in the proper county a petition under oath showing the facts in the case together with certified copies of the petition, order of appointment of executor or administrator, inventory and final decree of distribution of estate therein, and a full showing that debts of the estate have been paid and the district judge giving notice by publication for the period of three (3) weeks of the intention of the petitioner to have the probate proceedings admitted in this state as a probate of the estate. If on the day set for hearing the petition no objection is made, the judge shall make an order admitting the certified copies of the proceedings in the estate to record in his court and they shall be considered and treated from that time as original proceedings in his court and shall be conclusive evidence of the facts therein shown. If at such hearing any creditor objects to the proceedings and shows that the decedent is indebted to him, his claim not having been presented in the original state, the matter shall be postponed and the creditor or other person shall be allowed to petition for letters of administration as in other cases. This section shall not be construed to prevent the courts of this state from appointing a temporary administrator in this

state to collect and preserve the property of the estate of the deceased person which may be located in this state.

**2-11-202. Nonresident property in Wyoming; disposition.**

(a) In case of a nonresident's estate having property in this state not exceeding in value the sum of four hundred thousand dollars (\$400,000.00), which estate is being duly probated and settled in another state, the Wyoming district judge may enter an order for the sale of the property located in this state provided:

(i) The petitioner files with the district judge in the proper county a petition under oath showing the facts in the case together with certified copies of the petition, order of appointment of executor or administrator, notice to creditors showing that the time for filing claims has expired, and inventory of the Wyoming estate;

(ii) The petitioner files a certified copy of an order authorizing sale or other disposition of Wyoming property issued by the court having jurisdiction over the estate being probated in another state;

(iii) The district judge gives notice by publication for three (3) weeks of the intention of the petitioner to have the property located in this state subject to sale or other disposition; and

(iv) If on the day set for hearing the petition no objection is made, the judge shall make an order admitting the certified copies of the proceedings in the estate and the order authorizing sale or other disposition of Wyoming property to record in his court and they shall be considered and treated from that time as original proceedings in his court and shall be conclusive evidence of the facts therein shown.

(b) If on the day set for hearing the petition any creditor objects to the sale or other disposition of the Wyoming property, his claim not having been presented in the original state, the matter shall be postponed and the petition denied. This section shall not be construed to prevent the courts of this state from appointing a temporary administrator in this state to collect and preserve the property of the estate of the deceased person which may be located in this state.

**2-11-301. Naming of executors and trustees; generally; appointment of agents for service; bond when executor sole legatee; applicability of provisions.**

The testator may name in his will as executor or trustee any person or persons who are residents and citizens of the United States, or any bank or trust company organized under the laws of this state or of the United States and doing business in this state. When it appears to the court having jurisdiction that any individual named as an executor or trustee in any will is not a resident of this state or that any bank or trust company named as executor or trustee is not authorized to do business in this state, the court shall require the executor or trustee to designate a resident, bank or trust company of this state as agent or attorney upon whom any order, notice or process issued out of the courts of this state may be served. Service on the agent or attorney has the same effect as if served upon the nonresident executor or trustee in person. If any nonresident executor or trustee fails to appoint an agent or attorney, the court shall revoke his authority to act. When the person named as executor is also the sole legatee, instead of the bond required by other provisions herein of an executor, he may give a bond to the state in a sum and with sureties the court requires, conditioned only to pay within the time fixed by the court all the debts of the testator which are filed or exhibited within the time fixed by the notice to creditors. He shall return an inventory and appraisement as in other cases. Upon execution and approval of the bond, the filing of the inventory and appraisement and the publication of notice to creditors, the estate of the testator vests absolutely in the sole legatee and the debts of the testator so filed or exhibited become charges against the legatee. Upon breach of the condition of the bond, suit may be instituted on the bond by any creditor in the name of the state for the use of the creditor. The provisions hereof apply to all wills hereafter admitted to probate.

**2-11-302. Naming of executors and trustees; powers; generally.**

A domiciliary foreign personal representative who has complied with W.S. 2-11-301 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

**2-11-303. Naming of executors and trustees; limitations.**

The power of a domiciliary foreign personal representative under W.S. 2-11-302 shall be exercised only if there is no administration or application therefor pending in this state. A petition for local administration of the estate terminates the power of the foreign personal representative to act under W.S. 2-11-302 but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who before receiving actual notice of a pending local administration has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the petition for or grant of local administration. The 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 action or proceedings in this state.

#### CHAPTER 12 - ADMINISTRATION OF ESTATES OF MISSING PERSONS

##### **2-12-101. Filing of petition; information to be shown; appointing day for hearing.**

Whenever any resident of this state who owns or is entitled to the possession of any real or personal property situate therein is missing, or his whereabouts is unknown for ninety (90) days, and a verified petition is presented to the court of the county of which the missing person is a resident representing that the whereabouts of the missing person has been for such time and still is unknown, that his estate requires attention, supervision and care of ownership, and setting forth the names, ages and residence of the relatives of the missing person who would be heirs at law were the missing person deceased, the court shall order the petition to be filed and appoint a day for hearing the petition not less than ten (10) days from the date of the order.

##### **2-12-102. Publication of notice of hearing; service on persons named in petition.**

The clerk shall publish not less than twice during the ten (10) days prior to the day appointed a notice in some newspaper published in the county, stating that the petition will be heard at the courtroom of the court at the time appointed for the hearing. The clerk shall cause personal service of the notice of hearing to be served upon all persons named in the petition as heirs of the missing person should he be deceased resident in

the county, and cause to be mailed by certified mail a copy of the notice addressed to each of the supposed heirs at their address shown in the petition. The court may direct further notice of the filing of the petition be given in such manner and to such persons as it may deem proper.

**2-12-103. Hearing on petition; appointment of trustee.**

At the time fixed for the hearing or at any subsequent time to which the hearing may be continued, the court shall hear the petition and the evidence offered in support of or in opposition thereto. If satisfied that the allegations thereof are true and that the person remains missing and the whereabouts of the person are unknown, the court shall appoint some suitable person as trustee to take charge and possession of the estate and to manage, hold and control the same subject to the direction of the court.

**2-12-104. Preference in appointing trustee.**

In appointing a trustee, the court shall give preference to the wife or husband of the missing person or their nominee, and in the absence of a husband or wife, some person willing to act and entitled to participate in the distribution of the missing person's estate were he or she deceased, or a creditor of the missing person.

**2-12-105. Bond of trustee.**

Every person appointed trustee under the provisions of the preceding section shall give bond to the state of Wyoming with two (2) or more sufficient sureties, or surety bond, conditioned for the faithful performance of his duties, to be approved by the court or clerk thereof. In form the bond shall be joint and several and the penalty shall be not less than the value of the personal property and the probable value of the annual rents, profits and issues of real property belonging to the missing person, which value shall be ascertained by the court or clerk thereof by examining on oath the petitioner in the petition and any other person deemed by the court or clerk to have information or knowledge of such value. The sureties shall justify on written oath attached to the bond in an amount equal in the aggregate to the penalty thereof.

**2-12-106. Trustee to take possession of property; powers and duties generally; removal of trustee; sale of property.**

(a) The trustee shall take possession of the real and personal estate in this state of the missing person and collect, receive and receipt for and hold subject to the order of the court the rents, income, issues, profits and proceeds thereof and all indebtedness owing to the missing person and pay out of the trust funds the expenses of the trust and any indebtedness of the missing person authorized by the court. The court may direct the trustee to pay to the family of the missing person such money for family expenses and support from the income of the trust estate as the court from time to time may determine. When directed by the court, the trustee shall account to the court for all of the trustee's acts as trustee, and the court may at any time upon good cause shown remove any trustee and appoint another.

(b) When a sale of the real or personal property of the estate of a missing person is necessary to pay the allowance of the family or the debts outstanding against the missing person or the expenses of administration of the trust, or when it appears to the court it is for the best interest of all persons interested in the estate, the trustee may sell any real or personal property of the estate upon order of the court.

(c) The trustee in obtaining an order of sale and in conducting a sale of property of the estate of a missing person shall follow all the steps and procedure set forth in article 6 of chapter 7, Wyoming Probate Code relating to the sale of property of a decedent.

#### CHAPTER 13 - SIMULTANEOUS DEATH

##### **2-13-101. Short title.**

(a) This act may be cited as the "Uniform Simultaneous Death Act".

(b) "This act", when used in chapter 13 of the Probate Code, means W.S. 2-13-101 through 2-13-107.

##### **2-13-102. Applicability of provisions.**

This act does not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision is made for distribution of property different from the provisions of this act.

**2-13-103. Disposition of property based on presumption of survivorship.**

Where the title to property or the devolution thereto depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

**2-13-104. Beneficiaries.**

Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successively beneficiaries and those portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

**2-13-105. Joint tenants or tenants by the entirety.**

Where there is no sufficient evidence that two (2) joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half (1/2) as if one (1) had survived and one-half (1/2) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died the property thus distributed shall be in the proportion that one (1) bears to the whole number of joint tenants.

**2-13-106. Life or accident insurance proceeds.**

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

**2-13-107. Construction and interpretation.**

This act shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

ARTICLE 1 - FELONIOUS DEATH

**2-14-101. Taking of life precludes one from inheritance, insurance or survivorship benefits; how benefits distributed; notification of insurer necessary.**

(a) No person who feloniously takes or causes or procures another to take the life of another shall:

(i) Inherit from or take by devise or legacy from the deceased person any portion of his estate;

(ii) Inherit, receive or otherwise take any property held with the deceased person in a joint tenancy with rights of survivorship, tenancy by the entirety or any other form of co-ownership with rights of survivorship;

(iii) Inherit, receive or otherwise take any property conveyed by the deceased person by beneficiary designation, transfer on death designation, payable on death designation or other conveyance that occurs because of the death of the deceased person;

(iv) Serve through nomination, appointment or otherwise in any fiduciary or representative capacity for the deceased person, including as a personal representative, executor, trustee or agent. Any provision in a governing instrument conferring any power of appointment on the killer shall be deemed to have been terminated at the time immediately preceding the killing of the deceased person.

(b) No beneficiary of any policy of life or accident insurance or certificates of membership issued by any benevolent association or organization, payable upon the death of any person, who in like manner takes or causes or procures another to take the life of another, shall take the proceeds of such policy or certificate.

(c) Except as provided in subsection (d) of this section in every instance mentioned in this section all benefits that would accrue to the killer upon the death of the person whose life is taken shall become subject to distribution among the other beneficiaries or heirs of the deceased person according to the will, trust or other valid dispositive instrument of the deceased person as though the killer has predeceased the deceased person, or if no such valid instrument exists,

according to the rules of descent and distribution. However, an insurance company is discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof unless before payment the company receives written notice by or in behalf of some claimant other than the beneficiary named in the policy that a claim to the proceeds of the policy will be made by heirs of the deceased under the provisions of this section.

(d) For purposes of paragraph (a)(ii) of this section, the interests of the deceased person and the killer in property held by them at the time of the killing as joint tenants with the right of survivorship, tenants by entirety or any other form of co-ownership with rights of survivorship shall be deemed to have been terminated at the time immediately preceding the killing of the deceased person and the interests of the deceased person and the killer shall be recognized as tenancies in common.

(e) As used in this section, "killer" means the person who feloniously takes or causes or procures another to take the life of another person as provided in subsection (a) of this section.

#### ARTICLE 2 - WRONGFUL DEATH

**2-14-201. Renumbered by Laws 1982, ch. 54, § 7.**

**2-14-202. Renumbered by Laws 1982, ch. 54, § 7.**

#### CHAPTER 15 - ABSENT BENEFICIARIES

**2-15-101. Court may appoint agent to care for property.**

When any estate is assigned or distributed by a judgment or decree of the court to any person residing out of and having no agent in this state, and it is necessary that some person be authorized to take possession and charge of the estate for the benefit of the absent person, the court may appoint an agent for that purpose and authorize him to take charge of the estate as well as to act for the absent person in the distribution.

**2-15-102. Bond of agent; compensation.**

The agent shall execute a bond to the state of Wyoming, to be approved by the court, conditioned that he faithfully manage and account for the estate. The court appointing the agent may allow a reasonable sum out of the estate for his services and expenses.

**2-15-103. Locating person entitled; proceedings if unable.**

The agent shall, with diligence, attempt to locate the person entitled to the property and notify that person of the agent's possession thereof. If the agent is unable to locate the person within one (1) year after the agent's appointment, the agent shall advise the court, with a showing of the agent's efforts to locate the person. The court may direct further efforts to locate the person entitled as the court deems appropriate.

**2-15-104. Disposition of unclaimed property.**

When real or personal property remains in the hands of the agent unclaimed for one (1) year, the agent shall petition the court for an order directing the sale of the property. If it appears to the court that it is for the benefit of all interested parties the property shall be sold under the order of the court and the proceeds, after deducting the expenses of the sale allowed by the court, be held by the agent in a fiduciary capacity subject to the provisions of the Uniform Unclaimed Property Act, W.S. 34-24-101 through 34-24-140.

**2-15-105. Agent to render annual account; information to be shown; hearing; court may order sale of property.**

(a) The agent shall render an annual account to the court appointing him showing:

(i) The value and character of the property received by him, the portion thereof is still on hand, the portion sold and the proceeds of sales;

(ii) The income derived from the property;

(iii) The kind and amount of taxes and assessments imposed and whether paid or unpaid;

(iv) Expenses incurred in the care, protection and management of the property and whether paid or unpaid.

(b) When filed, the court may examine witnesses and take proofs in regard to the account. If satisfied that it will be for the benefit of the persons interested therein, the court may order a sale to be made of the whole or such parts of the real or personal property as appears proper and the purchase money to be held by the agent in a fiduciary capacity subject to the

provisions of the Uniform Unclaimed Property Act, W.S. 34-24-101 through 34-24-140.

**2-15-106. Liability of agent.**

The agent is liable on his bond for the care and preservation of the estate while in his hands and for disposition of the proceeds of the sale as required by this chapter, and may be sued thereon by any person interested, or such suit may be ordered by the court.

**2-15-107. Repealed by Laws 1993, ch. 213, § 3.**

CHAPTER 16 - UNIFORM TOD SECURITY REGISTRATION

**2-16-101. Short title; rules of construction.**

This act shall be known as and may be cited as the "Uniform TOD Security Registration Act."

**2-16-102. Definitions.**

(a) As used in this act:

(i) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner;

(ii) "Devisee" means any person designated in a will to receive a disposition of real or personal property;

(iii) "Heirs" mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent;

(iv) "Person" means an individual, a corporation, an organization or other legal entity;

(v) "Personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status;

(vi) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership;

(vii) "Register" including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities;

(viii) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities;

(ix) "Security" means a share, participation or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security and a security account;

(x) "Security account" means:

(A) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death;

(B) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; or

(C) An investment management or custody account with a trust company or a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death.

(xi) "State" includes any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States;

(xii) "This act" means W.S. 2-16-101 through 2-16-112.

**2-16-103. Registration in beneficiary form; sole or joint tenancy ownership.**

Only individuals whose registration of a security shows sole ownership by one (1) individual or multiple ownership by two (2) or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties or as owners of community property held in survivorship form, and not as tenants in common.

**2-16-104. Registration in beneficiary form; applicable law.**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

**2-16-105. Origination of registration in beneficiary form.**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

**2-16-106. Form of registration in beneficiary form.**

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

**2-16-107. Effect of registration in beneficiary form.**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be

canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

**2-16-108. Ownership on death of owner.**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interest as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

**2-16-109. Protection of registering entity.**

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this act.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this act.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if it registers a transfer of the security in accordance with W.S. 2-16-108 and does so in good faith reliance (1) on the registration, (2) on this act, and (3) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this act do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other

information available to the registering entity affects its right to protection under this act.

(d) The protection provided by this act to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

**2-16-110. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this act and is not testamentary.

(b) This act does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

**2-16-111. Terms, conditions and forms for registration.**

A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (1) for registrations in beneficiary form, and (2) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one (1) or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

**2-16-112. Application of act.**

This act applies to registrations of securities in beneficiary form made before or after July 1, 1993, by decedents dying on or after July 1, 1993.

CHAPTER 17 - BURIAL ARRANGEMENTS

**2-17-101. Authority to authorize burial or cremation; immunity for funeral directors and funeral service practitioners.**

(a) If a decedent leaves written instructions regarding his entombment, burial or cremation, or a document that designates and authorizes another person to direct disposition of the decedent's body the funeral director or funeral service practitioner to whom the body is entrusted shall proceed with the disposition of the body in accordance with those instructions or the instructions given by the person designated to direct disposition of the decedent's body. A document that designates another person to direct disposition of the decedent's body drafted pursuant to service in the military and in a form mandated by federal law at the time it was signed shall be recognized as valid for purposes of this section. In the event a decedent does not leave written instructions regarding his entombment, burial or cremation, or fails to leave a document designating another person to direct disposition of the decedent's body, the funeral director or funeral service practitioner to whom the body is entrusted shall obtain a signed consent before the entombment, burial or cremation proceeds.

(b) Any of the following persons, in order of priority as stated, may consent to the entombment, burial or cremation of the decedent, provided no written instructions or a document designating another person to direct disposition of the decedent's body were left by the decedent:

- (i) The decedent's spouse at the time of death;
- (ii) An adult child of the decedent;
- (iii) Either parent of the decedent;
- (iv) An adult sibling of the decedent;
- (v) A grandparent of the decedent;

(vi) A stepchild of the decedent;

(vii) A guardian of the decedent in accordance with W.S. 3-2-201(a)(x).

(c) If a funeral director or funeral service practitioner receives written consent from a person specified in subsection (b) of this section, he may act in accordance with the consent, unless a person with a higher or equal priority provides the funeral director or funeral service practitioner a contrary written consent within three (3) days. If the funeral director or funeral service practitioner has been provided contrary written consents from members of the same class with the highest priority as to the entombment, burial or cremation of the decedent, the director or funeral service practitioner shall act in accordance with the directive of the greatest number of consents received from members of the class. If that number is equal, the director or funeral service practitioner shall act in accordance with the earlier consent unless the person providing the later consent is granted an order from the district court for the county in which the funeral establishment is located. The district court shall order disposition in accordance with the later consent only if it is shown by a preponderance of the evidence the disposition is in accordance with the decedent's wishes.

(d) If the decedent is not survived by any member of the classes listed or no member of those classes is competent to sign a consent, any person who comes forward and legitimately identifies himself as another level of relation or friend of the decedent is authorized to sign the consent. If no consent is received within seven (7) days of the decedent's death, the coroner for the county in which the funeral establishment is located is authorized to sign the consent.

(e) A funeral director or funeral service practitioner acting in accordance with this section, or attempting in good faith to act in accordance with this section, shall be immune from civil liability.

(f) Nothing in this section abrogates or amends the intestate succession laws of W.S. 2-4-101 through 2-4-214.

#### CHAPTER 18 - NONTESTAMENTARY TRANSFER ON DEATH OF REAL PROPERTY

##### **2-18-101. Short title.**

This chapter shall be known as and may be cited as the "Nontestamentary Transfer of Real Property on Death Act."

**2-18-102. Definitions.**

(a) As used in this chapter:

(i) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real property that is the subject of the transfer on death deed;

(ii) "Owner" means a person who executes a transfer on death deed as provided in W.S. 2-18-103;

(iii) "Successor grantee beneficiary" means the person to whom an owner grants an interest in the real property that is the subject of the transfer on death deed if the primary grantee beneficiary does not survive the owner;

(iv) "Transfer on death deed" means a deed authorized by W.S. 2-18-103.

**2-18-103. Transfer on death deed.**

(a) A deed or title that conveys an interest in real or titled property, including any debt secured by a lien on the real or titled property, to a grantee beneficiary designated by the owner and that expressly states that the deed or title is effective on the death of the owner transfers the deceased owner's interest to the grantee beneficiary designated by name in the transfer on death deed or title effective on the death of the owner, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime. The grantee beneficiary also takes title subject to any interest in the property of which the grantee beneficiary has either actual or constructive notice.

(b) A transfer on death deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.

(c) A transfer on death deed may designate a successor grantee beneficiary. If the transfer on death deed designates a successor grantee beneficiary, the deed must state the condition

on which the interest of the successor grantee beneficiary would vest.

(d) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys an interest in the real property to a grantee beneficiary designated by all of the then surviving owners and that expressly states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a transfer on death deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship, the transfer on death deed is valid if the last surviving owner is one of the persons who executes the transfer on death deed. If the last surviving owner did not execute the transfer on death deed, the transfer lapses and the deed is void. An estate in joint tenancy with right of survivorship is not affected by the execution of a transfer on death deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship prevail over a grantee beneficiary named in a transfer on death deed.

(e) A transfer on death deed is valid only if the deed is executed and recorded, as provided by law, in the office of the county clerk in the county in which the real property is situated, before the death of the owner or the last surviving owner. A transfer on death deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

(f) A transfer on death deed may be revoked at any time by the owner or, if there is more than one (1) owner, by any of the owners who executed the transfer on death deed. To be effective, the revocation must be executed and recorded, as provided by law, in the office of the county clerk in the county in which the real property is situated, before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship and if the revocation is not executed by all the owners who executed the transfer on death deed, the revocation is not effective unless executed by the last surviving owner.

(g) If an individual who is a recipient of medical assistance for which it would be permissible for the department of health to file a claim pursuant to W.S. 42-4-206 or to assert a lien pursuant to W.S. 42-4-207 conveys an interest in real

property by means of a transfer on death deed, the department of health may assert a lien against the property that is the subject of the transfer on death deed for the amount which would have been recoverable against the owner's estate pursuant to W.S. 42-4-206 and may file a lien against the property pursuant to W.S. 42-4-207.

(h) If an owner executes and records more than one (1) transfer on death deed concerning the same real property, the last transfer on death deed that is recorded before the owner's death is the effective transfer on death deed.

(j) This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

(k) The signature, consent, or agreement of, or notice to, a grantee beneficiary of a transfer on death deed is not required for any purpose during the lifetime of the owner.

(m) A transfer on death deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

(n) Proof of the death of the owner or a grantee beneficiary and transfer of ownership of the property by operation of law shall be established exclusively as follows:

(i) By recording an affidavit as provided under W.S. 34-11-101 and an accompanying certificate of clearance;

(ii) The affidavit and accompanying certificate of clearance shall be recorded in the office of the county clerk of the county in which the real property is situated. The affidavit shall identify the transfer on death deed by deed book and page or document number. The certificate of clearance shall be issued by the Wyoming department of health and shall certify that all medical assistance claims have either been satisfied or do not exist.

(o) Title to the interest in real property transferred by a transfer on death deed shall vest in the designated grantee beneficiary only on the death of the owner. Insurance coverage

applicable to a property that is in force at the time of the death of the last titled owner shall be transferred and extended to the designated grantee beneficiary in accordance with W.S. 26-23-109 for a period of up to sixty (60) days following the date of the death of the last owner, unless the grantee beneficiary has disclaimed interest in the real property.

(p) Title to the interest in a vehicle transferred by a transfer on death title shall vest in the designated grantee beneficiary only on the death of the owner.

**2-18-104. Form of transfer on death deed.**

A transfer on death deed is sufficient if it complies with other applicable law and if it is in substantially the following form:

Transfer on Death Deed

I (we) .... (owner) hereby convey to .... (grantee beneficiary) effective on my (our) death the following described real property:

(Legal Description)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

[ ] Become void.

[ ] Become part of the estate of the grantee beneficiary.

Dated this .... day of .... year).

.....

(Signature of grantor(s))

(Acknowledgment)

**2-18-105. Form for revoking a transfer on death deed.**

An instrument revoking a transfer on death deed is sufficient if it complies with other applicable law and is in substantially the following form:

Revocation of Transfer on Death Deed

The undersigned hereby revokes the transfer on death deed recorded on .... (date), in deed book .... on page ....., in the office of the clerk of .... county, Wyoming, concerning the following described real property:

(Legal Description)

Dated this .... day of .... (year).

.....

(Signature of grantor(s))

(Acknowledgment)

**2-18-106. Disclaimer.**

A grantee beneficiary may refuse to accept all or any part of the real property interest conveyed by a transfer on death deed. If a grantee beneficiary refuses to accept or disclaims any real property interest, the grantee beneficiary shall have no liability under this chapter by reason of being designated as grantee beneficiary.