

S. GREGORY THOMAS*
G. NOLAN THOMAS*

THOMAS & THOMAS LLC

ATTORNEYS

316 S. GILLETTE AVE., STE. 200

GILLETTE, WY 82716

(307) 257-5298

greg@tntlaw.org

nolan@tntlaw.org

WILLS, TRUSTS & ESTATES
BUSINESS LAW
PERSONAL INJURY
REAL ESTATE
CIVIL LITIGATION
FAMILY LAW
PROBATE

*ALSO ADMITTED IN SOUTH
DAKOTA

May 3, 2025

VIA EMAIL ONLY

Christopher Sherwood
Chairmen of the Estate Planning, Elder
Law, Trust & Probate Section for the
Wyoming State Bar
csherwood@yonkeetoner.com

VIA EMAIL ONLY

Lance T. Harmon
Past Chairmen of the Estate Planning, Elder
Law, Trust & Probate Section for the
Wyoming State Bar
lance@performance-law.com

VIA EMAIL ONLY

Clarissa Nord
Wyoming Legislative Services Office
Clarissa.nord@wyoleg.gov

Re: Wyoming Probate Code Review – Comment

Mr. Sherwood, Mr. Harmon, and Ms. Nord:

The purpose of this letter is to address the request for recommendations for potential improvements to the Wyoming Probate Code. First, I apologize for this submission being one day after the May 2, 2025, 5:00 P.M. deadline – I had originally intended to draft this letter yesterday and blocked out some time for it, however, I had a deposition with a fairly combative deponent that took twice as long as I had anticipated, and found myself too exhausted to tackle this letter yesterday. Please accept my sincerest apologies for any inconvenience my late submission may cause.

This letter is by no means an exhaustive attempt to cover every area that needs reform in the Wyoming Probate Code. In my view, the same topics in this letter were already covered in an exhaustive and thorough manner by Ann Bradford Stevens, clear back in 2002.¹ A copy of Ms. Stevens' law review article is provided with this letter. In my view, the law review article speaks for itself and is far more persuasive and better written than anything I can come up with.

¹ See Ann Bradford Stevens, Uniform Probate Code Procedures: Time for Wyoming to Reconsider, 2 Wyo. L. Rev. 293. Many of the same arguments described in this letter are based on the same arguments in this law review article. This law review article is far better written, more in-depth, and more persuasive than this letter, and I would encourage anyone who reads this letter to review the law review article.

This letter merely intends to proceed in a summary fashion to highlight: (A) what I perceive as the weaknesses in the Wyoming Probate Code; (B) what I perceive to be the benefits of the Uniform Probate Code; and (C) suggest some possible reforms and improvements.

A. Weaknesses of the Wyoming Probate Code.

Here is a summary of what I perceive to be the overarching weaknesses of the Wyoming Probate Code:

1. Full Court Administration Requirements: The Wyoming Probate Code mandates full court administration for nearly all estates, sometimes including small and uncontested ones. This requirement results in unnecessary delays and expenses, burdening both the courts and the estate's beneficiaries. It is true that the Wyoming Probate Code has adopted some shorthand procedures like Wyo. Stat Ann. §§ 2-1-201-205 for Estates with a value of under \$400,000.00, however, I find these procedures are inadequate to address issues like spousal elective shares, creditor claims, will construction, or other difficult legal issues arising in administration. The complications I describe above frequently force smaller estates into full court administration that are uneconomical, slow, highly burdensome, and unprofitable for the parties involved.

2. Lack of Independent Administration: Unlike the Uniform Probate Code ("UPC"), Wyoming's probate process lacks provisions for independent administration by a personal representative. The UPC largely allows personal representatives to manage estates with minimal court involvement and provides personal representatives with greater authority and more power to administer an estate. The Wyoming Probate Code places a greater emphasis on Court proceedings and seems to view all formal probates as hostile and contested. The UPC, in contrast, especially in unsupervised administrations, largely puts the Court more in a position of being a final decision-maker in the event of irreconcilable disputes. The Wyoming Probate Code in contrast places greater emphasis on court proceedings and gives the courts far more control over probates than is necessary in most instances and especially in instances where the beneficiaries, personal representative, and attorney for the estate are collegial.²

3. Limited Adoption of UPC Principles: While Wyoming has incorporated some elements of the UPC, it has not adopted the core principles that provide flexibility and efficiency in estate administration. The current system remains rigid and outdated, and fails to meet the needs of modern estate management. The current system still views probates as largely adversarial in nature when, in reality, most estate administrations are uncontested and require minimal court involvement. I also find most UPC jurisdictions to have far better organized, detailed, and better-written statutes as compared to our Wyoming Probate Code. I have never once heard an attorney from another state on an ancillary administration tell me they viewed our code as better than the UPC in any respect. Additionally, while Wyoming has some features of the UPC, another area that is frequently problematic is that of ancillary administrations. Our ancillary administration

² Anecdotally, I recently had a probate with fourteen (14) interested parties. There was never any conflict in the case; my co-personal representatives were excellent, and the heirs were all cooperative with signing whatever we needed. Nevertheless, despite the lack of conflict and agreeableness, it still took my office approximately eighty-one (81) hours over a year to complete the paperwork, obtain proper consents and waivers, and complete the process without any hearings. Had this decedent died under UPC jurisdiction, we could have completed the same probate in half the time.

statutes, Wyo. Stat. Ann. §§ 2-11-201-202 simply do not jive with UPC jurisdictions and I find myself frequently having to use Wyo. Stat. Ann. § 2-1-205 instead of requesting a Wyoming District Court to adopt and recognize substantially similar proceedings from another state.

4. Procedural Inefficiencies: The existing probate procedures in Wyoming are cumbersome and time-consuming, often requiring continuous court supervision even when all parties are in agreement and creditors have been satisfied. Probates, in my view, should be viewed as transactional in nature from a legislative perspective, more akin to buying and selling real estate or a business as opposed to a contested child custody proceeding or divorce.³ The UPC does not rigidly proscribe court involvement; instead, the UPC largely makes the invocation of a supervised administration optional and something that can be requested in the right case as opposed to a rigid requirement for all estates.

B. Strengths of the Uniform Probate Code.

Based on the law review article cited above and my own review of the Wyoming Probate Code, my practice experience, and my own review of the South Dakota Probate Code, here is a summary of what I perceive to be the strengths of the Uniform Probate Code:

1. Flexibility and Reduced Court Involvement: The UPC offers flexibility by allowing probate to be a non-adversary proceeding with limited court involvement unless wanted by the parties. This reduces unnecessary court supervision and allows for more efficient estate administration. Again, in my view, probates should be viewed as transactional in nature in most instances as opposed to adversarial proceedings.

2. Increased Powers for Personal Representatives: Under the UPC, personal representatives have powers like trustees, allowing them to manage and distribute assets without further court orders, which streamlines the process. In my view, a competent attorney and a competent personal representative with an interest in following the law and doing things properly can adequately administer an estate and protect the interests of the parties interested in the estate.

3. Informal Procedures: The UPC provides informal procedures for probate, appointment, and closing, which can be used for small and large estates, reducing the need for court involvement and expediting the process. Again, informal administrations in UPC jurisdictions largely proceed like trust administrations, and there are rarely hearings and minimal court involvement. The UPC is far more reliant on the personal representative and the attorneys involved as opposed to the Court system.

4. Reduction in Use of Revocable Trusts: Adopting the UPC could also reduce the reliance on revocable trusts, as the UPC procedures offer many of the same advantages of revocable trusts, such as reduced court involvement and confidentiality. In my experience in South Dakota, revocable trusts were rare compared to Wyoming. In South Dakota, my advice was typically that a simple Will was adequate estate planning if there was harmony among the family. In Wyoming, even with harmony among the family, I still recommend expensive, time-consuming, and complicated revocable trusts to avoid probate. Additionally, in my view, the vast majority of

³ Frequently in my practice there is actually less paperwork and fewer documents filed in our divorce and custody cases than in many of our full probate cases.

the public, even with proper legal advice, cannot be trusted to use a revocable trust in a correct or efficient manner. I often need to use probate procedures even where there are trusts because clients forget or simply do not have the wherewithal to properly retitle all of their assets. In UPC jurisdictions, this problem is less common because an unsupervised administration of a Will is similar to a trust administration, and the client is still able to receive an efficient administration without spending thousands of dollars on a revocable trust that may or may not be correctly used once that client leaves an attorney's office and later dies.

5. Uniformity with Neighboring States: Adopting the UPC would align Wyoming's probate laws with those of surrounding states, promoting uniformity and potentially reducing legal complexities for estates with assets in multiple states. It is my understanding that South Dakota, Idaho, Montana, Nebraska, Colorado, and Utah each have largely UPC-based probate codes. If the UPC has been adopted and implemented in each of our neighboring states, I see no reason why Wyoming cannot do the same.

6. Cost and Time Efficiency: According to the law review article, the UPC has been shown to reduce the time and cost of probate administration, as evidenced by its implementation in states like Idaho, where it led to more efficient processes and reduced fees. Wyoming's statutory fee schedule results in fees for a personal representative and attorney that are based on the size of the Estate instead of the time and effort put into the Estate. It simply does not seem fair to me that an attorney and personal representative receives greater compensation in an uncontested \$2,000,000.00 estate than in a contested \$300,000.00 estate. The fees of the personal representative and attorney should be based more on time, effort, and hard expenses, as is the case in many UPC jurisdictions.

7. Protection for Heirs and Creditors: While the UPC emphasizes less court involvement, the UPC does include provisions for protecting heirs, beneficiaries, and creditors, such as the ability to demand notice and the option for formal proceedings if needed. Again, the amount of process that is involved in a UPC probate is largely decided upon by the parties instead of rigidly proscribed by statute.

C. Suggested Reforms.

Based on the insights from the law review article, the comments from the Wyoming Estate Planning listserv email, my own review of the model UPC, South Dakota UPC, my own review of the Wyoming Probate Code, and my experience practicing in Wyoming and South Dakota, here is a list of proposals for reforms to the Wyoming Probate Code:

1. Adoption of a Succession Affidavit Statute: Implement a statute similar to South Dakota's SDCL 29A-3-1203, which allows for the transfer of the real property of a deceased to the living through the use of a recordable affidavit. This statute allows a person to record an affidavit showing their rights to real estate interests and allows that real estate to be retitled in the name of the living without a court proceeding. This process is easier, faster, and less expensive than a summary probate under Wyo. Stat. Ann. § 2-1-205 to correct real estate titles.⁴

⁴ Anecdotally, I recently had to complete a summary probate for real estate interests valued at \$1200.00. The fees and expenses for a procedure under Wyo. Stat. Ann. § 2-1-205 cost more than the property's value. At the outset, that client considered leaving the title defective following the death instead of correcting it due to the cost involved.

2. Encouragement of Family Settlement Agreements: Enact statutes authorizing family settlement agreements and settlements with credits, akin to SDCL 29A-3-813, SDCL 29A-3-912, SDCL 29A-3-110, and SDCL 29A-3-1102, to facilitate amicable resolutions among heirs beneficiaries, creditors, and personal representatives by contract. Some Wyoming attorneys, such as myself, believe that contracts can always alter estate rights, while others, particularly in intestacy cases, say that estate distributions cannot be altered. I cannot find a single statute in the Wyoming Probate Code that addresses family settlement agreements or their enforceability. Families, particularly in intestacy cases, are often times desirous of a different result than that proscribed by the legislature. The probate code should be flexible and encourage the parties to agree upon resolutions of issues related to estate administration among themselves and with the creditors of a decedent. The agreements between the heirs should also be binding on the personal representative and be universally recognized by the Courts. These suggestions are in line with the policy and attitude that has long been espoused by the Wyoming Supreme Court in cases such as *In re Estate of Maycock*, 33 P.3d 1114, 1119, 2001 WY 103, ¶ 20 (Wyo., 2001).

3. Adoption of the Augmented Estate Concept: Introduce the augmented estate concept in elective share cases, as seen in SDCL 29A-2-201-214, to ensure fair distribution of assets to surviving spouses in cases they are disinherited. It seems an absurd legal result to that a spouse of two (2) weeks with no children with the deceased receives the same elective share as a spouse of twenty (20) years with no children with the deceased as the situation currently exists under the Wyoming Probate Code. Additionally, it seems absurd to me that a person can disinherit their spouse through non-probate transfers or trusts. The UPC does a far better job of recognizing and tackling the various ways a spouse can attempt to disinherit the survivor. In my opinion, the UPC has a far better system for addressing the issue of a disinherited spouse than Wyoming does.

4. Reforms to Homestead and Exempt Property Provisions: Replace Wyo. Stat. Ann. 2-7-501 through 2-7-509 with statutes similar to SDCL 29A-2-401 through SDCL 29A-2-403. In my opinion, at least \$50,000.00 of an estate should always be exempt from any creditor claims and allowances to a spouse and children in a yearly lump sum or monthly amount by a personal representative should be allowed. I frequently find clients who are afraid or reluctant to bring estates to probate or administer them properly due to the existence of outstanding creditors. If there were an amount of money the heirs could always receive regardless of whether there are creditors, that may provide a financial incentive to properly finalize a decedent's affairs.

5. Enactment of Personal Representative Duties Chapter: A chapter clearly defining a personal representative's duties and powers similar to SDCL 29A-3-701 to SDCL 29A-3-721 should be enacted. The Wyoming Probate Code should be reformed to provide greater control of an estate to its personal representative. The Wyoming Probate Code should be reformed to make a personal representative more akin to a trustee for heirs, beneficiaries, and creditors as opposed to a litigant in a contested proceeding. Moreover, I find the sales processes in Wyo. Stat. Ann. § 2-7-601-627 is highly convoluted and burdensome in intestate estates or cases where there is no Will with a power of sale. Fundamentally, I believe a personal representative should have the same rights a decedent had to deal with their property during life, subject only to that personal representative's fiduciary role and capacity with respect to heirs, beneficiaries, and creditors. I have rarely seen an estate where heirs or beneficiaries contested a sale, or court involvement was truly necessary. The existing sales process only adds procedure, expense, and burden where it is not needed, especially in cases where an estate has no cash and must liquidate assets to effectively

pay recurring expenses, compensate agents, and address creditor claims.

6. Replacement of Fee Compensation Statutes: Transition to a “reasonable fees” standard for compensation. Estate fees should be based more on an hourly billing scheme or a negotiated flat fee scheme between attorneys and clients, as opposed to rigid legislative mandates. Again, the legal fees should reflect the difficulty and amount of time that goes into a probate as opposed to purely the value. Many attorneys are reluctant to tackle smaller more complicated estates because doing so will not be profitable due to the limited statutory fees. Everyone who dies should have their legal affairs finalized and probate proceedings of some kind should be encouraged. If fees were simply based on a “reasonableness” test and the personal representative were given more discretion to set those fees it would likely result in more probates and better handling of a decedent’s affairs. Additionally, court approval should not be required unless the heirs or beneficiaries specifically request court supervision or challenge the fees.

7. Additional Reforms to Summary Probate Procedure: Amend the summary probate procedure in Wyo. Stat. Ann. 2-1-205 to allow for the appointment of a limited personal representative and applicability of the creditor’s claim process. It is currently an open question as to how creditors are addressed in a summary probate proceeding. Some Wyoming attorneys believe a creditor claim automatically requires a formal probate – this means a \$50,000.00 estate goes through the same process as a \$2,000,000.00 estate. The summary probate procedures do not explicitly address creditor’s claims and it is ambiguous as to whether a creditor claim automatically renders a smaller estate ineligible for summary probate. Moreover, in a summary probate there is no appointment of a personal representative. This means that there is no person given authority to receive information or deal with third parties. This frequently creates problems with banks and third parties who are interested in summary probate proceedings. Wyo. Stat. Ann. 2-1-205 should be amended to allow for the appointment of a limited personal representative or other agent for purposes of gathering information. The summary probate does not address the elective share of a spouse. The summary probate statute should be amended to: (a) provide procedures for creditors to follow; (b) allow the appointment of a limited personal representative; and (c) the District Court should be given broad authority and discretion to make whatever orders are necessary to ensure the settlement of smaller estates in the summary proceeding.

8. Adoption of Payable on Death Beneficiaries Statute for Business Entities: A statute should be implemented expressly allowing for payable on death beneficiaries to be designated in corporate bylaws, operating agreements, membership unit certificates, and share certificates. Some attorneys believe that the Uniform Transfer on Death Security Registration Act that Wyoming has adopted facilitates this, but to me it is not entirely clear from the statutes as enacted. Additionally, the Uniform Transfer on Death Security Registration Act may or may not apply to single member entities. A statute should be enacted allowing transfer on death beneficiaries to be designated for business entities.

9. Enactment of Stiffer Penalties for Non-Compliance: Introduce penalties for non-compliance with probate processes, including recovery of attorney’s fees and liquidated damages, to ensure adherence to legal requirements. I frequently encounter banks and third parties that do not honor small estate affidavits or fight with personal representatives about their authority. I would recommend enactment of a statute entitling a personal representative to recover attorney’s fees from any third party who fails to surrender information or property to them upon demand. I

would also recommend a statute entitling an estate to liquidated damages that begin accruing on the date the small estate affidavit is presented or on the date the letters testamentary and order appointing personal representative are presented to the third party. In multiple cases in my own practice I have had to call banks and make threats simply to get them to follow the enacted statutes. Non-compliance with small estate affidavits or court orders appointing a personal representative should be punished. In my view third parties have no right to impede or obstruct probate proceedings and there should be stiff penalties for third parties who fail to honor probate processes and comply.

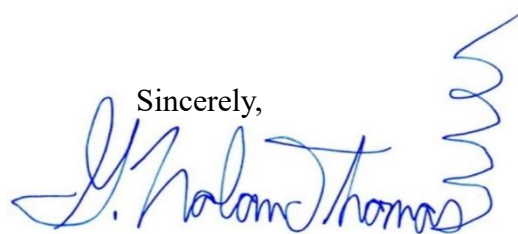
D. Conclusion.

I recognize that this letter calls for substantial reforms. In my humble opinion the Wyoming Probate Code cannot be salvaged or reformed at this point and Wyoming would be far better off simply adopting the Uniform Probate Code and starting over with a new system. However, I recognize that this is likely not a politically popular option given that many attorneys have practiced under the existing system for twenty to thirty years. If I had that experience level I would not be eager to learn a new system and rework all of my probate forms and my existing practice.

With that being said, continuing to follow a system simply for the sake of tradition does not mean there is not a better system available. I believe the legislature should be focused on reforms that ultimately make the probate experience cheaper, easier, and more efficient for the clients. I believe the UPC largely accomplishes that. I would still encourage the complete adoption of the UPC, but some reform is better than no reform and I would ask that any recommendations in this letter are considered and implemented if possible.

Thank you for your attention and work on this important matter. Please do not hesitate to contact me if there is anyway I can assist your efforts in reforming the Wyoming Probate Code.

Sincerely,

A handwritten signature in blue ink that reads "G. Nolan Thomas". The signature is written in a cursive style with a large, stylized initial "G" and a long, wavy flourish extending upwards and to the right.

G. Nolan Thomas

Attachments: (1) Ann Bradford Stevens, Uniform Probate Code Procedures: Time for Wyoming to Reconsider, 2 Wyo. L. Rev. 293.

2 Wyo. L. Rev. 293Wyoming Law Review
2002

General Law Division

Article

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UNIFORM PROBATE CODE PROCEDURES: TIME FOR WYOMING TO RECONSIDER**I. INTRODUCTION**

In 1939, the Section of Real Property, Probate, and Trust Law of the American Bar Association undertook the task of modernizing and creating uniformity among state probate codes.¹ This resulted in the Model Probate Code which was published in 1947.² The Section began to review the Model Code in 1962.³ In 1963, the National Conference of Commissioners on Uniform State Laws got actively involved.⁴ A stated goal was to bring reason and flexibility to the probate process.⁵ The *294 drafting process consisted of

(n)ine reporters, all law teachers with considerable practice experience . . . supervised in the drafting effort by a joint committee of about 25 lawyers who voted on every policy and on many issues of language The product was given repeated line-by-line readings in the National Conference of Commissioners on Uniform State Laws, an organization where practitioners outnumber law teachers by a considerable margin. The drafting and discussion process was aided also by comments from outside groups that studied the emerging recommendations and sent criticisms and suggestions to the draftsmen. By this process, the views of bankers, title companies, Internal Revenue Service, some state and local bar associations, and others were included.⁶

The drafters always looked for tested models that added simplicity and studied these carefully.⁷ After seven years of study and drafting,⁸ the Uniform Probate Code (U.P.C.) was approved by the National Conference of Commissioners on Uniform State Laws in 1969.⁹ The American Bar Association (ABA) House of Delegates approved the U.P.C. later that year.¹⁰

Soon after ABA approval, a number of western states quickly adopted the U.P.C., including Idaho, Colorado, Montana, Nebraska, North Dakota, and Utah.¹¹ The Wyoming Legislature passed the U.P.C. in 1975.¹² However, the Act was vetoed by Governor Ed Herschler on March 14, 1975. In his letter announcing the veto, the governor stated *295 his belief that the existing Wyoming code was firmly established and one of the finest in the country. He also stated that the amendments to the U.P.C. just adopted by the Wyoming Legislature defeated the goal of uniformity with the codes of other states. He also cited the lack of participation of the trust profession in drafting the legislation, and the courts and clerks' concern about additional burdens imposed on them.¹³

Though the governor had rejected the U.P.C., in 1979, Wyoming made substantial changes to probate procedures.¹⁴ Then, in 1980, finding substantive and technical problems with the 1979 law, the Wyoming Legislature enacted the Wyoming Probate Code of 1980.¹⁵ Though many provisions were not changed by either the 1979 or 1980 Code, the numbering changed, as the 1980 Code substantially reorganized the prior law.¹⁶ The 1980 Wyoming Code was the last general review and recodification of probate law in Wyoming.

The Wyoming Probate Code still requires a full court administration in almost all estates, even small, uncontested estates. The 1979 and 1980 changes and additions to the probate provisions came mainly from the Iowa Probate Code and the U.P.C.¹⁷ However, the limited changes in probate administration came almost exclusively from the Iowa Probate Code.¹⁸ Certain discrete parts of the articles in the U.P.C. other than the procedure article were included.¹⁹ The U.P.C. provision permitting certain ***296** small estates to completely avoid probate was included. This affidavit procedure for transferring title to personal property in small estates was adopted with minor changes.²⁰ However, basic principles of the U.P.C. were not included in the Wyoming Code. As Averill said regarding the 1980 Code,

Unfortunately, for the larger estate, the new (1981) code does not offer a much improved administration procedure than existed under prior law. The new Code's procedure is still based primarily upon continuous court involvement and supervision throughout the proceedings. This involvement is not altered even though the successors are in agreement and the creditors have been satisfied. Consequently, the time, effort, and expense of administration will continue to be at approximately the same level as existed under prior law

. . . .

The failure to enact an independent administration procedure for estates of all sizes and comprehensive powers provisions for all personal representatives (sic) are the most unfortunate failures of the new Code. Until these concepts become the law in Wyoming, the administration of many estates will continue to be inefficient, overly time consuming, and expensive.²¹

Both independent administration and comprehensive power for the personal representative are basic features of the U.P.C. Other states ***297** that have not adopted the U.P.C., such as Washington and Texas, have more flexible probate procedures than Wyoming that include these features.²² The U.P.C. has been in effect in the states that border Wyoming, other than South Dakota, for twenty-five to thirty years.²³ I believe it is time for Wyoming to take another look at U.P.C. probate procedures and consider adoption of at least the procedure articles.

Richard Wellman was the Chief Reporter for the U.P.C. and has written extensively about it. As the devil's advocate, he makes the case for not changing the existing probate law:

Many lawyers and judges are skeptical of any proposals that purport to 'reform' settled areas of law. To them, occasional complaints about the workings of present systems are inevitable. They doubt that any new system can offer advantages that will outweigh its ambiguities and the turmoil of change. They resent the criticism of law and lawyers that goes with change, and worry about erosion of familiar sources of lawyer income.²⁴

Referring to the entire U.P.C., he goes on to point out that it is "easy to throw a monkey wrench into any 150-page package of proposed new laws"²⁵

However, Wellman is a strong advocate of the U.P.C. He points out that the U.P.C. system for probate was not a radical new system of probate even when it was drafted. The U.P.C. system of independent administration, unless interested persons seek intervention, had existed for 200 years in Pennsylvania.²⁶ It was also in use where the will permitted it, in Texas, Georgia and Washington.²⁷ Of the provisions that ***298** dropped traditional notice requirements, Wellman said the draftsmen sought "tested models for every device that seemed to contribute to the goal of simplification."²⁸ Wyoming lawyers and the Wyoming Legislature should consider the longevity of these systems before they conclude it is appropriate to continue the Wyoming system of extensive court involvement. As Wellman put it, the probate offices in Pennsylvania "constitute a standing contradiction to any assumption that a modern state must interpose a powerful court between survivors and the estates they would claim."²⁹

The entire U.P.C. consists of nine Articles. The focus of this writing is Article III, Process of Administering an Estate, the largest division of the Code.³⁰ When it comes to inheritance, probate procedure is “the heart of the matter,”³¹ though it is a small part of law school courses on Trusts and Estates, and does not get much attention from academics.³² This article will describe the Article III procedures and provide a comparison to the current Wyoming probate code.³³ It will also discuss ***299** Article IV.³⁴ Article IV, Foreign Personal Representatives and Ancillary Jurisdiction, along with parts of Article III, deal with ancillary probate, an important part of probate procedure.

A. Basic Advantages of the Probate Procedures in the Uniform Probate Code

The hallmark of the U.P.C. is flexibility, which is carried out through Article III. Central to the U.P.C. is the:

(I)dea that probate is basically a non-adversary proceeding in which the court should have a very limited role unless the parties desire the court's help and supervision, in which case such assistance can be obtained It provides that supervision can be had with respect to some aspects of the administration without involving the court in other aspects of the probate.³⁵

As the Official Comment states, Article III is designed to provide “persons interested in decedents' estates with as little or as much by way of procedural and adjudicative safeguards as may be suitable under varying circumstances.”³⁶ As one commentator put it, “(t)hose interested in the estate can thus purchase as much or as little administration as appears necessary and proper.”³⁷

The U.P.C. provides for varying degrees of notice and court involvement, the degree being determined by those with an interest in the estate. Unless an interested party seeks a more formal process, informal procedures can be used. In other words, the level of formality is determined by the concerns of the interested parties, not by the size of the estate. Even if the administration of the estate is informal, an interested party, heir or creditor, who believes he or she needs more protection, can file a demand for notice and receive notice of steps in the proceeding.³⁸ ***300** Then she can take various actions to protect her interests.³⁹ The U.P.C. makes the probate process more like other legal processes in that the court is involved only to resolve disputes raised by the parties.⁴⁰ However, if an interested party seeks a fully court-supervised administration, and the court agrees that it is appropriate, supervised administration is an option under the U.P.C.⁴¹

A related basic advantage of the U.P.C. is the powers given to the personal representative. These provisions make the probate process more like what happens after death under a typical revocable living trust. As Wellman states, “After obtaining letters, the person or persons appointed assume a role very much like that of trustees of a well drawn revocable inter vivos trust who are directed to distribute trust estate remaining after the settlor's death after first satisfying all of his creditors.”⁴² The personal representative “becomes in effect a statutory trustee.”⁴³ He can collect assets, sell assets as needed, pay claims, and distribute assets without further court orders.⁴⁴ As with revocable trusts, he, or an interested party, can seek the isolated adjudication of a particular question, if needed. The court has broad jurisdiction to decide such isolated issues when presented, under the U.P.C.⁴⁵

Both of the basic advantages I have just described, informal processes and increased power for the personal representative, appear on their face to reduce protections for those with interests in the estate. However, in comparing the U.P.C. to the current system of probate in Wyoming, one should consider the possibility that the protections are really illusory. It should not be assumed that current court-supervised administration offers much real protection to heirs and beneficiaries. In many areas, the apparent protection of court supervision is deceptive.⁴⁶ ***301** The court is not providing the protection that the process purports to give.⁴⁷ The person with letters of administration has “full practical control of the decedent's liquid assets, notwithstanding the degree of ‘supervision’ exerted by the court following appointment.”⁴⁸ Some probate officials are reluctant to act unless a written complaint prepared by a lawyer is made.⁴⁹ Even the required notices may not be effective since, “(t)he routine which the statutory notice requirements create also tends to defeat the purpose of notice by making every warning paper ordinary.”⁵⁰

B. Many Revocable Trusts Will Not Be Needed if the Uniform Probate Code is Adopted

Adoption of the U.P.C.'s procedural provisions would probably reduce the use of revocable trusts in the state, because the U.P.C. procedures offer many of the advantages of such trusts.⁵¹ Living trusts are being used by many whose goal is to avoid probate.⁵² Those who promote revocable trusts at public meetings state that probate avoidance is the primary goal.⁵³ In a state with a probate procedure like Wyoming's, avoiding probate is likely to be a significant benefit. However, one would not need to avoid the probate process if it could be done with little court involvement, and thus was less expensive and less time consuming. In one U.P.C. state, Colorado, with an inexpensive and quick procedure ***302** for probate, probate avoidance has "lost its importance."⁵⁴ Also, probate is often required anyway, even where the decedent has a revocable trust.⁵⁵

Another advantage that is often touted for using revocable trusts is that the settlor can keep the details of the trust private.⁵⁶ The will must be filed with an informal probate application under the U.P.C.⁵⁷ However, in most cases, the details in the will are not so personal that they require privacy.⁵⁸ The probate administration under the U.P.C. preserves confidentiality in many circumstances, unless conflict leads an interested party to seek court involvement. It is certainly much more likely that the details of a probate process will be confidential under the U.P.C. than under the current court-supervised probate procedures in Wyoming. If the informal procedures in the U.P.C. are used, the will, the applications for informal probate and for appointment of a personal representative, the appointment, and a closing statement, will probably be all that is available for public review.⁵⁹ The inventory must be sent to persons interested in the estate who request it.⁶⁰ However, the personal representative is not required to file it with the court.

Of course, an interested party may petition for a formal probate and supervised administration under the U.P.C. that would then make much more information public. However, this is also true with revocable trusts. An unhappy party can bring suit against the trustee and thus make the trust and actions of the trustee part of the public record.

Another of the proffered advantages of the revocable trust is ***303** avoiding ancillary probate.⁶¹ Ancillary probate will probably not be needed if the U.P.C. probate procedures are adopted because of their broad recognition of the domiciliary probates of other states.⁶² The ability to manage and transfer decedent's assets immediately after death is another of the revocable trust's touted virtues. With a revocable trust, the successor trustee can take over the management of the trust assets immediately on the settlor/trustee's death. In contrast, the appointment of a personal representative will take time. However, the personal representative can be informally appointed under the U.P.C. as early as 120 hours after the death, and no hearing is required.⁶³ Also, since bond is not required unless an interested party seeks it, posting of bond will not delay the personal representative's appointment in most circumstances.⁶⁴

Non-lawyers are often drawn to revocable trusts due to two common misperceptions.⁶⁵ Such trusts do not save income or estate taxes, nor do they protect the settlor's assets from her creditors. Assets in a revocable trust are included in the value of the gross estate, for estate tax.⁶⁶ Their income is taxed to the settlor, under the grantor trust rules.⁶⁷ Secondly, the settlor's creditors generally have access to assets in the trust.⁶⁸ In contrast to probate administration, the decedent's creditors ***304** seeking assets of a trust are not cut off by nonclaim statutes, nor may their claims be set aside due to exemptions unique to probate.⁶⁹

Revocable trusts as a vehicle for property succession have two disadvantages. The legal costs of preparing a revocable trust and will are somewhat higher than those for preparing a will only, even a will that contains a trust.⁷⁰ As one experienced lawyer put it,

what is saved by the revocable trust is, in many cases, the cost of the Executor having to marshal the assets of the estate. To a great extent this saving is offset by the increased cost of doing the estate plan, which still includes a Will (albeit a pour-over Will) and a Durable Power of Attorney, but which now includes an additional document, the revocable trust. And because the trust contains provisions involving life and death, it is most complex. This coupled . . . with transferring the assets to the trust . . . (means) the net cost can be many times that of a conventional Will. In effect, the client is prepaying during life what would otherwise be payable after death.⁷¹

Also, revocable trusts require attention after they are created, in transferring property into and out of the trust, and in record keeping.⁷²

From a public policy perspective, another problem with revocable trusts is that the legislative protections for a decedent's spouse and ***305** other family members often are not applied to revocable trusts.⁷³ Revocable trusts, as well as other probate avoidance techniques such as joint tenancy, transfer property at death without such statutory protections as the elective share and the homestead allowance.⁷⁴ Property passed in this way is not in the probate estate, so these statutory protections do not apply. For example, the Wyoming elective share applies when a decedent "by will" deprives the spouse of more than the elective share of property "which is subject to disposition under the will."⁷⁵ Those using the probate avoidance techniques may intend to avoid the statutory protection for spouses and children, and revocable trusts and joint tenancies will be available in Wyoming even if the procedure section of the U.P.C. is adopted.⁷⁶ However, if Wyoming adopts the informal procedures available under the U.P.C., perhaps probate avoidance devices will not be used so routinely, and the public policy that these protections embody will not be so regularly evaded.⁷⁷

C. Other Advantages of the U.P.C.

If Wyoming adopted the probate procedures of the U.P.C., and thus fewer people were motivated to avoid probate, one questionable probate avoidance device used in Wyoming might not be used in the future. In Wyoming, individuals often execute deeds but do not deliver or record them before death, attempting to transfer title to real property without going through probate. The validity of such transfers is not clear, because a court may conclude that the gift was not completed before death. Also, the deed does not comply with the execution requirements ***306** to effect a transfer after death.⁷⁸ Such "revocable deeds" are not a trustworthy method of transferring property at death. Hopefully, the informal probate processes of the U.P.C. would eliminate their use.

Uniformity would be another significant benefit, if Wyoming adopted the U.P.C. Its probate law would then be much more similar to that of surrounding states. Uniformity is a real opportunity for Wyoming because all of the surrounding states have adopted the U.P.C.⁷⁹ In the surrounding states, except for South Dakota, the U.P.C. has been in place for 25 to 30 years, and has not been repealed.⁸⁰

It is true that those states that have adopted the U.P.C. have changed some of its provisions. Wellman and Gordon studied the changes made in Article III by the first nine states to enact the U.P.C., Montana, Utah, Idaho, Colorado, Arizona, Nebraska, Alaska, North Dakota and South Dakota. This includes all states contiguous to Wyoming. They concluded that none of the changes:

(P)osed any serious threat to the Code's goal of facilitating non-court settlement of decedent's estates The enactments in Idaho, Alaska, North Dakota and South Dakota are free from any obvious statutory impediment to the functioning of (Article III) as intended by the national draftsmen, and the Colorado and Arizona deviations are so slight that they should not cause serious problems. The future for the Code in Montana, Nebraska, and Utah is more difficult to predict, but these statutes, like the others studied, clearly enable practitioners to reduce probate delays and cost significantly if they choose to do so.⁸¹

Since this study, many of the problematic changes made by ***307** Montana and Utah that the study identified have been themselves changed back to provisions identical to the U.P.C. or very similar. For example, Montana has removed its provision requiring the clerk to publish notice to creditors.⁸² Montana has also removed its provision that all claims on which the personal representative has not acted within sixty days are deemed rejected, and thus have to be litigated by the creditor.⁸³ The provision now deems such creditors' claims to be allowed, like the U.P.C. Utah has removed its percentage court-approved statutory fee.⁸⁴ It has also removed the general requirement of a bond for the personal representative that was in its original version of the U.P.C.⁸⁵ Finally, Utah removed a provision that only family allowances approved by a court were exempt from creditors' claims.⁸⁶ In one area, the amendment went the opposite direction. The U.P.C. was amended and is now like the variations adopted by Nebraska, Montana and Utah. The U.P.C. was amended in 1993 to permit a probate later than three years after the decedent's death for the sole purpose of transferring title to property, similar to the provisions of these three states.⁸⁷

Finally, the unnecessary delays and costs of probate have made a significant contribution to the bad reputation of lawyers. Popular publications have given credence to this.⁸⁸ Wellman noted, “Sadly, the probate system is so patently vulnerable to criticism that no amount of favorable and reassuring talk by loyalists is going to satisfy the public.”⁸⁹ In his view, the U.P.C.’s “major purpose is to reestablish public confidence in inheritance law.”⁹⁰ However, limited data indicates that the U.P.C. procedures have not restored such confidence in states where it has been adopted. An Idaho study concluded “society’s pervasive distrust of the probate system has not been altered appreciably by the implementation of a modern probate code.”⁹¹

***308 D. The Uniform Probate Code Has Been Well-Received by Lawyers and Trust Officers**

The response of probate lawyers and trust officers to the U.P.C., a few years after it was adopted, was very positive in Idaho. In 1971, Idaho became the first state to adopt the U.P.C. in its entirety.⁹² Based on surveys of lawyers, and surveys and interviews of trust officers, “Idaho’s experience demonstrates that the U.P.C. works well in practice and has no basic substantive defects.”⁹³ Further, “(c)ode provisions permitting speed and flexibility in disposing of estate assets have proven particularly advantageous.”⁹⁴ Sixty-eight percent of attorneys who returned a 1975 survey believed that the U.P.C. was a benefit to them in meeting their client’s needs.⁹⁵ Younger attorneys were more likely to see the benefits of adopting the U.P.C. Eighty-five percent of those who had practiced less than 10 years found the U.P.C. beneficial, and 58% of those who had practiced more than ten years did so.⁹⁶ After six years of applying the Code, trust officers “uniformly favored the Code’s adoption.”⁹⁷ I found no data outside Idaho on how Articles III and IV of the U.P.C. have been received by lawyers in the states in which the U.P.C. was adopted. However, it speaks well for the U.P.C. that it has not been repealed in any state where it has gone into effect except South Dakota, where it was reenacted.⁹⁸

I also found little data on whether the U.P.C. probate process has met its promise of expedited probate administration. The Idaho study did show more efficient probate administration, soon after the U.P.C. was adopted.⁹⁹ In the 1975 survey of Idaho attorneys, 60% believed that the U.P.C. had generally reduced the time required to administer an estate.¹⁰⁰ ***309** This is not surprising since, soon after the U.P.C. was adopted in Idaho, court-supervised administration was only being used in a small percentage of the probates.¹⁰¹

The Idaho study also shows a reduction in personal representative and attorney fees. Prior to adopting the U.P.C., Idaho had a statutory fee schedule for personal representatives, as Wyoming still does.¹⁰² It was 3% of the estate value over \$10,000. The statutes did not include a fee schedule for lawyers, though the bar had a voluntary fee guideline, which, in 1971, listed a 3% fee for community property up to \$10,000 and all property over \$10,000.¹⁰³ Based on probate files, it appears that lawyers relied on that bar schedule before the U.P.C. was enacted.¹⁰⁴ On the other hand, the U.P.C. fee provision, adopted in Idaho, allows the personal representative to set a reasonable fee for herself and the lawyer, subject to review by the court if an interested party seeks review.¹⁰⁵ Based on data in the surveys, and from inheritance tax filings and probate files, the study concludes that “in most estates (the U.P.C.) continues to hold probate costs significantly below pre-UPC levels.”¹⁰⁶

Idaho lawyers perceived that the amount of their fees for similar estates was declining, and more objective data also supports this perception.¹⁰⁷ The median of the fee reduction these lawyers estimated was 30%, and other data bore this out.¹⁰⁸ Personal representatives’ fees showed an even greater drop.¹⁰⁹

***310** Looking at the process from the lawyer perspective, Wyoming lawyers practicing probate may be concerned that they will lose income if the probate process is streamlined. However, it is possible that the volume of probate business may increase, as fewer clients seek to avoid probate by using joint tenancies and revocable trusts.¹¹⁰

The remainder of this article will describe the Wyoming probate administration procedures, and compare them to the U.P.C. procedures.¹¹¹ I will also discuss the fee provision in both Wyoming and the U.P.C. Then, I will address the protection the U.P.C. provides for beneficiaries and creditors who seek it, and the protection it provides to personal representatives. Finally, I will compare the ancillary probate procedures under both the Wyoming Code and the U.P.C.

II. Wyoming Procedures for administration of estates

Wyoming's first Legislature enacted the Probate Procedure Act in 1891.¹¹² “Comparatively few and no truly significant alterations” were made to that Act prior to the 1979 and 1980 changes described in the first section of this article.¹¹³ Few significant changes have been made since then.¹¹⁴ I will describe the current Wyoming law on the passing of ***311** decedent's property, beginning with what happens if no action is taken, and ending with the general, court-supervised probate.

A. Do Nothing

In Wyoming, the passage of time will eliminate unsecured creditor's claims and protect purchasers of decedent's property from such creditors if the decedent dies intestate. Creditors have two years from the decedent's death to seek appointment as the personal representative.¹¹⁵ If no letters are issued within that time, “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.”¹¹⁶ Secured creditors are not barred.¹¹⁷

If the decedent dies with a duly executed will, there appears to be no time limit for probating the will, and presumably the regular statute of limitations for the type of creditor's claim would apply to the claim.¹¹⁸ While the Wyoming code declares that property “passes” to heirs or will beneficiaries, the provision goes on to say that the property is subject to the control of the court.¹¹⁹

Wyoming also has procedures that eliminate probate entirely, or provide a less cumbersome process than regular probate, which I will now describe. However, they apply in very narrow circumstances.

B. Distribution by Affidavit

For personal property in probate estates whose total value is \$150,000 or less, an affidavit procedure permits title to a decedent's personal property to be transferred, without any court filing.¹²⁰ This non- ***312** probate process was taken from the U.P.C.¹²¹ The statute protects third parties that make the transfers pursuant to the affidavits.¹²² The dollar limit was recently increased from \$70,000 to \$150,000.¹²³

C. Probate of the Will Without Administration

A will can be probated by the judge or a court clerk in Wyoming, after a hearing, without any administration.¹²⁴ The person seeking probate must state that a copy of the will and petition was mailed to all heirs and devisees.¹²⁵ No other notice is required prior to admission of the will to probate.¹²⁶ Under this procedure, the order probating the will shall not appoint an executor.¹²⁷ After the order is entered, admitting the will to probate or denying admission, the order and will are to be sent by certified mail to all heirs and beneficiaries.¹²⁸ To limit the time period for contesting the will, notice must be published.¹²⁹

***313** D. Summary Procedures

All other Wyoming procedures require notice by publication and a court decree to transfer title to property. A somewhat shorter procedure than full probate applies if the named executor is the sole beneficiary. After the court sets bond, an inventory and appraisal are filed, and notice by publication is made, the estate vests in the beneficiary, who agrees to be liable for any debts.¹³⁰

Wyoming also has an early distribution and closing procedure for estates where the whole estate consists of exempt property.¹³¹ The personal representative must publish notice of the opening of probate and of a required hearing. An appraisal is also required.

At the hearing, the court decides if exemptions cover the whole value of the estate. If so, it sets over the property to those entitled, and the probate administration is complete.¹³²

Two summary procedures apply to transfer title to real property only. The procedure that can be done immediately is limited to probate estates whose value is \$150,000 or less.¹³³ An application must be filed in the district court where the property is located. Notice of the application to distribute the property must be published. A disinterested appraisal is also required. The court may then enter a decree establishing the right and title to the real property. The decree is presumptive evidence of title even if false statements were used to procure the decree.¹³⁴

The other summary procedure for title to real estate has no dollar limit but can only be used when two years have passed since the prior owner's death.¹³⁵ After direct notice to those interested, including creditors, ***314** heirs and beneficiaries, notice by publication, and a hearing, the court determines the rights in the real property.¹³⁶

E. Wyoming Regular Probate

In all other situations, the court in Wyoming is involved in probate administration from the time of appointment of the personal representative until the closing of the estate. This is true whether the estate passes by will or by intestacy. Also, the process is similar, whether the probate is uncontested or involves substantial controversy.

Wyoming statutes prescribe what must be included in the petition for probate of a will.¹³⁷ After it is filed, “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 due execution of the will, admit the same to probate.”¹³⁸ The statute goes on to state that notice is not required unless the court finds good cause to require notice.¹³⁹ Wyoming has a similar process for appointment as executor or administrator.¹⁴⁰ A bond must be posted to administer an estate, either testate or intestate, unless the will expressly waives the requirement or the distributees waive it in writing.¹⁴¹ After probate of the will, and appointment of the executor or administrator as personal representative, the personal representative is required to publish notice of the probate and appointment, including the limit on creditors claims, in a local newspaper, once ***315** a week for three weeks.¹⁴² Notice must also be mailed to heirs, beneficiaries, and known creditors.¹⁴³

An inventory must be filed with the court within 120 days of appointment and an appraisal under oath must be filed within 120 days after the inventory.¹⁴⁴ The statute requires that the personal representative employ a disinterested person to determine the value of any asset that does not have a readily determinable value.¹⁴⁵

The court supervises all sales, mortgages or leases of property, though this court involvement can be waived by will.¹⁴⁶ The personal representative must petition for authority to sell, with prior notice given for sale of real estate.¹⁴⁷ The court may set conditions for sale, such as a public auction, and the court must confirm the sale and its terms.¹⁴⁸ If not expressly waived, even sales that the decedent had contracted to perform before he died must be approved by the court, after notice and hearing.¹⁴⁹ Even if the will authorizes sales of real property to be made without court approval, the personal representative must give notice to the surviving spouse and all heirs or beneficiaries prior to the sale.¹⁵⁰

As for payments or distributions from the estate, the court must approve any support allowance, and set over the homestead and other exempt property.¹⁵¹ Notice and hearing are required for any other distribution of the estate.¹⁵² Finally, any payment of fees during the administration ***316** of the estate must be done by court order.¹⁵³ Expenses can be paid at any time, subject to approval in the final report.¹⁵⁴

All creditor claims must be submitted to the court clerk, who then sends a copy to the personal representative.¹⁵⁵ Creditors' claims that are not filed within the later of three months after notice by publication, or thirty days after mailed notice, are barred.¹⁵⁶ However, the Wyoming statute contains an exception that lessens the finality of this bar. The statute provides that

claims are not barred if the court finds that the claimant is “entitled to equitable relief due to peculiar circumstances.”¹⁵⁷ If the personal representative is a creditor of the estate, the court must appoint a temporary administrator to represent the estate in regard to the claim, and the court must either allow the claim, or treat it as a contested claim.¹⁵⁸ Allowance or rejection of all claims must be filed with the clerk.¹⁵⁹ The personal representative may choose to adjudicate claims. After hearing, a decree may be entered, binding distributees.¹⁶⁰

Probate in Wyoming must be completed in one year from the appointment of the representative, unless a court grants a continuance for good cause.¹⁶¹ This was the Wyoming legislature's response, in the 1980 Code, to public criticism of delays in probate.¹⁶²

The final report and a final accounting must be set for hearing after notice.¹⁶³ The personal representative must present evidence to the court that all taxes have been paid before the estate can be closed or the personal representative discharged.¹⁶⁴ Expenses are approved and fees ***317** ordered, upon hearing on the final report and accounting.¹⁶⁵ The personal representative then seeks a court order discharging her from liability.¹⁶⁶

Supervised probate in Wyoming merits a careful reexamination. As Wellman said, most of what the public has identified and criticized about probate is related to court-supervised administration.¹⁶⁷ He describes court-supervised probate in this way,

(T)he personal representative handles the business of administration as if he were a receiver in a closely watched proceeding to wind up the affairs of an insolvent debtor.¹⁶⁸

While this may be appropriate in the hotly contested estate, independent administration, which is an option under the U.P.C., is appropriate for most estates.

III. U.P.C. Procedures

A. Do Nothing

Before turning to informal probate, I will discuss how the U.P.C. treats a decedent's property when no probate procedure is undertaken. Suppose nothing is done after a decedent's death. If the affidavit procedure, discussed next, is not used, or the estate is not eligible to use it, and no action is taken on behalf of an intestate estate, the U.P.C. directly addresses transfer of title to assets and establishing that title. Under the U.P.C., if a decedent dies intestate, heirs can establish title by proving the decedent died owning the property, proving the death occurred and proving the devisee's relationship to the decedent.¹⁶⁹ The property descends to the heirs, subject to creditors, family allowance and abatement. ***318**¹⁷⁰ If a decedent dies testate, a will must be probated, to be effective to transfer property.¹⁷¹ However, the will can be informally probated, without appointment of a personal representative.¹⁷²

The U.P.C. provides a one year from death cut off for creditor's claims against the estate and against the distributees, even if no notice is given.¹⁷³ Therefore, in an intestate estate, where no action is taken to administer the decedent's estate, the statutes of limitations in the U.P.C. may effectively clear heirs' title, if the heirs are willing to wait. After one year, the decedent's creditors would not have any claim to the property now possessed by the heirs. This would also be true for the beneficiaries of a testate estate, where the will was probated, even where no personal representative was appointed. In that situation, as Averill puts it, title is answered by “the passage of time.”¹⁷⁴

***319** Despite the statutes of limitations just discussed, the intestate statute's “subject to” conditions on the heir's title may cause title examiners to hesitate to insure the title, when the intestate heir tries to transfer the property. For most estates, the benefit of informal appointment of a personal representative, to more easily establish title for transferees, will outweigh its minimal burden. As Averill says, “Realistically . . . purchasers and transfer agents will demand proof of heirship and that no will was probated within the three year limitation in any county in the state.”¹⁷⁵

The appointment of a personal representative may be critical. The U.P.C. protects the title of those who purchase from persons to whom the appointed personal representative distributes property. As Wellman said, “The protection of real property titles was uppermost in the minds of the draftsmen.”¹⁷⁶ The purchaser takes title “free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.”¹⁷⁷ This broad protection for purchasers begins with a distributee receiving title from a personal representative.¹⁷⁸ Note that the purchaser is protected without a supervised administration or formal closing, but simply an informal appointment of the personal representative.¹⁷⁹ An official comment to the provision on persons dealing with the personal representative states, “The purpose of the Code is to make the deed or instrument of distribution the usual monument of title.”¹⁸⁰

In addition to providing the basis for purchaser protections, appointment ***320** is necessary for creditors to enforce claims against the estate, prior to distribution of the property.¹⁸¹ Also, a personal representative cannot administer an estate without being appointed and, once appointed, is protected from liability if she acts within her authority.¹⁸² Again, an informal appointment is sufficient for these purposes.

B. Affidavit Procedure

For very small estates, the U.P.C. includes the affidavit procedure that Wyoming adopted.¹⁸³ In the original 1969 U.P.C., the upper limit on the estate value was \$5000. This limit would likely be increased if Article III of the U.P.C. were adopted in Wyoming. However, the U.P.C.'s informal probate and appointment might make it unnecessary to set the limit as high as the \$150,000 limit in Wyoming's current code.¹⁸⁴

C. Informal Appointment, Probate and Closing

Informal procedures for appointment, probate and closing are available under the U.P.C. to all estates, small and large. Informal procedures are useful as a starting point, and may well be all that is needed in an estate in which there is no disagreement about distribution and administration, and there are no serious issues with creditors. In Idaho, six years after the U.P.C. became effective, it was reported that “(a) strong emphasis is placed on using informal estate openings whenever possible.”¹⁸⁵

Wyoming already has the informal initial steps in the procedure. Where the decedent had a will, Wyoming permits the probate of the will, and the appointment of the personal representative, without prior notice. This provision was added as part of the 1980 Code.¹⁸⁶ However, a hearing appears to be required.¹⁸⁷

Under the U.P.C., an informal appointment is made by a judge or court official.¹⁸⁸ The court official is called a registrar in the code and ***321** could be the clerk in the Wyoming court system.¹⁸⁹

Under the U.P.C., informal appointment can be made within 120 hours of death, without hearing or general prior notice, and whether the decedent dies intestate or testate.¹⁹⁰ Notice is only required for two narrow groups of people. First, those who file with the court a demand for notice must be notified prior to the appointment.¹⁹¹ Second, in intestacy, the U.P.C. requires notice, before the appointment, to anyone who has statutory priority over the person applying and has not waived his or her priority.¹⁹²

The court official must check the application for informal appointment to see that it conforms with a statutory list of requirements.¹⁹³ The court official's job is simply to review the application to see if the proper statements and verification are included, and that certain basic requirements are met such as venue and priority for appointment.¹⁹⁴ However, she has broad discretion to refuse the application and the applicant must then turn to formal proceedings.¹⁹⁵ If the application conforms to the statutory requirements, the personal representative is appointed and authorized to act.¹⁹⁶ Informal appointment cannot be used to appoint someone who does not have priority under the will unless those with priority have renounced their interest.¹⁹⁷

Similarly, a person who does not have priority under the U.P.C. to administer an intestate estate must be appointed in a formal proceeding, unless those with priority have renounced their interest.¹⁹⁸ Finally, anyone who objects to an informal appointment must use the formal appointment process.¹⁹⁹

Under the U.P.C., a similar informal procedure is available for ***322** probate of the will.²⁰⁰ Again, the court official's job is to see that the application meets the statutory requirements, though she has broad discretion to refuse to probate the will.²⁰¹

An executor may choose to proceed informally, in order to quickly obtain the authority to act, even if she plans to pursue a formal adjudication of testacy later.²⁰² The formal testacy could be readily combined with a formal closing.²⁰³

Once letters are issued by the court official, the personal representative may administer the estate without further court approval.²⁰⁴ The personal representative has a general duty to "observe the standards of care applicable to trustees," as described elsewhere in the U.P.C.²⁰⁵ She is also obligated to follow the will and act "as expeditiously and efficiently as is consistent with best interests of successors to the estate."²⁰⁶ Beyond that, the appointed personal representative "gets statutory powers and duties that permit full administration and closing of an estate without further contact with the probate office or court."²⁰⁷ She may "accomplish the entire job of collecting assets, paying debts, and selling land or intangibles as needed to raise necessary cash and distributing the estate to the successor" without further court orders.²⁰⁸

As previously discussed, the informally appointed personal representative has the ability to pass marketable title to property.²⁰⁹ Distributees ***323** then can give marketable title to purchasers.²¹⁰ Due to the powers granted the personal representative, no further proceeding may be needed after informal appointment. Proceedings under Article III of the U.P.C. are independent of each other, and the informal appointment of a personal representative ends that proceeding.

After informal appointment, the appointed personal representative is obligated to give notice. She must deliver, or mail to the last known address, notice of her appointment to heirs and devisees, within thirty days of appointment.²¹¹ The prescribed information in the notice includes "the court where the papers relating to the estate are on file."²¹² The notice informs the recipients of their right to seek further court involvement. It must include a statement that "the estate is being administered by the personal representative under the . . . Probate Code without supervision by the Court but that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration."²¹³

Whether the informally appointed personal representative must give general notice to creditors depends on which U.P.C. provision a particular state adopts. One alternative requires notice only to creditors who have filed a demand for notice.²¹⁴ The other requires a general publication notice.²¹⁵ If no general notice is given, claims are not barred until ***324** one year after the death of the decedent.²¹⁶ Therefore, the consequence for failing to generally notify creditors is that those who take title to the property cannot use the short statutes of limitation in the U.P.C. These statutes bar claims not filed within four months of publication for those "notified" by newspaper publication.²¹⁷ For those notified directly, which is permissive under both alternatives, the limit is the later of sixty days after direct notice or four months after publication.²¹⁸ Even without notice, the period of uncertainty is limited to one year and the personal representative may choose no notice, knowing of the one-year risk. Creditors present a claim by sending the personal representative a statement indicating its basis, the amount claimed and the name and address of the claimant.²¹⁹

The informally appointed personal representative is not required to post bond unless the will requires it, or an interested person makes a written demand to the registrar that bond be required.²²⁰ Then, bond will be required before the administration can proceed, unless the personal representative seeks to be excused from the bond through a court action.²²¹ To request that bond be set, the person requesting bond must have at least a \$1000 interest in the estate.²²² This includes creditors who have at least a \$1000 interest.²²³

Within three months of appointment, the personal representative is required to prepare an inventory and send it to interested persons who request it. She may, but is not required to, file it with the court.²²⁴ The U.P.C. permits the personal representative to employ an appraiser to value property whose value is subject to doubt, but it does not require an appraisal.²²⁵

The estate can be closed informally, simply by filing a statement ***325** prescribed in the Code.²²⁶ In this manner, the entire probate process can be conducted informally, even with large estates. The closing must state that the time for presentation of creditors' claims has expired.²²⁷ The personal representative's appointment is terminated one year after the closing statement is filed, if no proceedings are pending in the court involving the personal representative at that time.²²⁸ The personal representative's liability is not terminated until six months after the closing statement is filed.²²⁹ Any claims against the personal representative for breach of fiduciary duty, by creditors not otherwise barred, or by others entitled to the property of the decedent, must be filed within six months after the closing statement is filed.²³⁰ Otherwise, they are barred, unless the claim is for "fraud, misrepresentation or inadequate disclosure related to the settlement" of the estate.²³¹ The U.P.C. also provides a statute of limitations that limits liability of distributees. Distributees are only liable for one year after the distribution, though the limit does not apply if the distribution was procured by fraud.²³² To terminate the appointment and liability sooner, a formal closing is needed.

The Idaho survey of probate lawyers and trust officers showed widespread use of informal proceedings for opening and administering estates soon after the U.P.C. was adopted.²³³ In two of the larger counties, informal filings constituted at least 90% of the total probate filings in 1975.²³⁴ Only eleven supervised administration filings were made in the five most populous counties in 1973 and only one in 1974. These counties had 45% of the state's population at the time.²³⁵ Idaho trust departments ***326** also reported that they rarely used supervised administration.²³⁶

C. Formal Proceedings

The personal representative may decide that the benefits of formal testacy or formal closing are worth the effort and cost.²³⁷ Formal testacy requires pre-hearing notice, which must be mailed to all heirs.²³⁸ It must also be mailed to beneficiaries and executors of the will being offered for probate and of any wills offered for probate elsewhere, and to any personal representative appointed informally whose appointment has not terminated.²³⁹ Newspaper publication of the probate hearing is also required.²⁴⁰ After a hearing on the will, a court order is entered regarding its validity, decedent's domicile, and who are decedent's beneficiaries or heirs.²⁴¹ The benefit of formal testacy is that the order probating the will can only be invalidated in narrow circumstances, and only if the petition is filed within one year of the order.²⁴² Note that a formal testacy petition does not trigger court-supervised administration of the estate.²⁴³ The estate will be administered without such supervision unless an interested party petitions for it.

A request for formal appointment of a personal representative may or may not be part of a formal testacy petition.²⁴⁴ The personal representative has the same powers whether appointed formally or informally.²⁴⁵ "Although the appointment had been secured in formal proceedings before the court . . . the appointing authority has no authority to check the work of a personal representative or to make orders relating to him unless the representative or some other interested person petitions ***327** after the appointment for some order or relief concerning the estate."²⁴⁶

Even if the probate, appointment and administration have been informal, the personal representative or other person may want to have the quicker protection of a formal closing. The Idaho study concluded that when a bank serves as trustee, "the banks are absolutely uniform in requiring a formal closing of the estate and a court order discharging the bank as personal administrator."²⁴⁷ One effective combination is to start with an informal appointment of a representative, administer the estate without involvement of the court, and then combine a petition for formal testacy and formal closing of the estate.²⁴⁸

Notice of the petition for formal closing must be given to all interested persons.²⁴⁹ If no formal testacy has taken place, notice by publication is required to bind unknown heirs.²⁵⁰ Others must get direct notice, including known creditors.²⁵¹ The court

has authority to issue orders on a wide variety of matters after the hearing on the closing, such as approving distributions and accounts, and ending the liability of the personal representative.²⁵²

***328 D. Personal Representative and Attorney Fees**

Under the U.P.C., the personal representative has authority to employ and pay the attorney who provides services to the estate.²⁵³ The personal representative is also authorized to pay herself.²⁵⁴ Payment does not have to await closing, nor does it require a court order. Any person who disagrees with the decision of the personal representative and who has an interest in the estate can bring a special action for determining the reasonableness of the compensation of the personal representative or the attorney.²⁵⁵ The court can order appropriate refunds.²⁵⁶ However, if no party seeks review, the court will not review fees.

Wellman sees the fee provisions as important to addressing critics of the probate system. “(T)he elimination of . . . arbitrary methods of fee determination, particularly the percentage scale with which probate critics have had such a field day, should reduce talk of the ‘lawyers’ tax’ on estates and slow the flight from probate which has occurred in recent years.”²⁵⁷

The U.P.C. does not provide guidelines for the reasonableness of fees, but this is an area where a few states have modified the U.P.C. provision. Colorado and Nebraska use the factors listed in the Model Rules of Professional Conduct as the criteria for determining the reasonableness of the attorney's fee.²⁵⁸ These factors include the time spent, skill required, customary fee, amount involved and experience of the attorney. Montana still has a statutory fee structure similar to Wyoming's for both the personal representative and the attorney. It sets a maximum fee for the personal representative based on a percentage of the estate value for federal tax purposes, and then sets the maximum fee for the attorney at one and one half times the fee allowable to the personal representative. ***329**²⁵⁹ The Utah statute provides criteria for the reasonableness of the personal representative's fees including the “quality, quantity and value” of the services and the customary fee for other similarly situated personal representatives.²⁶⁰ North Dakota does not provide guidelines for reasonableness of the fees. However, it does require that, when the fee is based on the value of the estate, a copy of a written fee agreement be sent to the heirs.²⁶¹

Idaho adopted the U.P.C. provisions without changes, authorizing payment of a reasonable fee.²⁶² Attorneys and personal representatives report that they use several factors to determine fees, including the size of the estate. Fifty-nine percent of the attorneys who responded to the survey reported that they set fees using an hourly rate adjusted for the size of the estate and the expertise required. Twenty-three percent used just an hourly fee. Fourteen percent used just a percentage of the estate value to set a fee, as under the fee schedule prior to adoption of the U.P.C.²⁶³ This is a rapid change from most Idaho lawyers using the percentage fee guidelines only four years earlier.²⁶⁴ The banks who served as personal representatives used an hourly rate or a rate for a specific job, “adjusted for such factors as complexity, liability exposure, expertise required, and type of management.”²⁶⁵ A study of Idaho estate accountings concluded that fees for attorneys and personal representatives had generally shifted to a fee based on services rendered. The study found the result was that “the larger the estate, the smaller the fee as a percentage of the estate.”²⁶⁶

Attorney fees and personal representatives commissions were a larger percentage of the smallest estates, after the U.P.C. was adopted, according to the Idaho study.²⁶⁷ This is important, since small estates are ***330** a significant part of the estates that are probated.²⁶⁸ The increase in fees in small estates, when the percentage fee guideline or statute is removed, is not too surprising. Some expenses may be incurred in all estates, no matter how small. Also, it may be that attorneys are not using all of the informal devices available under the Code for the smaller estates.²⁶⁹

A percentage fee system, like Wyoming's, probably does not adequately compensate lawyers and personal representatives for their work in small estates.²⁷⁰ The lawyers probating small estates in Wyoming may not be getting paid for all of the services provided. As Wellman puts it, “existing legal requirements in many areas not only irritate the public but complicate the settlement of quite modest estates to the point where someone, usually a lawyer, must work for very little or nothing if titles are to be cleared.”²⁷¹ The U.P.C. fees provision may more adequately compensate lawyers and personal representatives in small estates. In Idaho, institutional personal representatives, including those who were representing small estates, found the fee amounts

were more acceptable to clients than percentage fees.²⁷² The greatest benefit of the U.P.C. fee system may be “the replacement of an arbitrary fee system with an equitable one.”²⁷³

E. Protection for Heirs, Beneficiaries and Creditors

One protection for those with interests in the estate is the U.P.C.'s perjury provision. The U.P.C. addresses perjury in its general provisions. Under the general provision, the filing of any document under the U.P.C. is deemed to be an affirmation “that its representations are true as far as the person executing the document knows or is informed.”²⁷⁴ This provision is important since the informal appointment process in the U.P.C. grants significant power to the personal representative, relying solely on verified statements of the applicant. The applications for informal probate and appointment require significant information *331 about the decedent, the successors, and known wills.²⁷⁵ Deliberate falsification may lead to penalties for perjury, and is also cause for removal of the personal representative.²⁷⁶

Under another general provision, in Article I, anyone who commits fraud in connection with a proceeding is personally liable to any person injured. The injured person may obtain relief by filing an action within two years of discovering the fraud.²⁷⁷

For those with interests in the estate, even the informal processes include certain specific protections. Informal probate is not permitted if the decedent executed more than one will and earlier wills were not expressly revoked.²⁷⁸ Though notice is not generally required before an informal application, any person who has an interest in an estate can demand notice of all filings and orders, even informal proceedings, under the U.P.C.²⁷⁹ Also, before an informal appointment of a personal representative, notice must be given to those who have prior or equal right to appointment.²⁸⁰ Finally, informal proceedings are not a final adjudication of rights until three years have passed since death. Unless formal proceedings are invoked, the rights of the successors to the estate are finally decided only when three years have elapsed.²⁸¹

Any interested person may petition the court for formal testacy, formal closing, or a court-supervised administration, even if the personal representative prefers to proceed informally.²⁸² “Interested person” is broadly defined.²⁸³ If a formal petition for appointment or testacy is made, the informally appointed personal representative must stop administration *332 except to preserve the estate, or as the court orders.²⁸⁴ An interested party can also seek a narrower order stopping the personal representative from taking a particular action, or petition for removal of the informally appointed personal representative for cause.²⁸⁵ Note that neither of these actions would lead to ongoing court supervision unless that is also sought, and the court decides supervision is necessary.²⁸⁶ Also, a person who has an interest in the estate greater than \$1000 can file a demand with the registrar that the personal representative post bond.²⁸⁷

Finally, the interested party with broad concerns can seek a fully court-supervised administration. She can file a petition for supervised administration of the estate, which will prevent distributions without court order.²⁸⁸ This is a “single in rem proceeding to secure complete administration and settlement of a decedent's estate.”²⁸⁹ However, even under a supervised administration, the U.P.C. authorizes the personal representative to act without court involvement, except for making distributions.²⁹⁰ The court may impose additional restrictions on the personal representative, which must be endorsed on the letters of administration.²⁹¹

In comparing U.P.C. informal procedures with existing formal probate requirements, Wellman asks that we keep in mind the non-probate alternatives that are available, such as joint accounts and revocable trusts.²⁹² Joint accounts provide a particularly easy vehicle for those close to a decedent before his death to see that assets transfer directly with no formal process. As he puts it, we would not readily accept these probate substitutes if “family pressures and basic honesty” were not satisfactory safeguards in the usual situation.²⁹³ No notice to heirs or *333 likely beneficiaries is required for many techniques of wealth transmission at death, such as revocable trusts, life insurance trusts and joint tenancies.²⁹⁴ Wyoming's lack of anxiety about creditors in particular is shown by the relatively high \$150,000 limit on using affidavits to transfer title to assets after death. Wellman observes that creditors' protections in probate codes are not very important. “Decedents as a class are not a major concern of commercial creditors; advanced in years they generally leave little unsecured debt.”²⁹⁵ He notes that creditor groups

had showed no concern during a decade of debate about the U.P.C.'s probate procedure reforms.²⁹⁶ Besides, even with informal appointment and probate under the U.P.C., there is “some record of assumption of responsibility for control of assets.”²⁹⁷

IV. Comparison of Probate in States Other Than Decedent's Domicile

One goal of the U.P.C. is to unify administration for the estate that has property in different states.²⁹⁸ The probate procedure articles of the U.P.C. “eliminate the need for or advantage of separate administrations for portions of decedent's estate which happen to be located in various states.”²⁹⁹ The U.P.C. does this even though it defers to two traditional assumptions that have tended to prevent this:

The Code accepts the long-standing assumption that each state controls the law applicable to its land titles. Also, the Code assumes that creditors should not be deprived by death of a nonresident debtor of access to his property which is locally available to them (T)he code enables unified administration in spite of these assumptions which have served traditionally to prevent it.³⁰⁰

Wyoming procedure already includes some of the flexible principles of the U.P.C., for probate of the property of a decedent who is not domiciled in Wyoming. However, the Wyoming Code often does not spell out the particulars. For example, the U.P.C. has detailed provisions *334 that control transfers of property if the U.P.C. state is not the domiciliary jurisdiction, and provisions which coordinate probates in different states, if more than one probate is necessary.³⁰¹ Wyoming has neither.

In the 1980 Code, Wyoming incorporated the U.P.C. provision on the foreign personal representative's authority to act in Wyoming.³⁰² In Wyoming and under the U.P.C., when a decedent is not domiciled in the state, a personal representative appointed in the decedent's domicile may exercise all powers that a “local personal representative” could.³⁰³ I will call such a person the foreign personal representative. She has the same authority in Wyoming as if she were the resident personal representative, to collect and distribute decedent's property located in Wyoming.³⁰⁴

However, the same basic provision on the authority of the foreign personal representative has very different effects in Wyoming and in a U.P.C. jurisdiction, because of the rest of each jurisdiction's code. Under the U.P.C., the provision gives the foreign personal representative broad non-court supervised authority. However, in Wyoming, this same provision limits the foreign personal representative, from Colorado, for example, to the court supervision required by Wyoming statutes.

Generally, in a U.P.C. state, no court proceeding would be required even for the foreign personal representative to sell real property. Since the personal representative could sell property without court order if the decedent was a domiciliary, and since foreign personal representatives are authorized to do what domiciliary personal representatives can, formal probate would not be needed.³⁰⁵ The foreign personal representative need only file, with the U.P.C. state court where the property is located, authenticated copies of his appointment and of any bond given, to *335 be authorized to act.³⁰⁶ The foreign domiciliary personal representative may file an informal probate in the non-domiciliary state, to facilitate transfer of real estate title.³⁰⁷ However, even the informal probate does not require court involvement, as would be required in Wyoming to sell property.

In contrast, to sell Wyoming real property, unless the will expressly authorizes sale without court intervention, the foreign personal representative would have to go through a court-supervised procedure.³⁰⁸ Similarly, to make distributions of real property, a court order would be needed to transfer title.³⁰⁹ In other words, conferring on the foreign personal representative the powers of the local personal representative is conferring much less power in Wyoming than in a U.P.C. state.

Wyoming has a conflicts of law provision on probate of wills that is common among the states. It recognizes and probates wills that have been probated elsewhere.³¹⁰ Wyoming also has a summary administration procedure for estates that have been completely settled in another jurisdiction.³¹¹ It applies, however, only to estates having property in this state not exceeding \$150,000 in value. After the petitioner submits documents from the completed probate in another state, and gives notice by publication, and if no objection is made at the hearing, the out-of-state proceedings may be admitted as if the probate took place here.³¹²

***336** The U.P.C. has a broader provision than Wyoming for recognition of probate actions from a different state which is decedent's domicile, both those that are part of formal court proceedings and those that result from statutes of limitations. The U.P.C. state is required to give res judicata effect to final domiciliary adjudications, not only those regarding testacy, which Wyoming recognizes, but also domiciliary adjudications of will construction and validity.³¹³ Unlike Wyoming, the probate does not have to be complete. However, for the domiciliary decisions to be res judicata in a U.P.C. state, they must have included a finding that the decedent was domiciled in the state.³¹⁴ The proceeding in the court where res judicata is sought must provide notice and opportunity to be heard. Judgments for or against any personal representative in any jurisdiction bind the local personal representative.³¹⁵ Finally, under the U.P.C., if the creditor's claims are barred by the nonclaim statute in the domiciliary jurisdiction, they are barred in the other states, unless notice was published in the other state before the bar was effective in the domicile.³¹⁶ Therefore, a creditor's claim will be barred in the other state unless she files for probate and publishes notice quickly in the other state.

The foreign personal representative cannot act in Wyoming if a local administration is pending or in effect.³¹⁷ This provision is taken from the U.P.C.³¹⁸ This conflict is unlikely to occur in a jurisdiction that has adopted the U.P.C. because an administration in a jurisdiction other than the decedent's domicile is unlikely.³¹⁹ Under both codes, if a local ***337** administration is filed, third persons are protected who previously dealt with the foreign personal representative and had no notice of the local administration.³²⁰ Also, the local personal representative steps into the shoes of the foreign personal representative as far as actions the foreign personal representative has already taken.³²¹

The U.P.C. does provide tools for those interested persons who want the court to be more involved, in any jurisdiction where the decedent owned property. Subject to the res judicata provisions, those who are interested in the estate, as defined by the Code, can petition in any such jurisdiction for formal probate, appointment or closing; or supervised administration; or for other proceedings authorized by the U.P.C.³²²

However, under the U.P.C., the personal representative appointed in the decedent's domicile has priority as personal representative in an administration in another state, and can have anyone else removed who has been appointed.³²³ Also, the personal representative from the domicile is the only one who can do an informal probate in the other state.³²⁴

The U.P.C. provides a procedure for the foreign personal representative to use an affidavit to collect property in other states.³²⁵ Those who transfer such property in good faith to the foreign personal representative are protected, unless resident creditors notify them not to transfer the property.³²⁶ The Wyoming affidavit procedure cannot be used by foreign personal representatives, though it can be used by nonresident distributees, and the personal representative may also be a distributee.³²⁷

***338** The Wyoming procedure also has a \$150,000 limit, which the U.P.C. affidavit procedure does not.³²⁸

In another provision with no counterpart in the Wyoming Code, the U.P.C. gives the state court broad personal jurisdiction over foreign personal representatives. For example, if the decedent would have been subject to personal jurisdiction in the state, the foreign personal representative is also subject to such jurisdiction.³²⁹ Also, jurisdiction is explicitly extended on a long-arm basis. If the state would have personal jurisdiction over the foreign personal representative as an individual, it has jurisdiction over her as a personal representative.³³⁰ Also, state courts have jurisdiction over the foreign personal representative if she has filed her appointment in the U.P.C. state.³³¹

Wyoming and the U.P.C. have different arrangements for serving the foreign personal representative. In Wyoming, the personal representative must designate a resident bank or trust company to act as agent for service.³³² The U.P.C. provides various methods for serving a foreign personal representative, including certified mail.³³³

The U.P.C. also explicitly coordinates simultaneous probates in different states if they do occur. As would be expected with a Uniform Law, the U.P.C. provides for coordination between the two probates. If the estate is solvent, the general rule is that the personal representative in another state must distribute all assets to the domiciliary personal representative.³³⁴ One significant

exception is when the will or choice of law requires that the law of the state where the property is located control as to who receives the property.³³⁵ Another exception would apply only when there is a formal closing in the other jurisdiction. Then, the court *339 in the other jurisdiction may order a distribution other than to the domiciliary personal representative.³³⁶

When the estate in the U.P.C. state is insolvent, or the estates in both states combined are insolvent, the personal representatives together must assure that family protections are met, and coordinate payment of creditor claims.³³⁷ This provision has the effect of “subjecting all assets of the decedent, wherever they may be located and administered, to claims properly presented in any local jurisdiction.”³³⁸ The two personal representatives must coordinate payment of claims on a pro rata basis, adhering to the priority of claims.³³⁹

V. Conclusion

This article has examined Articles III and IV, the procedural parts of the U.P.C. These parts contain the two guiding principles of the U.P.C. First, the amount of probate process required should depend on the needs of those involved and the conflict over the estate. The second related principle is that the duly appointed personal representative should have the same authority to act that a trustee has, without court supervision, unless those involved in the estate seek such intervention.

Articles III and IV may seem complex to the reader. This is hard to avoid in a procedural system designed to give the estate choices, among levels of formality, at each stage of the probate process. However, the U.P.C. was designed, after careful study by practitioners, as a complete procedural system. Its use over the last two to three decades in many states, including all states contiguous to Wyoming except South Dakota, has shown few problems in Articles III and IV. Those problems have been corrected with a few discreet amendments and these articles of the U.P.C. are generally in the same form as when originally approved in 1969.³⁴⁰

Over twenty-five years have passed since Governor Herschler vetoed Wyoming's attempts to adopt the U.P.C. substantially as a whole. Though the legislature later revisited the probate code, it picked sections here and there from the U.P.C. and omitted essential parts. It is now time *340 for the Wyoming Legislature to reconsider adopting the U.P.C. It is important, however, that the Legislature adopt all or most of Articles III and IV, rather than picking and choosing specific provisions.³⁴¹ These two articles form a carefully thought out system of integrated probate procedure. The advantages to such a system are significant. It would likely reduce the time and expense of the probate process in Wyoming for most estates. It would also eliminate or reduce the need for revocable trusts whose intent is to avoid probate, and it would make Wyoming's procedures very similar to those of most states in the region. Lastly, ambiguities that require one to guess about how to proceed are likely to be few in a Uniform law, if it is adopted as a whole, not piecemeal.

*341 Appendix

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Footnotes

a1 Ann Bradford Stevens is a Professor of Law, University of Wyoming College of Law. J.D. 1976, Yale University; L.L.M. in Taxation, 1997, University of Washington. This article was supported in part by the George Hopper Faculty Research Fund. The author would also like to thank Gay George, Mistee Godwin, and Erika Olson for their valuable research.

1 Uniform Probate Code Approved by Council, 4 Real Prop. Prob. & Tr. J. 206, 207 (1969).

2 Id.

3 Id.

4 Id.

5 Richard V. Wellman & James W. Gordon, *The Uniform Probate Code: Article III Analyzed in Relation to Changes in the First Nine Enactments*, 1975 *Ariz. St. L.J.* 477, 478.

6 Richard V. Wellman, *Lawyers and the Uniform Probate Code*, 26 *Okla. L. Rev.* 548, 551 (1973) (footnote omitted) (hereinafter *Wellman, Lawyers*); see also Malcolm A. Moore, *Estate Planning Opportunities Which May Be Possible Under the Uniform Probate Code*, 1 *Estate Planning* 83, 88 (1974). See generally *Wellman, Lawyers, supra*, at 551 n. 10 for additional sources on the evolution of the Uniform Probate Code (U.P.C.).

7 *Wellman & Gordon, supra* note 5, at 486.

8 Richard V. Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 *Conn. L. Rev.* 453 (1970) (hereinafter *Wellman, Blueprint*).

9 Unif. Probate code § 1-101 historical notes (amended 1999), 8 *U.L.A. Part I* 1 (1998) (hereinafter *U.P.C.*).

10 *Association's House of Delegates Meets in Dallas, August 11-13*, 55 *A.B.A. J.* 970, 976 (1969).

11 *U.P.C. § 1-101 tbl. (amended 1999)*, 8 *U.L.A. Part I* 1 (1998) (indicating that the U.P.C. was adopted by Idaho in 1971, Colorado and North Dakota in 1973, Montana and Nebraska in 1974, and Utah in 1975).

12 *H.B. 44, 1975 Leg., 30th Session (Wyo. 1975)*.

13 Letter from Hon. Ed Herschler, Governor of Wyoming, to Hon. Thyra Thomson, Secretary of State of Wyoming 1-2 (Mar. 14, 1975) (on file with Wyoming Secretary of State's Office). The Wyoming Legislature passed the Uniform Probate Code again in 1977. Senate File 10, 44th Legislature, 1977 Session. Governor Ed Herschler again vetoed the Act. See Letter from Hon. Ed Herschler, Governor of Wyoming, to Honorable President and Members of the Senate, Forty-Fourth Legislature (Feb. 26, 1977) (on file with Wyoming Secretary of State's Office). The attempt in the Senate to override the veto failed on a vote of 18-12. *Wyoming Digest of Senate Journal, 44th State Legislature*, p. 32 (1977).

14 *Probate Code, 1979 Wyo. Sess. Laws* 142.

15 *Probate Code, 1980 Wyo. Sess. Laws* 54.

16 Lawrence H. Averill, Jr., *The Wyoming Probate Code of 1980: An Analysis and Critique*, 16 *Land & Water L. Rev.* 103, 106 (1981).

17 *Id.* at 108.

18 See *id.* app. I at 392-94 (indicating in all but two of the 1980 changes to *Wyo. Stat. Ann.* title 2, chapter 7--which contains the bulk of probate administration statutes--that the source of the change was the Iowa Probate Code).

- 19 Id. app. I at 389-94. For example, the 1980 Code included the self-proving affidavit section from the U.P.C. Compare Wyo. Stat. Ann. § 2-6-114 (LexisNexis 2001) with U.P.C. § 2-504 (amended 1999), 8 U.L.A. Part I 148 (1998). The 1980 Code also contained the U.P.C. provision on half-blood intestate heirs. Compare Wyo. Stat. Ann. § 2-4-104 (LexisNexis 2001) with U.P.C. § 2-107 (amended 1999), 8 U.L.A. Part I 87 (1998). It further included, with modifications, the antilapse statute for will bequests from the U.P.C. Compare Wyo. Stat. Ann. § 2-6-106 (LexisNexis 2001) with U.P.C. § 2-603(b) (amended 1999), 8 U.L.A. Part I 165 (1998). Also, Wyoming has adopted some additional provisions from the U.P.C. since 1980. For example, in 1987, the Wyoming Legislature added Wyo. Stat. Ann. § 2-6-124 (LexisNexis 2001), authorizing a written statement on personal tangible items that can be changed without changing the will, taken from U.P.C. § 2-513 (amended 1999), 8 U.L.A. Part I 158 (1998). And in 1993, the legislature adopted the Uniform TOD Security Registration Act, Wyo. Stat. Ann. §§ 2-6-101 to-112 (LexisNexis 2001), from the U.P.C. §§ 6-301 to-310 (amended 1999), 8 U.L.A. Part II 449 (1998).
- 20 See discussion *infra* Part II.B. This provision was recently amended, 2002 Wyo. Sess. Laws 60. Compare Wyo. Stat. Ann. §§ 2-1-201 &-202 (LexisNexis 2001) with U.P.C. §§ 3-1201 &-1202 (amended 1999), 8 U.L.A. Part II 307 (1998).
- 21 Averill, *supra* note 16, at 178-79. Few significant changes have been made since Averill wrote this in 1981. See *infra* note 114. Lawrence H. Averill, Jr., was formerly on the faculty of the University of Wyoming College of Law and is the author of Uniform Probate Code Nutshell (5th ed. West Group) and many other articles on the U.P.C.
- 22 See Appendix for brief description of those in Washington and Texas.
- 23 *Supra* note 11. The U.P.C. has been effective in South Dakota for seven years. *Infra* note 79.
- 24 Wellman, Lawyers, *supra* note 6, at 548. The report of the Maine Probate Law Revision Commission to the legislature, when it recommended adoption of the U.P.C., noted the change in attitude of the Commissioners “from one of early skepticism about the Uniform Probate Code to one of acceptance and enthusiastic endorsement.” Maine Probate Law Revision Commission, Report to the 109th Maine Legislature and Summary of the Commission's Study and Recommendations Concerning Maine Probate Law 5-6 (Sept. 1978) (unpublished report, on file with author).
- 25 Wellman, Lawyers, *supra* note 6, at 549.
- 26 *Id.* at 554.
- 27 *Id.* According to the Practice Manual,

(T)he UPC largely draws upon the more useful tools found in the laws of the varying states (and in some instances, the law of England) . . . (I)t is by and large a composite of what the Commissioners and Reporters found to be the better procedures and tools available to practitioners in different states, unified in such a manner as to constitute an interrelating, workable Code.

Robert R. Wright, Preface to the First Edition of 1 Uniform Probate Code Practice Manual, at xi, xii (Richard V. Wellman ed., 2d ed. 1977).
- 28 Wellman & Gordon, *supra* note 5, at 486 (footnote omitted).
- 29 Wellman, Blueprint, *supra* note 8 at 463. In Pennsylvania, a limited power magistrate can initiate administration and it does not need to be closed by court order. *Id.* at 466. The Pennsylvania personal representative has no duty to return to the magistrate and has obligations like those of a trustee. *Id.* at 471. New Jersey also had a “generous” opportunity for independent administration at the time the U.P.C. was drafted. *Id.*

- 30 Wellman & Gordon, *supra* note 5, at 525. By pages, Article III is forty percent of the Code, with comments. *Id.* The other general categories covered by the U.P.C. are Property Protection for Disabled Persons, Non-Probate Transfers at Death, and Jurisdiction of Trusts. Wellman, *Lawyers*, *supra* note 6, at 551. Other aspects of transfer of property at death covered by the U.P.C. include intestate succession rules, elective share, exempt property, and wills (formation and interpretation), all in Article II. U.P.C. art. II (amended 1999), 8 U.L.A. 76 (1998).
- 31 Wellman & Gordon, *supra* note 5, at 553.
- 32 Wellman, *Blueprint*, *supra* note 8, at 472 & n.70.
- 33 This article does not discuss one part of Article III, Universal Succession. In 1982, the U.P.C. was amended to include this informal process in which intestate heirs, or residuary beneficiaries of a will, together apply to the Registrar and agree to be personally liable to creditors, and for proper distributions. U.P.C. §§ 3-312-22, 8 Part II U.L.A. 5 (1998). If the application is approved, a statement is issued that is evidence of title. U.P.C. § 3-315, 8 U.L.A. Part II 70 (1993). The procedure was taken from civil law. Prefatory Note, *Succession Without Administration*, 8 U.L.A. Part II 65 (1998). So far, no states have adopted these provisions. 8 U.L.A. Part II 5 (1998). The Wyoming summary procedure where the executor is also the only heir is somewhat like Universal Succession, in that the administration ends at an early stage and the heir assumes liability. However, the Wyoming procedure involves notice, bond, inventory, appraisal, and a court hearing. See *infra* text accompanying note 130.
- 34 I will also describe parts of Article I, which includes a few general provisions and definitions that are essential to Articles III and IV.
- 35 See Moore, *supra* note 6, at 87. To Wellman, the root of probate complications is that routine probate is seen as the business of the court. Wellman, *Blueprint*, *supra* note 8, at 462.
- 36 U.P.C. § 3 Gen. Cmt., 8 U.L.A. Part II 26 (1998).
- 37 Terry L. Crapo, *The Uniform Probate Code—Does It Really Work?*, 1976 *BYU L. Rev.* 395, 398 (1976). As Wellman put it, the procedure provisions of the U.P.C. allow survivors and their lawyers to “select among several available settlement procedures with an eye to finding the desirable balance of safety and efficiency.” Wellman, *Blueprint*, *supra* note 8, at 476.
- 38 U.P.C. § 3-204, 8 U.L.A. Part II 53 (1998) (amended 1999).
- 39 See *infra* U.P.C. Section Part E, *Protections*.
- 40 James W. Gordon, *Note, Flexibility, The Uniform Probate Code's Procedural Article, and Some Comparisons with Kentucky Statutes*, 62 *Ky. L.J.* 1083, 1087 (1974).
- 41 U.P.C. § 3-501, 8 U.L.A. 302 (1993).
- 42 Wellman, *Blueprint*, *supra* note 8, at 494. Thus, the administration can be as efficient as transfer at death through a revocable trust. *Id.* at 488. He points out two differences that give greater protection to interested parties in a U.P.C. informal probate than in a revocable trust. First, the personal representative's authority is a matter of public record, and second, the personal representative submits to the court's jurisdiction. *Id.* at 494.

- 43 Id. at 492. U.P.C. § 3-712 makes a direct analogy to a trustee. U.P.C. § 3-712, 8 U.L.A. Part II 37 (1998).
- 44 See *infra* text accompanying notes 204-208.
- 45 U.P.C. § 3-105, 11 U.L.A. 257 (1993).
- 46 Wellman, *Blueprint*, *supra* note 8, at 469. It may be that in some states when property has been distributed and the recipients are satisfied, probate procedures, such as formal closing, are simply ignored. *Id.* at 471-72. A local example of apparent protections in the statute that are not real is the requirement of a hearing before a will is probated. The statute says the clerk or court “may hear (the petition) forthwith” and the section is headed “Hearing Upon Petition . . .” Wyo. Stat. Ann. § 2-6-203 (Lexis 2002). Despite this, I understand that at least in Albany County no hearing is generally held.
- 47 Wellman, *Blueprint*, *supra* note 8, at 469. Wellman describes it as the court “adding its blessing” to what lawyers and personal representatives do. *Id.*
- 48 *Id.* at 498.
- 49 *Id.* at 469.
- 50 *Id.*
- 51 Soon after the ABA adopted the U.P.C., one commentator predicted that the use of revocable trusts and other probate avoidance devices would decline and the use of wills and probate would increase after adoption of the U.P.C. Moore, *supra* note 6, at 83. He predicted that the devices will only be used when they have another purpose. *Id.* at 87. I found no data on whether this has actually happened where the U.P.C. has been adopted, though it is clear revocable trusts are still used by many.
- 52 Fredrick J. Tansill, *Are Revocable Trusts Oversold and Overused? Practical Nontax and Tax Considerations in the Use of Revocable Intervivos Trusts--Part 1*, 23 *Tax Mgmt. Est. Gifts & Tr. J.* 239, 243 (1998). Judy Lee, *New Hawaii Uniform Probate Code*, *Haw. B.J.* *6 (March, 1998). Also, problems are created with do-it-yourself probate avoidance. Wellman, *Lawyers*, *supra* note 6, at 555-56.
- 53 Clinton B. Kruse, Jr., *Twenty-Six Reasons for Caution in Using Revocable Trusts*, 21 *Colo. Law.* 1131 (1992).
- 54 *Id.* He points out that Colorado probate is an office procedure very similar to revocable trust administration. *Id.*
- 55 Howard B. Solomon, *Revocable Trusts--A Contrarian's Viewpoint*, 68 *N.Y. St. B.J.* 34, 35 (1996). Revocable trusts will not likely shorten the total duration of the process of winding up the decedent's affairs in an estate that is subject to estate tax. The closing letter from the IRS will likely not be received for a year to two years after the death, whether the assets are distributed from a formerly revocable trust or through a will. *Id.* at 36. From personal experience, another problem is with settlors who do not understand what they have done when they create revocable trusts, and proceed to transfer assets without doing so in the name of the trust.
- 56 Tansill, *supra* note 52, at 241. Tansill contends that the vast majority of clients do not care about confidentiality. *Id.* He advises attorneys not to presume that confidentiality is important to the client. *Id.*

- 57 U.P.C. S3-301(a)(2)(i), 8 U.L.A. Part II 56 (1998).
- 58 Solomon, *supra* note 55, at 36.
- 59 U.P.C. §§ 3-301, 8 U.L.A. Part II 55-6 (1998); U.P.C. §§ 3-1003(a), 8 U.L.A. Part II 56 294-95 (1998). The sworn statement closing the estate states that the personal representative has performed his duties, but does not require details particular to the estate. *Id.*
- 60 U.P.C. § 3-706, 8 U.L.A. Part II 152 (1998).
- 61 John R. Price, *Price on Contemporary Estate Planning* § 10.12, at 1079 (2d ed. 2000).
- 62 See *infra* notes 302-13 (comparing U.P.C. and Wyoming Statutes).
- 63 U.P.C. § 3-302 8 U.L.A. Part II 58 (1998).
- 64 *Id.* § 3-306. Of course, the possible shorter administration of the U.P.C. processes depends on the estate having good legal counsel on how to proceed. See Tansill, *supra* note 52 at 243. Revocable trusts are often advocated as a way to plan for your possible disability. Even for this purpose, another devise may be preferable. A durable power of attorney, that authorizes the creation of a revocable trust if necessary, may be a better option. *Id.* at 242-43. If the person is competent until death, the revocable trust will not go into effect, nor will property be transferred to it. Even if the client becomes incompetent, if the durable power of attorney is accepted by third parties as authority for the holder to act on behalf of the incompetent person, the revocable trust may not be needed. The holder can simply act under the durable power of attorney. *Id.*
- 65 Kruse, Jr., *supra* note 53.
- 66 26 U.S.C. § 2038 (1994).
- 67 *Id.* § 671-679.
- 68 Any trust interests of the settlor are available to creditors, to the extent the trustee could pay them to the settlor or for his benefit. Restatement (Second) of Trusts § 156(2) (1987). The power to revoke is sometimes equated to ownership of the corpus of the trust in applying the beneficial interest rule of the restatement. Ohio Rev. Code Ann. § 1335.01; see also Kan. Stat. Ann. § 58-2414 (2001). The majority of states that have ruled on this issue also apply this restatement rule after death. *Phillips v. Roe*, 580 N.W. 2d 810, 812 (Iowa 1998). See also Iowa Code Ann. § 633.3104(1)(West 2000). The comment to the draft of the Restatement (Third) of Trusts states, regarding revocable trusts, “property held in the trust is subject to the claims of creditors of the settlor or of the deceased settlor’s estate if the same property belonging to the settlor or the estate would be subject to the claims of the creditors, taking account of homestead rights and other exemptions. This result is not dependent on the trust being ‘illusory’ or ‘testamentary,’ or on the transfer being a fraudulent conveyance, but is based on the sound public policy of basing the rights of creditors on the substance rather than the form of the debtor’s property rights.” Restatement (Third) of Trusts § 25 cmt. to subsection 2, (e) (Tentative Draft no. 1, 1996). In 1998, a section was added to the U.P.C. making nonprobate transfers liable to creditors, including transfers that are effective at death from trusts, if the estate is not sufficient to meet creditors’ claims. U.P.C. § 6-102, 8 U.L.A. Part II 133 (Supp. 2001). Transfers to a revocable trust can also be invalidated as fraudulent transfers. Restatement (Second) of Trusts § 63(1) (1987). Wyoming has adopted the Uniform Fraudulent Conveyance Act. See Wyo Stat. Ann. §§ 34-14-101 to 34-14-113 (LexisNexis 2001). Under this Act, transfers that cause insolvency, or that were intended or expected to defraud creditors or cause insolvency, can be set aside. *Id.* §§ 34-14-105, 34-14-107, 34-14-108.

- 69 Kruse, *supra* note 53, at 1132.
- 70 Price, *supra* note 61, § 10.15, at 1082. This difference in cost may be partly offset by the deductibility of the fees for creating the trust. *Id.*
- 71 Solomon, *supra* note 55, at 35.
- 72 Price, *supra* note 61, § 10.13, at 1080-81.
- 73 Nathaniel W. Schwickerath, Note, Public Policy and the Probate Pariah: Confusion in the Law of Will Substitutes, 48 Drake L. Rev. 769, 803 (2001). See also Van Foreman McClellan, Note, Inter Vivos Transfers: Will They Stand Up Against the Surviving Spouse's Elective Share?, 14 Okla. City U. L. Rev. 605 (1989).
- 74 Schwickerath, *supra* note 73, at 803.
- 75 Wyo. Stat. Ann. § 2-5-101 (LexisNexis 2001). The Wyoming Supreme Court declined to decide whether the elective share should apply to revocable trusts. See *Briggs v. Wyo. Nat'l Bank*, 836 P.2d 263, 265. (Wyo. 1992). The dissent believed the court should have decided the issue. *Id.* at 267. Colorado, through its version of the U.P.C., provides that the elective share applies to revocable trusts, even those executed in other states. Colo. Rev. Stat. § S 15-11-201, 15-11-202 (2001).
- 76 Two frequent promoters of revocable trusts advocate their use as a device to avoid the spouse's elective share in some jurisdictions. Robert Esperti & Renno L. Peterson, *The Living Trust Revolution: Why America is Abandoning Wills and Probate*, 221-25 (Viking 1992).
- 77 The U.P.C. addresses the problem of revocable trusts being used to avoid the possible elective share, in Article 2. U.P.C. § 2-205(2)(ii) 8 U.L.A. Part I, 106 (1998). It adds the trust assets to the augmented estate, the amount used to determine the elective share. *Id.* § 2-202(a).
- 78 Roger A. Cunningham et al., *The Law of Property*, § 11.3 (2d ed. 1993). Wellman points out that the burdens of traditional probate encourage the use of secret arrangements to redistribute property after death. Wellman, *Lawyers*, *supra* note 6, at 555-56.
- 79 See *supra* note 11. South Dakota adopted the U.P.C. in 1975 but then immediately repealed it on July 1, 1976. 76 S.D. Laws House Bill No. 705 (1st Sess.); see also Wellman & Gordon, *supra* note 5. South Dakota adopted the U.P.C. again in 1994, which became effective in 1995. S.D. Codified Laws §§ 29A-1-101 through 29A-8-101 (Michie 2001). Other states that have adopted the code are Alaska, Arizona, Florida, Hawaii, Maine, Michigan, Minnesota, New Mexico, North Dakota and South Dakota. U.P.C., 8 U.L.A. Part I, 79 (1998).
- 80 See *supra* note 11.
- 81 Wellman & Gordon, *supra* note 5, at 526.
- 82 Mont. Code Ann. § 72-3-801 (2001).
- 83 *Id.* § 72-3-805 (2001).

- 84 Utah Code Ann. § 75-3-718 (2001).
- 85 Id. § 75-3-603.
- 86 Id. § 75-2-404.
- 87 U.P.C. § 3-108 & amendment note; 8 U.L.A. Part II, 42-43 (1998). Neb. Rev. Stat. Ann. § 30-2408 (Michie 2001); Utah Code Ann. § 75-3-106 (2001); Mont. Code Ann. § 73-3-129 (2001).
- 88 Wellman, *Lawyers*, supra note 6, at 549 (noting N. Dancy, *How to Avoid Probate* (1965) and other publications).
- 89 Id. at 550.
- 90 Id. at 551.
- 91 Terry L. Crapo, *The Uniform Probate Code - It Still Works in Idaho*, 1979 *BYU L. Rev.* 343, 361 (1979).
- 92 1971 Idaho Sess. Laws ch. 111 at 233-34, codified at Idaho Code § 15 (Lexis 2001).
- 93 Crapo, supra note 91 at 361.
- 94 Id.
- 95 Crapo, supra note 37, at 398.
- 96 Id. at 399.
- 97 Crapo, supra note 91 at 360.
- 98 See supra notes 11 and 79.
- 99 Crapo, supra note 37, at 406. The benefits are not because Idaho had a very restrictive probate procedure before it adopted the U.P.C.. Crapo describes prior Idaho probate process as a “reasonably modern probate system.” Id. For example, it included a summary process to resolve estates in three situations, where the decedent had died over two years ago, where the only heir was a surviving spouse, and where the estate had a value of under \$1500. Id. at 396 n.3.
- 100 Crapo, supra note 37, at 398. In this survey, 470 questionnaires were sent out after trying to eliminate those of the 1015 attorneys registered with the Idaho bar who probably do not do probate. The survey had a return rate of 58.5%, or 275. Id. at 396 n.4. The survey showed an age differential similar to the one just described in the text on the question of whether the U.P.C. reduced the administration time. Id. at 399. Administration time may be measured in two different ways. For example, Crapo pointed out that administration of taxable estates may require less hours, though the final closing may not occur sooner, since the estate tax liability must be settled first. Crapo, supra note 91, at 358.
- 101 Crapo, supra note 37, at 412.

- 102 Idaho Code S15-1107 (Michie pre-U.P.C.). See Crapo, *supra* note 37, at 395, n.2, for the fee schedule.
- 103 Crapo, *supra* note 37, at 402 n.17 (citing the Idaho State Bar Deskbook (July 1971)).
- 104 Crapo, *supra* note 91, at 348.
- 105 U.P.C. §§ 3-715(18)-(21), 8 U.L.A. Part II, 170, § 3-721, 8 U.L.A. Part II, 204-05 (1998). This means that the fees will often not be part of the court record, which makes it difficult to study them. Lee, *supra* note 52, at 5.
- 106 Crapo, *supra* note 91, at 344. For his data on fees, Crapo relies on Kinsey, A Contrast of Trends in Administrative Costs in Decedent's Estates in a Uniform Probate Code State (Idaho) and a Non-Uniform Probate Code State (North Dakota), 50 N.D. L. Rev. 523, 524-25, 527 (1974).
- 107 Crapo, *supra* note 37, at 404. Fifty seven point six percent of lawyers believed that fees had been reduced due to the U.P.C. procedures. *Id.*
- 108 *Id.* See Crapo, *supra* note 91, at 348. For 1974-77, the average attorney fee was 2.4% of the estate, for the 844 estate accountings examined. *Id.* at 346 Table-1.
- 109 *Id.* at 348. For 1974-77, the average fee was 51% below the average fee in 1971. *Id.*
- 110 Wellman, Lawyers, *supra* note 6 at 555. Wellman also points out that lawyers' overall probate revenue may go up because they are receiving a reasonable fee for small estates. See *infra* text accompanying notes 267-273.
- 111 I hope the article can also serve as a partial reference on changes made to Article III of the U.P.C. by states adopting it. The Uniform Laws Annotated expressly does not attempt to provide that information. Variations from Official Text, 8 U.L.A. Part I, 24 (1998). The only resource with significant such information that I found was the Wellman & Gordon article, which was published in 1975! Wellman & Gordon, *supra* note 5.
- 112 1890-91 Wyo. Sess. Laws 70 at 243-304. (Lawrence H. Averill, Wyoming's Law of Decedent's Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code--Part 1, 7 Land & Water L. Rev. 169, 173 n.20 (1972)).
- 113 Averill, *supra* note 16, at 173.
- 114 For example, in the most important chapter for this article, Chapter 7, Administration of Estates (which is 43 pages in the current annotated code), the only significant changes since the 1980 Code are a 1981 shortening of the time to file an inventory when the elective share is involved, Wyo. Stat. Ann. S2-7-403 (LexisNexis 2001); a 1981 provision allowing the court to close an estate on its motion, Wyo. Stat. Ann. § 2-7-815 (LexisNexis 2001); a 1981 and 1985 loosening of the appraisal requirements, Wyo. Stat. Ann. § 2-7-404 (LexisNexis 2001); a 1987 provision to allow additional fees to the personal representative and the attorney when the statutory fees are "not equitable", Wyo. Stat. Ann. § 2-7-803 to 804 (LexisNexis 2001); 1989 changes in notice to creditors, Wyo. Stat. Ann. §§ 2-7-205, 7-703 (LexisNexis 2001); and a 1989 prohibition of the discharge of a personal representative until takes are paid and certain evidence of that is presented, Wyo. Stat. Ann. § 2-7-812 (LexisNexis 2001).
- 115 Wyo. Stat. Ann. § 2-4-211 (LexisNexis 2001).

- 116 Id. § 2-4-212. This is a special statute of limitations and an absolute bar to creditors claims. *Kuntz v. Kinne*, 395 P.2d 286, 288 (Wyo. 1964).
- 117 Wyo Stat Ann § 2-4-212 (LexisNexis 2001).
- 118 For example, if the creditor had a written contract with the decedent, the statute of limitations is ten years after the cause of action accrues. Wyo. Stat. Ann. § 1-3-105(a)(i) (LexisNexis 2001). Any custodian of a will must file it with the clerk of court within ten days after he knows of the death. Wyo. Stat. Ann. § 2-6-119 (LexisNexis 2001). The apparent requirement in the Wyoming statute that the personal representative petition for probate of the will within thirty days of knowledge of the death and knowledge that he is executor, simply permits someone else to file, if the personal representative does not act. Wyo. Stat. Ann. § 2-6-202 (LexisNexis 2001)
- 119 Id. § 2-7-402.
- 120 Id. § 2-1-201. 2002 Wyo. Sess. Laws 60.
- 121 Averill, *supra* note 16, app. I at 389. This was added in the 1980 Code. Id. at 157 n.224. In the U.P.C., the limit is \$5,000, though that was approved in 1969. U.P.C § 3-1201 8 U.L.A. Part II, 307 (1998). Interestingly, the Wyoming dollar limit is much higher than any in the region for transfers by affidavit. Four states have a \$25,000 limit. Idaho Code § 15-3-1201 (Michie 2001); Neb. Rev. Stat. § 30-24-125 (2001); Utah Code Ann. § 75-3-1201 (2001); and S.D. Codified Laws § 29A-3-1201 (Michie 2001). The limit is \$27,000 in Colorado, Colo. Rev. Stat. Ann. § 15-12-1201 (West 2001), and \$20,000 in Montana, Mont. Code Ann. § 72-3-1101 (2001), and Nevada, Nev. Rev. Stat. § 146.080 (2001). The limit is \$15,000 in North Dakota, N.D. Cent. Code § 30.1-23-01 (2001). All of these except Nevada have adopted the U.P.C. so they have the informal appointment and probate available for small estates. This probably explains why the dollar amount has stayed low in these states. Washington, Oregon and California, states that have not adopted the U.P.C., have limits closer to Wyoming's limit. Wash. Rev. Code § 11.62.010 (2001); Or. Rev. Stat. § 114.515 (2001); Cal. Prob. Code § 13101(a)(5) (West 2001). There is no protection for creditors in these affidavit procedures, which may also explain their low dollar limits in many jurisdictions. Informal probate under the U.P.C. has more protection for creditors and other beneficiaries. See *infra* Part E of the U.P.C. Section.
- 122 Wyo. Stat. Ann. § 2-1-202 (LexisNexis 2001).
- 123 2002 Wyo. Sess. Laws 60.
- 124 Wyo. Stat. Ann. § 2-6-122 (LexisNexis 2001). “(T)here shall be no delay in the hearing, unless good cause appears.” Id. There is also a procedure for simply filing a will which requires a petition and mailed notice, id. § 2-6-121, though I do not see its usefulness.
- 125 Wyo Stat Ann § 2-6-122 (LexisNexis 2001).
- 126 Id. § 2-6-203.
- 127 Id. § 2-6-122(c).
- 128 Id. § 2-6-209. Averill discusses the uncertainty about the appeal of such an order. Averill, *supra* note 16, at 168-69.

- 129 Wyo. Stat. Ann. § 2-6-122(d) (LexisNexis 2001). After using this procedure to probate the will and limit any will contest, the beneficiaries could use the affidavit procedure with more confidence, as a way to transfer personal property, if the estate value was \$150,000 or less.
- 130 *Id.* § 2-11-301. This provision seems to be misplaced. In 1980, it was added to the chapter on Foreign Wills. Averill, *supra* note 16, at 161 n.244. However, the language of the provision is not limited to foreign wills. See § 2-11-301. Averill also points out that to qualify to use this procedure, all beneficiaries of an estate other than the residuary beneficiary could disclaim their interests. Averill, *supra* note 16, at 162. However, the residuary beneficiary would have to be the executor named in the will. *Id.*
- 131 Wyo. Stat Ann § 2-7-505 (LexisNexis 2001). This procedure existed before the 1980 Code but was “exposed and revitalized” by that Code. Averill, *supra* note 16, at 160. The main exempt property would be that covered by the \$30,000 homestead exemption. Wyo Stat Ann § 2-7-508 (LexisNexis 2001).
- 132 *Id.* S2-7-505. The U.P.C. has a similar procedure. See U.P.C. §§ 3-1203 &-1204 8 U.L.A. Part II, 309-10 (1998) (amended 1999). No notice to creditors is required, and the personal representative may use the informal closing process. See *infra* text accompanying notes 226-32.
- 133 Wyo. Stat. Ann § 2-1-205 (LexisNexis 2001). 2002 Wyo. Sess. Laws 60.
- 134 *Id.*
- 135 *Id.* S2-9-201.
- 136 *Id.* S2-9-202 &-203.
- 137 *Id.* § 2-6-201.
- 138 *Id.* § 2-6-202. Apparently, in practice, a hearing is not usually required in Wyoming, at least in Albany County.
- 139 *Id.*
- 140 Wyo. Stat. Ann. §§ 2-4-205-211 (LexisNexis 2001). I am inferring from this statute on appointment in intestate cases that no pre-hearing notice is required, because no requirement is stated. The administrator can be appointed immediately, it appears. Where the decedent dies testate, the appointment of the executor is a part of the petition for probate. See *Id.* §§ 2-6-201 & 208. The procedure in § 2-6-203 to probate a will without pre-hearing notice is similar to the informal probate under the UPC. See Wyo. Stat. Ann. § 2-6-203 (LexisNexis 2001). See *infra* text accompanying notes 186-192. See also Averill, *supra* note 16, app. I at 391 (S 2-6-203 existed, in part, before the 1980 code and was partly taken from the Iowa Probate Code). The concept is a return to the “common form probate” that was the one of the first probate procedures brought from England to the early colonies. Wellman, *Blueprint*, *supra* note 8, at 463 (citing Lewis M. Simes, *The Function of Will Contests*, 44 Mich. L. Rev. 503 (1946)). Under common form probate, proof of wills and appointment was to be made without prior notice or other delay. Wellman, *Blueprint*, *supra* note 8, at 463.
- 141 Wyo Stat Ann §§ 2-3-102 & 111 (LexisNexis 2001). Averill points out the ambiguities and the problems raised by the latter provision on waiver by the distributees. Averill, *supra* note 16, at 172.

- 142 Wyo. Stat. Ann. § 2-7-201 (LexisNexis 2001).
- 143 Id. § 2-7-205(a).
- 144 Wyo. Stat. Ann. § 2-7-403(a) & 404 (LexisNexis 2001). Failure to comply in good faith with the time limitations may result in the personal representative being found in contempt of court and a fine may be imposed. Wyo. Stat. Ann. § 2-7-403(a) (LexisNexis 2001). The requirements for the inventory are less rigid than they were in the 1980 Code. See Averill, *supra* note 16, at 162-63.
- 145 Wyo. Stat. Ann. § 2-7-404(a)(ii) (LexisNexis 2001).
- 146 Id. §§ 2-7-614-626 & 609. See also Wyo. Stat. Ann. § 2-3-501 (LexisNexis 2001) (mortgage property). The personal representative does not have to follow the court-supervised procedures for perishable property and personal property for which there is a regular market. Wyo. Stat. Ann. § 2-7-613 (LexisNexis 2001).
- 147 Id. § 2-7-614-615.
- 148 Id. § 2-7-615-621.
- 149 Id. §§ 2-7-601-608.
- 150 Id. S2-7-205(c).
- 151 Id. §§ 2-7-501(a), 502 & 505.
- 152 Id. § 2-7-807. The court must determine that there is property available beyond what is needed for administration and claims, and the petition cannot be filed until 30 days after the deadline for claims to be filed. Id. The statute appears to require proportionate distribution. Id. § 2-7-807(c). See Averill, *supra* note 16, at 173-74, for a discussion of possible interpretations of that provision.
- 153 Wyo. Stat. Ann. § 2-7-805(a) (LexisNexis 2001).
- 154 Id. § 2-7-802(a).
- 155 Id. S2-7-703(a) & (b). Claims could be submitted to the personal representative until this change was made in the 1980 code. Averill, *supra* note 16, at 164.
- 156 Wyo. Stat. Ann. § 2-7-703(a) (LexisNexis 2001).
- 157 Id. § 2-7-703(c)(i). This was added in the 1980 Code and taken from the Iowa Code. Averill, *supra* note 16, at 164. Averill concluded that this exception created a “significant loophole” in Iowa.
- 158 Wyo. Stat. Ann. § 2-7-708 (LexisNexis 2001).

- 159 Id. § S 2-7-712.
- 160 Id. § 2-7-715.
- 161 Id. § 2-7-801(a-c).
- 162 Averill, *supra* note 16, at 164-65. Averill predicted that the rule might actually slow down probate, if one year becomes the benchmark. To him, the rule made the clerk a “bureaucrat who dispenses red tape,” as the clerk is to bring all problems under the time limit to the attention of the court. The U.P.C. has no deadline for completing probate, though interest must be paid on general pecuniary devises after one year from the appointment of the personal representative. U.P.C. § 3-904, 8 U.L.A. Part II, 271 (1998).
- 163 Wyo. Stat. Ann. §§ 2-7-812, 813 (LexisNexis 2001).
- 164 Id. § 2-7-812. Averill criticized the 1981 version of this provision as invading the privacy of those involved in the estate, and as causing unnecessary delay. He pointed out that the tax collectors have plenty of tools to collect taxes, without getting the probate court involved. Averill, *supra* note 16, at 166-67. In 1989 the statute was amended but it did not loosen the requirements. Instead, it was made explicit that the personal representative would not be discharged without certain proof. The U.P.C. informal closing requires that the personal representative state that all taxes have been paid “except as specified in the statement” and the statement must include “arrangements that have been made to accommodate outstanding liabilities.” U.P.C. § 3-1003, 8 U.L.A. Part II, 294-95 (1998).
- 165 Wyo. Stat. Ann. § 2-7-802(a) (LexisNexis 2001).
- 166 Id. § 2-7-814.
- 167 Wellman, *Blueprint*, *supra* note 8, at 468.
- 168 Id.
- 169 This can be inferred from U.P.C. § 3-101, 8 U.L.A. Part II, 29 (1998).
- 170 Id. Wyoming has a similar provision, though the property is also “subject to the possession of the personal representative and to the control of the court . . .” Wyo. Stat. Ann § 2-7-402 (LexisNexis 2001).
- 171 U.P.C. § 3-102, 8 U.L.A. Part II, 33-34 (1998). This seems to conflict with the prior section which provides that if the decedent executed a will, property automatically devolves to the devisees, subject to family allowances, the elective share, creditors, administration, as with intestacy. U.P.C. § 3-101, 8 U.L.A. Part II, 29 (1998).
- 172 U.P.C. § 3-302, 8 U.L.A. Part II, 58 (1998).
- 173 U.P.C. § 3-803(a)(1) & § 3-1006. This applies to claims that arose before the death of the decedent. The original U.P.C. provided a bar on creditor's claims against the estate and the distributees of three years after death. U.P.C. § 3-803 and § 3-1006 official cmt. However, in 1989, that was reduced to one year. Id. Four of the U.P.C. states adopted the amendments as to both claims against the estate and against the distributees, (Colo. Rev. Stat. §§ 15-12-803 & 15-12-1006 (2001); N.M. Stat. Ann. §§ 45-3-803 & 45-3-1006 (LexisNexis 2001); S.C. Code Ann. §§ 62-3-803 & 62-3-1006 (Law. Co-op. 2001); Utah Code Ann. §§ 75-3-803 & 75-3-1006 (2001)). Two adopted the amendment as to claims against the estate, but kept

the three-year limit for claims against distributees. Minn. Stat. §§ 524.3-803 & 524.3-1006 (2001); Mont. Code Ann. §§ 72-3-803 & 72-3-1013 (2001). Three states adopted a two year limit for both. Ariz. Rev. Stat. §§ 14-3803 & 14-3936 (2001); Fla. Stat. ch. §§ 733.702 & 733.710 (2001); Idaho Code §§ 15-3-803 & 15-3-1006 (LexisNexis 2001). Hawaii has an eighteen month limit for both and Maine has a nine month limit for both. Haw. Rev. Stat. Ann. §§ 560:3-803 & 560:3-1006 (LexisNexis 2001); Me. Rev. Stat. Ann. tit. 18-A §§ 3-803 & 3-1006 (West 2001). Finally, five states continue to have three year limits for both. Alaska Stat. §§ 13.16.460 & 13.16.645 (LexisNexis 2001); Mich. Comp. Laws §§ 700.3803 & 700.3957 (LexisNexis 2001); Neb. Rev. Stat. Ann §§ 30-2485 & 30-24,120 (LexisNexis 2001); N.D. Cent. Code §§ 30.1-19-03 & 30.1-21-06 (2001); S.D. Codified Laws §§ 29A-3-803 & 29A-3-1006 (LexisNexis 2001). See also Wellman, *Blueprint*, supra note 8, at 490 n.151 (noting that these bars probably do not apply to tax liens).

- 174 Lawrence H. Averill, *Wyoming's Law of Decedent's, Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code-Part II*, 8 *Land & Water L. Rev.* 187, 207 (1973). Another possible claim, for family allowances and the elective share, will not be an issue in many estates. Those claiming an interest in an estate under an unprobated will have a three year statute of limitations. This is because a will cannot be probated when more than three years have passed since the decedent's death, except in narrow circumstances such as uncertainty as to whether the owner is dead. U.P.C. § 3-108.
- 175 Averill, supra note 174, at 207.
- 176 Wellman, *Lawyers*, supra note 6, at 556.
- 177 *Id.* The real owner has other remedies. Distributees must make restitution if property is received in error. U.P.C. §§ 3-909, 3-1004. The personal representative is liable for any improper action regarding the estate. U.P.C. § 3-712. See also U.P.C. § 3-1005.
- 178 U.P.C. § 3-910.
- 179 In a testate estate, “(i)nformal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding.” U.P.C. § 3-302. Also, if a personal representative is appointed and then is terminated, without transferring the property, the title of devisees and heirs is cleared. U.P.C. § 3-711 official cmt.
- 180 U.P.C. § 3-714 official cmt. The comment continues, “(h)owever, this is not available when no administration has occurred and, in that event, reliance on general recording statutes must be had.” *Id.*
- 181 U.P.C. § 3-104.
- 182 U.P.C. §§ 3-103, 3-703(b).
- 183 See supra Part II.B.
- 184 Wyo. Stat. Ann. § 2-1-201 (LexisNexis 2001).
- 185 Crapo, supra note 91, at 358.
- 186 Wyo. Stat. Ann. § 2-6-203 (LexisNexis 2001). See supra note 140.
- 187 *Id.* See supra note 46.

- 188 U.P.C. § 3-307. The registrar can be a judge, clerk or anyone else designated by the court. *Id.* § 1-307. One of Governor Herschler's stated concerns in vetoing the U.P.C. was that the court clerks had advised him that the U.P.C. would require additional employees in the clerk's office and that they would be required to give advice that was outside their "province." Letter from Hon. Ed Herschler, Governor of Wyoming, to Thyra Thompson (March 14, 1975) (on file with the Wyoming Secretary of State's Office). Despite this, the 1980 Wyoming Code authorizes the clerk to probate wills without prior notice. Wyo. Stat. Ann. § 2-6-203 (LexisNexis 2001).
- 189 *Id.* § 2-6-203.
- 190 U.P.C. §§ 3-301, 3-307-308. The appointment is delayed thirty days unless the person applying is the personal representative at the decedent's domicile, or the will states that the law of the state where appointment is sought shall apply. *Id.* § 3-307.
- 191 U.P.C. §§ 3-204, 3-308(a)(6).
- 192 *Id.* § 3-310.
- 193 *Id.* §§ 3-301, 3-308(a)(6).
- 194 *Id.* § 3-308.
- 195 *Id.* § 3-309. The registrar may decline the application for "any reason." *Id.*
- 196 *Id.* § 3-307.
- 197 *Id.* §§ 3-308(a)(7), 3-203 (c), (e).
- 198 *Id.* § 3-203(e).
- 199 U.P.C. § 3-203(b).
- 200 *Id.* § 3-301.
- 201 *Id.* §§ 3-303, 3-305. The registrar can decline to probate the will in informal proceedings because of "failure to meet the requirements of § 3-303 & § 3-304 or any other reason . . ." *Id.*
- 202 Wellman, *Blueprint*, *supra* note 8, at 494.
- 203 Lawrence H. Averill, *An Introduction to the Administration of Decedents' Estates Under the Uniform Probate Code*, 20 S.D. L. Rev. 265, 276 (1975).
- 204 U.P.C. §§ 3-307(b), 3-704. These code sections apply do not distinguish between formally and informally appointed personal representatives.

- 205 Id. § 3-703(a) (including by reference U.P.C. § 7-302, the trustee's duties in the Uniform Probate Code article on trust administration).
- 206 Id.
- 207 Wellman, *Lawyers*, supra note 6, at 553. U.P.C. § 3-715 includes a long list of actions that a personal representative may take unless restricted by the will or in an order in a formal proceeding. Id.
- 208 U.P.C. § 3-711; Wellman, supra note 6, at 492-93. Banks in Idaho reported that they frequently sell assets without court approval, and found this to be a “major administrative advantage of the U.P.C.” Crapo, supra note 91, at 358-59. Section 3-715 includes a long list of actions that are expressly authorized as long as the personal representative acts “reasonably for the benefit of the interested persons.” U.P.C. § 3-715.
- 209 See supra text accompanying notes 177-180.
- 210 U.P.C. § 3-910.
- 211 Id. § 3-705.
- 212 Id.
- 213 Id. The personal representative breaches her duty if she does not send this notice, but this does not affect the validity of the appointment. Id.
- 214 Id. § 3-801(a). If the state chooses “may” rather than “shall” in this section, the only requirement would be to notify the creditors who have filed a demand for notice under U.P.C. § 3-204. This seems like the alternative that Wyoming would choose, since probate without prior notice is already permitted in Wyoming. Wyo. Stat. Ann. § 2-6-203 (LexisNexis 2001). The Official Comment to U.P.C. § 3-803 states:
- (T)he odds that holders of important claims against the decedent need help in learning of the death and proper place of administration are rather small. Any benefit to such claimants of additional procedures designed to compel administrations and to locate and warn claimants of an impending non-claim bar, is quite likely to be heavily outweighed by the costs such procedures would impose on all estates, the vast majority of which are routinely applied to quick payment of the decedent's bills and distributed without any creditor controversy.
- U.P.C. § 3-803, official cmt.
- 215 U.P.C. § 3-801(a) (using “shall” rather than “may”).
- 216 Id. § 3-803(a)(1). This statute of limitations was reduced from three years to one year in 1989. See supra note 172.
- 217 Id. § 3-801(a).
- 218 Id. § 3-801(b).
- 219 Id. § 3-804.

- 220 Id. § 3-603.
- 221 Id. See also U.P.C. § 3-604.
- 222 U.P.C. § 3-605.
- 223 Id.
- 224 Id. § 3-706. The time for the inventory to be done, three months, is a little shorter than Wyoming's 120 days. Wyo Stat. Ann. § 2-7-403 (LexisNexis 2001).
- 225 U.P.C. § 3-707. An appraisal does appear to be required for the summary procedure that allows distribution when the estate value is less than exemptions, expenses, and encumbrances, without notice to creditors. Id. § 3-1203. This makes sense, since the ability to use that procedure depends on the value of the estate.
- 226 U.P.C. § 3-1003(a)(1). The statement cannot be filed until after the appointment of the personal representative. Id.
- 227 Id. § 3-1003(a)(1). This presumably means that the personal representative would have to wait one year from the death of the decedent to file the closing statement if no publication or direct notice was given to creditors.
- 228 Id. § 3-1003(b).
- 229 Id. § 3-1005. However, without a court proceeding, a personal representative can require potential distributees to object or lose any right to object to a distribution. The personal representative mails or delivers notice of a proposed distribution, and if no objection is made in thirty days, the right of a distributee to object is gone. Id.S 3-906(b).
- 230 Id. § 3-1005.
- 231 Id.
- 232 Id. § 3-1006.
- 233 Crapo, *supra* note 37, at 410 & 412. See *supra* Part I. D.
- 234 Id. The category of informal filings included a summary proceeding for surviving spouses that Idaho retained from its prior code, when adopting the U.P.C. These proceedings were about one quarter of the informal proceedings in all Idaho counties in 1973 and 1974. Id. at 409.
- 235 Crapo, *supra* note 37, at 409, 412-13. More supervised filings were made in less populous counties. Id. In 1997, Hawaii amended its probate code to remove the \$40,000 limit on the use of informal probate. This change did not cause the rise in informal probate that they expected. Only 41% of the 837 new filings in one judicial circuit were seeking informal probate. This may have been due to practitioners still using the old familiar forms and procedures. Lee, *supra* note 52, at 8, 12.

- 236 Crapo, *supra* note 91, at 358.
- 237 In Hawaii, where the Code was recently changed to remove the dollar limit for using informal procedures, most lawyers will probably continue to use the formal closing. Lee, *supra* note 52, at 12.
- 238 U.P.C. § 3-403(a). Heirs are those entitled to property under the intestate statute. *Id.* § 1-201(20).
- 239 U.P.C. § 3-403(a).
- 240 *Id.*
- 241 U.P.C. § 3-409.
- 242 *Id.* § 3-412(3). The informal probate can be invalidated until three years following the decedent's death. *Id.* § 3-108(a).
- 243 U.P.C. § 3-107.
- 244 *Id.* § 3-401.
- 245 *Id.* §§ 3-307(b), 3-703, 3-715. Wellman, *Blueprint*, *supra* note 8, at 493.
- 246 1 Richard V. Wellman, *Uniform Probate Code Practice Manual 5* (American Law Institute-American Bar Association Committee on Continuing Professional Education 2d ed. 1977).
- 247 Crapo, *supra* note 91, at 358. In fact, one of their few complaints about the U.P.C. was that clients and attorneys pressured them to do informal closings. *Id.* at 359.
- 248 Averill, *supra* note 203, at 275. Section 3-1001 states that the petition for complete settlement of the estate may request the court to determine testacy. U.P.C. § 3-1001. Presumably, the notice of a formal testacy hearing, under U.P.C. § 3-403, and the notice of the formal hearing under U.P.C. § 3-1001, can be combined.
- 249 U.P.C. § 3-1001(a). Under Article 1 of the Uniform Probate Code “interested person” is defined to include:
heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in any proceeding.
Id. § 1-201(23).
- 250 U.P.C. § 3-106.
- 251 *Id.* § 3-1001. Even if all interested persons do not receive notice, those who do receive notice are bound by the orders in the proceeding. *Id.* § 3-106.

- 252 U.P.C. § 3-1001. If the personal representative has committed fraud, she is liable for two years after discovery of the fraud. Id. § 1-106.
- 253 U.P.C. § 3-715(18)-(21).
- 254 Id. § 3-715(18).
- 255 Id. § 3-721. However, those involved in the estate will not necessarily receive notice of the fees paid, except in a formal closing. The formal closing can include a final accounting, which would include the fees. Id. § 3-1001. The closing by sworn statement only requires a statement that expenses were paid or otherwise disposed of. Id. § 3-1003.
- 256 U.P.C. § 3-721.
- 257 Wellman & Gordon, *supra* note 5, at 511. See also Sharon Bell, *Fees of Executors, Administrators, and Testamentary Trustees* (The American College of Trust and Estate Counsel 1993).
- 258 Neb. Rev. Stat. Ann. § 30-2482 (Michie 2001). Colo. Rev. Stat. Ann. § 15-12-721 (West 2001). Interestingly, Colorado removed one of the criteria, the nature and length of the professional relationship with the client, from the list, after it adopted the Uniform Probate Code. These criteria also appear in Wyoming's ethical rules. Wyo. Code of Prof'l Conduct R. 1.5 (2001).
- 259 Mont Code Ann §§ 72-3-631, 72-3-633(1) (Smith 2001). It also sets 3% of the value of the interest passing as a maximum fee for attorney services in terminating a life estate, or severing joint tenancies. Id. § 72-3-633(2), (3). Both provisions permit the court to order additional fees for extraordinary services. Id. §§ 72-3-631(5), 72-3-633(5).
- 260 Utah Code Ann. §§ 75-5-718, 75-3-718(1) (2001).
- 261 N.D. Cent. Code § 30.1-18-21 (2001).
- 262 Idaho Code §§ 15-3-715(18), (21), 15-3-721 (Michie 2001).
- 263 Crapo, *supra* note 37, at 403.
- 264 Id. at 402. See *supra* text accompanying notes 103 and 104.
- 265 Crapo, *supra* note 91, at 355. Some reported increased record keeping, but several trust officers “agreed that a fee based on services was far easier to justify to clients than the percentage fee.” Id. “(T) he percentage fee system produced windfall profits in some instances.” Id.
- 266 Crapo, *supra* note 91, at 349.
- 267 Id.
- 268 Wellman, *Lawyers*, *supra* note 6, at 549.

- 269 Crapo, *supra* note 91, at 353. Also, the study was based only on estates where an accounting was submitted, which may be the estates that had problems and thus higher costs. *Id.* Any additional fee for complexity in a small estate will create a big change in what percent fees are of that estate. *Id.* at 349.
- 270 See *id.* at 349. “Several (Idaho) attorneys and trust officers . . . commented that . . . the increased fees (for small estates after adoption of the U.P.C.) merely represent the charging of a proper fee for services rendered.” *Id.*
- 271 Wellman, *Blueprint*, *supra* note 8, at 454.
- 272 Crapo, *supra* note 91, at 353.
- 273 *Id.* at 357.
- 274 U.P.C. § 1-310.
- 275 *Id.* § 3-301. The registrar must confirm that the applicant has “made oath or affirmation that the statements contained in the application are true to the best of he knowledge and belief.” *Id.* § 3-303(a)(2).
- 276 *Id.* See also *id.* § 3-611(b).
- 277 *Id.* § 1-106. The injured person may also get restitution from those who benefited, other than bona fide purchasers. *Id.*
- 278 U.P.C. § 3-304. Similarly, lost and destroyed wills cannot be informally probated. *Id.* §§ 3-303(a)(5), 3-402(a).
- 279 *Id.* § 3-204.
- 280 *Id.* § 3-310.
- 281 *Id.* § 3-108(a). See also Wellman, *Blueprint*, *supra* note 8, at 500. Any earlier termination of successor's rights would require “best possible notice”, under the Uniform Probate Act. *Id.* Creditors' claims are now cut off after one year. See *supra* text accompanying note 173.
- 282 *Id.* §§ 3-401, 3-502, 3-1001(a). Section 3-414(a) is explicit that a proceeding for formal appointment is authorized even if an informal application is pending or an informal appointment has already been made.
- 283 U.P.C. § 1-201(23).
- 284 *Id.* § 3-414(a).
- 285 *Id.* §§ 3-607, 3-611.
- 286 *Id.* §§ 3-107, 3-502.

- 287 Id. § 3-605. See U.P.C. § 3-604 (provides the applicable bond amount). If the will waives bond, it may still be required, in a formal proceeding, if requested by an interested party. Id. § 3-603. On the other hand, even if bond is required in the will, it may be dispensed with if the court finds that bond is not necessary. Id.
- 288 U.P.C. §§ 3-502, 3-504.
- 289 Id. § 3-501. The court is authorized to decide that supervised administration is not necessary to protect those with interests in the estate. Id. § 3-502. On the other hand, if the will directs supervised administration, the court shall order it unless the relevant circumstances have changed since the will was executed. Id.
- 290 U.P.C. § 3-504.
- 291 Id. §§ 3-501, 3-504.
- 292 Wellman, *Blueprint*, supra note 8, at 498.
- 293 Id.
- 294 Wellman, *Blueprint*, supra note 8, at 498.
- 295 Id. at 512.
- 296 Id.
- 297 Id. at 498.
- 298 Richard V. Wellman, *How the Uniform Probate Code Deals with Estates that Cross State Lines*, 5 *Real Prop. Prob. & Tr. J.* 159 (1970) (hereinafter *Wellman, State Lines*).
- 299 Wellman, *Blueprint*, supra note 8, at 488.
- 300 Wellman, *State Lines*, supra note 298, at 159.
- 301 See *infra* text accompanying notes 334-339 (discussing coordination of probates in different states).
- 302 Wyo. Stat. Ann. § 2-11-302 (LexisNexis 2001). See U.P.C. § 4-205. See also Averill, supra note 16, app. I at 394.
- 303 Wyo. Stat. Ann. § 2-11-302 (LexisNexis 2001). In Wyoming, a nonresident cannot be appointed as personal representative of an intestate estate, unless a resident is appointed as co-personal representative. Id. § 2-4-201(c). There seems to be no such restriction in Wyoming on appointment as executor. Id. § 2-6-208. The Uniform Probate Code does not prohibit appointment of a nonresident in either situation, though the nonresident applicant for informal appointment may have to wait longer after the decedent's death to be appointed. U.P.C. §§ 3-203, 3-307.

- 304 Such personal representative may “gather up all the assets, sue in Wyoming courts for claims of property, and remove these assets out of state for administration in the domiciliary estate.” Averill, *supra* note 16, at 176-77.
- 305 U.P.C. § 3-715(6), 4-205.
- 306 *Id.* §§ 4-204, 4-205.
- 307 *Id.* § 3-303(d). As discussed, *supra* note 171, to be effective to transfer property, a will must be probated. *Id.* § 3-102. Devisees establish title to property under a “probated will.” *Id.* § 3-901. However, it appears that an informal probate already completed in the domiciliary estate should be recognized in the other state simply upon filing the copies and bond under U.P.C. § 4-204. Wellman, *State Lines*, *supra* note 298, at 161.
- 308 Wyo. Stat. Ann. §§ 2-7-614-626 (LexisNexis 2001). See *supra* notes 146-150 and accompanying text. The Wyoming Legislature recently added a court procedure for selling Wyoming property when the probate court in another state has authorized the sale. The procedure applies only when the estate in Wyoming has a value of \$150,000 or less, and requires the district court judge to do notice by publication. If the petition for sale is approved, the proceeding is to be “treated from that time as original proceedings.” Presumably, this means the sale would proceed as other court-supervised sales in Wyoming probate. Also, the petition for sale must be denied if a creditor objects who did not file a claim in the proceeding in the other state. 2002 Wyo. Sess. Laws 60, to be codified at Wyo. Stat. Ann. § 2-11-202 (LexisNexis 2002).
- 309 *Id.* § 2-7-807.
- 310 Wyo. Stat. Ann. §§ 2-11-101-104 (LexisNexis 2001). Wyoming also has a process for probate of wills that have become operative in another jurisdiction that does not require probate. *Id.* § 2-11-105.
- 311 Wyo. Stat. Ann. § 2-11-201 (LexisNexis 2001). See *supra* note 308 (description of new summary procedure for the sale of Wyoming property).
- 312 *Id.* However, a creditor who did not present his claim in the state where the other probate was done can cause the summary procedure to be postponed while he petitions for letters of administration in Wyoming. *Id.* The value limit in this provision was increased to \$150,000 in the last legislative session. 2002 Wyo. Sess. Laws 60, to be codified at Wyo. Stat. Ann. § 2-11-202(a)(iv) (LexisNexis 2002).
- 313 U.P.C. § 3-408.
- 314 *Id.* The first court in which formal proceedings are started has the exclusive right to determine domicile. *Id.* § 3-202. The finding of domicile may also occur in a formal closing proceeding. *Id.* §§ 3-1001-1002.
- 315 U.P.C. § 4-401.
- 316 *Id.* § 3-803(a)(1), (b) The one year from death bar would apply if no notice was given to creditors in the domicile. *Id.*
- 317 Wyo. Stat. Ann § 2-11-303 (LexisNexis 2001).
- 318 U.P.C. § 4-206. See Averill, *supra* note 16, app. I at 394.

- 319 Averill reached a similar conclusion about Wyoming. He concluded, soon after the provisions for the foreign personal representatives were added in the 1980 Code, that “for a large number of nondomiciliary decedents who leave property located in Wyoming, no actual administration will take place Unless there are substantial unpaid creditors, no one ordinarily will desire to require local administration.” Averill, *supra* note 16, at 177. However, it seems that local administration would be required where real estate in Wyoming is part of the estate. See *supra* text accompanying notes 308-09.
- 320 See Wyo. Stat. Ann. § 2-11-303 (LexisNexis 2001); U.P.C. § 4-206. These two provisions are virtually identical.
- 321 See Wyo. Stat. Ann. § 2-11-303 (LexisNexis 2001); U.P.C. § 4-206.
- 322 U.P.C. § 4-207. A proceeding must be brought where a decedent was domiciled or owned property. *Id.* § 3-201.
- 323 U.P.C. § 3-203(g). This rule applies unless the will appoints someone different for the state administration. *Id.*
- 324 *Id.* § 3-308(b). Also, one seeking informal appointment in a jurisdiction that is not decedent's domicile, and who has not already been appointed in the domicile, must wait thirty days after death to be appointed. *Id.* § 3-307. This delay is so the first appointment can be in the domicile. *Id.*, official cmt.
- 325 U.P.C. § 4-201.
- 326 *Id.* § 4-202. Filing of his appointment and bond would also presumably provide such protection for third parties under sections 4-205 and 3-714. Wellman, *State Lines*, *supra* note 298, at 161 n. 18.
- 327 Wyo. Stat. Ann. § 2-1-201 (LexisNexis 2001).
- 328 *Id.* See *supra* Part II.B. 2002 Wyo. Sess. Laws 60, to be codified at Wyo. Stat. Ann. § 2-1-201 (LexisNexis 2002).
- 329 U.P.C. § 4-302.
- 330 *Id.* § 4-301.
- 331 *Id.*
- 332 Wyo. Stat. Ann. § 2-11-301 (LexisNexis 2001). This section states that when the court having jurisdiction sees that the personal representative is not a resident, it shall require designation of such an agent. However, Averill interprets the reference to this section in the next Code section to mean no other court involvement is required, such as recognition of the domiciliary probate. Averill, *supra* note 16, at 176. If this is so, how does the residency of the personal representative come before the court? This is one illustration of the problem with taking from parts of the Uniform Probate Code and not the integrated whole.
- 333 U.P.C. § 4-303(a).
- 334 *Id.* § 3-816. Sections 3-815(b) & (c) apply if the estate is insolvent.

335 Id.

336 Id.

337 U.P.C. §§ 3-815(b), (c). These provisions apply when the estate is insufficient to satisfy all “family exemptions and allowances” and “prior charges and claims.” Id.

338 U.P.C. § 3-815, official cmt.

339 U.P.C. §§ 3-815(b), (c).

340 See Unif. Probate Code, apps. X-XII (West 11th ed. 1993) (Supp. 2001).

341 Wellman & Gordon, *supra* note 5, at 526. See also *supra* note 332 (shows a Wyoming example of problems that can be created). The Maine Commission recommending the U.P.C. to the legislature stated in its report, “(o)ne thing that became clear to the Commission in the course of its study is the importance of avoiding ‘tinkering’ with the language of the uniform version of the Uniform Probate Code, or changing sections here and there, or adding new provisions, without very careful consideration of the impact of such changes on both, (a) the operation of the Code as a whole and (b) the desirability of uniformity of law and statutory language from state to state.” Report to the Legislature, *supra* note 24, at 6-7. The General Comment that precedes Article III lists the essential characteristics that need to be preserved if a state does decide to vary from the language of Article III of the Uniform Probate Code. U.P.C. art. III, official cmt.; 8 U.L.A. Part II, 26-28 (1998).

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