COMMITTEE ON RULES AND JUDICIARY

10/22/2026-AMENDED AND REPORTED OUT TO THE FLOOR

BILL NO. 36-0277

Thirty-Sixth Legislature of the Virgin Islands

May 8, 2026

An act enacting a comprehensive probate code for the Virgin Islands to govern intestate and testate succession, administration of decedents' estates, and related procedures

PROPOSED BY: Senator Novelle E. Francis Jr.
Sponsors: Marvin A. Blyden, Kenneth L. Gittens, Clifford. A. Joseph, Sr. and Avery L. Lewis

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 15 Virgin Islands Code is amended by adding the following Article II:

"ARTICLE II

PART I. INTESTATE SUCCESSION

§2-101. Intestate Estate.

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this Code, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.

§2-102. Share of Spouse.

The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(A) no descendant or parent of the decedent survives the decedent; or

(B) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first $300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

(3) the first $225,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first $150,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

§2-103. Share of Heirs other than Surviving Spouse.

(a) **Definitions.** In this section:

(1) "Deceased parent", "deceased grandparent", or "deceased spouse" means a parent, grandparent, or spouse who either predeceased the decedent or is deemed under this [article] to have predeceased the decedent.

(2) "Surviving spouse", "surviving descendant", "surviving parent", or "surviving grandparent" means a spouse, descendant, parent, or grandparent who neither predeceased the decedent nor is deemed under this [article] to have predeceased the decedent.

(b) **Heirs Other Than Surviving Spouse.** Any part of the intestate estate not passing

under Section 2-102 to the decedent's surviving spouse passes to the decedent's descendants or parents as provided in subsections (c) and (d). If there is no surviving spouse, the entire intestate estate passes to the decedent's descendants, parents, or other heirs as provided in subsections (c) through (j).

(c) **Surviving Descendant.** If a decedent is survived by one or more descendants, any part of the intestate estate not passing to the surviving spouse passes by representation to the decedent's surviving descendants.

(d) **Surviving Parent.** If a decedent is not survived by a descendant but is survived by one or more parents, any part of the intestate estate not passing to the surviving spouse is distributed as follows:

(1) The intestate estate or part is divided into as many equal shares as there are:

(A) surviving parents; and

(B) deceased parents with one or more surviving descendants, if any, as determined under subsection (e).

(2) One share passes to each surviving parent.

(3) The balance of the intestate estate or part, if any, passes by representation to the surviving descendants of the decedent's deceased parents, as determined under subsection (e).

(e) **When Parent Survives: Computation of Shares of Surviving Descendants of Deceased Parent.** The following rules apply under subsection (d) to determine whether a deceased parent of the decedent is treated as having a surviving descendant:

(1) If all the surviving descendants of one or more deceased parents also are descendants of one or more surviving parents, those descendants are deemed to have predeceased the decedent.

(2) If two or more deceased parents have the same surviving descendants and none of those deceased parents has any other surviving descendant, those deceased

parents are deemed to be one deceased parent with surviving descendants.

(f) **Surviving Descendant of Deceased Parent.** If a decedent is not survived by a descendant or parent but is survived by one or more descendants of a parent, the intestate estate passes by representation to the surviving descendants of the decedent's deceased parents.

(g) **Surviving Grandparent.** If a decedent is not survived by a descendant, parent, or descendant of a parent but is survived by one or more grandparents, the intestate estate is distributed as follows:

(1) The intestate estate is divided into as many equal shares as there are:

(A) surviving grandparents; and

(B) deceased grandparents with one or more surviving descendants, if any, as determined under subsection (h).

(2) One share passes to each surviving grandparent.

(3) The balance of the intestate estate, if any, passes by representation to the surviving descendants of the decedent's deceased grandparents, as determined under subsection (h).

(h) **When Grandparent Survives: Computation of Shares of Surviving Descendants of Deceased Grandparent.** The following rules apply under subsection (g) to determine whether a deceased grandparent of the decedent is treated as having a surviving descendant:

(1) If all the surviving descendants of one or more deceased grandparents also are descendants of one or more surviving grandparents, those descendants are deemed to have predeceased the decedent.

(2) If two or more deceased grandparents have the same surviving descendants and none of those deceased grandparents has any other surviving descendant, those deceased grandparents are deemed to be one deceased grandparent with surviving descendants.

(i) **Surviving Descendant of Deceased Grandparent.** If a decedent is not survived

by a descendant, parent, descendant of a parent, or grandparent but is survived by one or more descendants of a grandparent, the intestate estate passes by representation to the surviving descendants of the decedent's deceased grandparents.

(j) **Surviving Descendant of Deceased Spouse.** If a decedent is not survived by a descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent but is survived by one or more descendants of one or more deceased spouses, the intestate estate passes by representation to the surviving descendants of the deceased spouse or spouses.

§2-104. Requirement of Survival by One Hundred Twenty (120) Hours; Gestational Period; Pregnancy after Decedent's Death.

(a) **Definitions.** In this section:

(1) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(2) "Gestational period" means the time between the start of a pregnancy and birth.

(b) **Requirement of Survival by One Hundred Twenty (120) Hours; Gestational Period; Pregnancy After Decedent's Death.** For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (c), the following rules apply:

(1) An individual born before a decedent's death who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by one hundred twenty (120) hours, it is deemed that the individual failed to survive for the required period.

(2) If the decedent dies during a gestational period that results in the birth of an individual who lives at least one hundred twenty (120) hours after birth, that individual is deemed to be living at the decedent's death.

(3) If the decedent dies before the start of a pregnancy by assisted reproduction resulting in the birth of an individual who lives at least one hundred twenty (120) hours after birth, that individual is deemed to be living at the decedent's death only if the individual is recognized as the decedent's child under the laws of the Virgin Islands or the law of another jurisdiction governing parentage through assisted reproduction, and:

(A) the embryo was in utero not later than thirty-six (36) months after the decedent's death; or

(B) the individual was born not later than forty-five (45) months after the decedent's death.

(c) **Section Inapplicable if Estate Would Pass to State.** This section does not apply if its application would cause the estate to pass to the Government of the Virgin Islands under Section 2-105.

§2-105. No Taker.

If there is no taker under the provisions of this Article, the intestate estate passes to the Government of the Virgin Islands.

§2-106. Representation.

(a) Definitions. In this section:

(1) "Deceased descendant," "deceased parent," "deceased grandparent," or "deceased spouse" means a descendant, parent, grandparent, or spouse who either predeceased the decedent or is deemed under this article to have predeceased the decedent.

(2) "Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed under this article to have predeceased the decedent.

(b) Decedent's Descendants. If, under § 2-103(c), all or part of a decedent's intestate estate passes by representation to the decedent's surviving descendants, the estate or part of the estate is divided into as many equal shares as there are (i) surviving descendants in the

generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(c) **Descendants of Parent When Parent Survives.** If a decedent is survived by one or more parents and, under Section 2-103(d) and (e), the balance of the decedent's intestate estate or part passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the balance passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(d) **Descendants of Parent When No Parent Survives.** If a decedent is not survived by a parent and, under Section 2-103(f), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased parents, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(e) **Descendants of Grandparent When Grandparent Survives.** If a decedent is survived by one or more grandparents and, under Section 2-103(g) and (h), the balance of the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the balance passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(f) **Descendants of Grandparent When No Grandparent Survives.** If a decedent is not survived by a grandparent and, under Section 2-103(i), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased grandparents, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

(g) **Descendants of Deceased Spouse.** If a decedent is survived by descendants of one or more deceased spouses and, under Section 2-103(j), the decedent's intestate estate passes by representation to the surviving descendants of one or more of the decedent's deceased spouses, the intestate estate passes to those descendants as if they were the decedent's surviving descendants under subsection (b).

§ 2-107. Inheritance without Regard to Number of Common Ancestors in Same Generation.

An heir inherits without regard to how many common ancestors in the same generation the heir shares with the decedent.

§2-108. Reserved.

§2-109. Advancements.

(a) If an individual dies intestate as to all or a portion of the estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(b) For purposes of subsection (a), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

§2-110. Debts to Decedent.

A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

§2-111. Alienage.

No individual is disqualified to take as an heir because the individual or an individual through whom the individual claims is or has been an alien.

§2-112. Dower and Curtesy Abolished.

The estates of dower and curtesy are abolished.

§2-113. Individuals Related to Decedent Through More than One Line.

An individual who is related to the decedent through more than one line of relationship is entitled to only a single share based on one line of relationship. If the shares from the lines of relationship are unequal, the individual is entitled to the larger share. The individual and the individual's descendants are deemed to have predeceased the decedent with respect to the other line or lines of relationship.

§2-114. Parent Barred from Inheriting in Certain Circumstances

(a) A parent is barred from inheriting from or through a child of the parent if:

(1) the parent's parental rights were terminated and not judicially reestablished; or

(2) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under other Virgin Islands law on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is deemed to have predeceased the child.

(c) Except as otherwise provided in Section 2-119(b), the termination of a parent's parental rights to a child has no effect on the right of the child or a descendant of the child to inherit from or through the parent.

SUBPART 2. PARENT-CHILD RELATIONSHIP

§2-115. Definitions. In this subpart:

(1) "Adoptee" means an individual who is adopted.

(2) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under Virgin Islands law the term means only the man for whom that relationship is established.

(3) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.

(4) "Genetic parent" means a child's genetic father or genetic mother.

(5) "Relative" means a grandparent or a descendant of a grandparent.

§2-116. Effect of Parent-Child Relationship.

Except as otherwise provided in § 2-119(b) through (e), if a parent-child relationship exists or is established under this subpart, the parent is a parent of the child, and the child is a child of the parent for the purpose of intestate succession.

§2-117. No Distinction Based on Marital Status.

Except as otherwise provided in § 2-114, 2-119, 2-120, or 2-121, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status.

§2-118. Adoptee and Adoptee's Adoptive Parent or Parents.

(a) Parent-Child Relationship Between Adoptee and Adoptive Parent or Parents. A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.

(b) Individual in Process of Being Adopted by Married Couple; Stepchild in Process of Being Adopted by Stepparent. For purposes of subsection (a):

(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and

(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by one hundred twenty (120) hours.

§2-119. Adoptee and Adoptee's Genetic Parents.

(a) Parent-Child Relationship Between Adoptee and Genetic Parents..Except as otherwise provided in subsections (b) through (e), a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.

(b) Stepchild Adopted by Stepparent. A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:

(1) the genetic parent whose spouse adopted the individual; and

(2) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

(c) Individual Adopted by Relative of Genetic Parent. A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

(d) Individual Adopted after Death of Both Genetic Parents. A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.

§2-120. [Reserved]

§2-121. [Reserved]

§2-122. Equitable Adoption.

This subpart does not affect the doctrine of equitable adoption."

PART 2 ELECTIVE SHARE OF SURVIVING SPOUSE

§2-201. [Reserved]

§2-202. Elective Share; Existing Law Retained.

The right of a surviving spouse to elect to take a share of the decedent's estate in lieu of the provisions of the decedent's will is governed by title 15 Virgin Islands Code, section 10 which is not repealed, superseded, or amended by this act and remains in full force and effect.

§2-203. [Reserved]

§2-204. [Reserved]

§2-205. [Reserved]

§2-206. [Reserved]

§2-207. [Reserved]

§2-208. [Reserved]

§2-209. [Reserved]

§2-210. [Reserved]

§2-211. [Reserved]

§2-212. [Reserved]";

§2-213. Effect of Premarital or Marital Agreement on Right to Elect and Other Rights.

(a) In this section, "agreement" includes a subsequent agreement that affirms, modifies, or waives an earlier agreement.

(b) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be

affirmed, modified, or waived, only by a written agreement signed by the surviving spouse, before or after marriage. The agreement is enforceable without consideration.

(c) An agreement under subsection (b) is not enforceable if the surviving spouse proves that:

(1) the agreement was involuntary or the result of duress;

(2) the surviving spouse did not have access to independent legal representation under subsection (d);

(3) unless the surviving spouse had independent legal representation when the agreement was executed, the agreement did not include an explanation in plain language of the rights under subsection (b) being affirmed, modified, or waived; or

(4) before signing the agreement, the surviving spouse did not receive adequate financial disclosure under subsection (e).

(d) A surviving spouse had access to independent legal representation if:

(1) before signing an agreement, the surviving spouse had a reasonable time to:

(A) decide whether to retain a lawyer to provide independent legal representation; and

(B) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and

(2) the other spouse was represented by a lawyer, and the surviving spouse had the financial ability to retain a lawyer or the other spouse agreed to pay the reasonable fees and expenses of independent legal representation.

(e) A surviving spouse had adequate financial disclosure under this section if the surviving spouse:

(1) received a reasonably accurate description and good-faith estimate of the value of the property, liabilities, and income of the other spouse;

(2) expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(3) had adequate knowledge or a reasonable basis for having adequate knowledge of the information described in paragraph (1).

(f) A court may refuse to enforce a term of an agreement under subsection (b) if, in the context of the agreement taken as a whole:

(1) the term was unconscionable at the time of signing; or

(2) enforcement of the term would result in substantial hardship for the surviving spouse because of a material change in circumstances arising after the agreement was signed.

(g) An issue of unconscionability or substantial hardship of an agreement is for decision by the court as a matter of law.

(h) Unless an agreement under subsection (b) provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by the spouse in the property of the other spouse and a renunciation of all benefits that would otherwise pass to the renouncing spouse by intestate succession or by virtue of any will executed before the waiver or property settlement.

§2-214. Protection of Payors and Other Third Parties.

"[Reserved]";

PART 3. SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

§2-301. Entitlement of Spouse; Premarital Will.

(a) If a testator's surviving spouse married the testator after the testator executed the testator's will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate they would have received if the testator had died intestate as to

that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under § 2-603 or 2-604 to such a child or to a descendant of such a child, unless:

(1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(3) the testator provided for the spouse by transfer outside the will and the intent that the transfer is in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(b) In satisfying the share provided by this, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under § 2-603 or 2-604 to a descendant of such a child, abate as provided in § 3-902.

§2-302. Omitted Child.

(a) Parent-Child Relationship Established After Execution of Will. Except as provided in subsection (b), if a testator becomes a parent of a child after the execution of the testator's will and fails to provide in the will for the child, the omitted child receives a share in the estate as follows:

(1) If the testator had no child living when the testator executed the will, the omitted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to another parent of the omitted child and that parent survives the testator and is entitled to take under the will.

(2) If the testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, the omitted child is entitled to share in the testator's estate as follows:

(A) The portion of the testator's estate in which the omitted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(B) The omitted child is entitled to receive the share of the testator's estate, as limited in subparagraph (A), that the child would have received had the testator included all omitted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(C) To the extent feasible, the interest granted the omitted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(D) In the satisfaction of a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(b) Intentional Omission of Child; Provision for Child Outside Will. Neither subsection (a)(1) nor subsection (a)(2) applies if:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the omitted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(c) Omission of Child Believed Dead. If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted child.

(d) Abatement. In the satisfaction of a share provided by subsection (a)(1), devises made by the will abate under Section 3-902.

PART 4. EXEMPT PROPERTY AND ALLOWANCES

§2-401. Applicable Law.

This part applies to the estate of a decedent who dies domiciled in the Virgin Islands. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in the Virgin Islands are governed by the law of the decedent's domicile at death.

§2-402. Homestead Allowance.

A decedent's surviving spouse is entitled to a homestead allowance of $22,500.00. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $22,500.00 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share.

§2-403. Exempt Property.

In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding $15,000. in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $15,000.00, or if there is not $15,000.00 worth of exempt property in the

estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $15,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.

§2-404. Family Allowance.

(a) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children or for the sole use of the surviving spouse if there are no minor or dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

(b) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

§2-405. Source, Determination, and Documentation.

(a) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding $27,000 or periodic installments not exceeding $2,250 per month for one year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

PART 5. WILLS, WILL CONTRACTS, AND CUSTODY OF WILLS

§2-501. Who May Make a Will.

An individual 18 or more years of age who is of sound mind may make a will.

§2-502. Execution; Witnessed or Notarized Wills; Holographic Wills.

(a) Witnessed or Notarized Wills. Except as otherwise provided in subsection (b) and in Sections 2-503, 2-506, and 2-513, a will must be:

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(3) either:

(A) signed by at least two individuals, each of whom signed within a

reasonable time after the individual witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgement of the will; or

(B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgements.

(b) Holographic Wills. A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(c) Extrinsic Evidence. Intent that a document constitutes the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

(d) This section applies to nonelectronic wills. Electronic wills are governed by 15 V.I.C. §§ 51–62, and those sections control to the extent of any inconsistency.

§2-503. Harmless Error.

Although a document or writing added upon a document was not executed in compliance with Section 2-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(1) the decedent's will,

(2) a partial or complete revocation of the will,

(3) an addition to or an alteration of the will, or

(4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

§2-504. Self-Proved Will.

(a) A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the

witnesses, each made before an officer authorized to administer oaths under the laws of the territory or state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this ____ day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____ and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as (his)(her) will and that (he)(she) signs it willingly or willingly directs another to sign for (him)(her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

Territory of the Virgin Islands

District of

Subscribed, sworn to and acknowledged before me by____ , the testator, and subscribed and sworn to before me by____ , and____ , witnesses, this ___day of___.

(Seal)

(Signed)

(Official capacity of officer)

(b) A will that is executed with attesting witnesses may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

Territory of the Virgin Islands

District of _____

We, ____, ____, and ____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator had signed willingly (or willingly directed another to sign for (him)(her), and that (he)(she) executed it as (his)(her) free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of (his)(her) knowledge the testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by ____ , the testator, and subscribed and sworn to before me by____ , and ____, witnesses, this ____, day of ____.

(Seal)

(Signed)

(Official capacity of officer)

§2-505. Who May Witness.

(a) An individual generally competent to be a witness may act as a witness to a will.

(b) The signing of a will by an interested witness does not invalidate the will or any provision of it.

§2-506. Choice of Law as to Execution.

A written will is valid if executed in compliance with Section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

§2-507. Revocation by Writing or by Act.

(a) A will or any part thereof is revoked:

(1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(2) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will," whether or not the burn, tear, or cancellation touched any of the words on the will.

(b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(c) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

(d) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

§2-508. Revocation by Change of Circumstances.

Except as provided in §s 2-803 and 2-804, a change of circumstances does not revoke a will or any part of it.

§2-509. Revival of Revoked Will.

(a) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under §2-507(a)(2), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under §2-507(a)(2), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(c) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

§2-510. Incorporation by Reference.

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

§2-511. Testamentary Additions to Trusts.

(a) A will may validly devise property to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised to a trust described in subsection (a) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provide otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

§2-512. Events of Independent Significance.

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

§2-513. Separate Writing Identifying Devise of Certain Types of Tangible Personal Property.

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

§2-514. Contracts Concerning Succession.

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this Article, may be established only by (i) provisions of a will stating material provisions of the contract, (ii) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract, or (iii) a writing evidencing the contract and signed by the party alleged to have breached the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

§2-515. Deposit of Will with Court in Testator's Lifetime.

(a) The clerk of the Superior Court, upon being paid the fees allowed therefore by law shall receive and deposit in their office, any will of a resident of the Virgin Islands which any person shall deliver to the clerk for that purpose and shall give a written receipt therefor to the person depositing the same. A subscribing witness to any law will or testament may make and sign an affidavit before any officer authorized to administer oaths setting forth such facts as he would be required to testify in order to prove such will. Such affidavit may be written upon said will, or on some paper securely attached thereto, and may be filed for safe keeping with the last will or testament to which it relates. There may also be filed with such will, affidavits

of qualified physicians licensed or permitted to practice in a state or possession of the United States, certifying that the maker of said will was of sound mind at the time of its execution, together with any facts supporting such opinion.

(b) A will delivered to the clerk of the Superior Court shall be enclosed in a sealed wrapper, so that the contents thereof cannot be read, and shall have indorsed thereon the name of the testator, their place of residence, and the day, month and year when delivered; and shall not, on any pretext whatever, be opened, read or examined, until delivered to a person entitled to the same, as herein directed.

(c) A will received by the clerk of the Superior Court for safe keeping shall be delivered only:

(1) to the testator in person; or

(2) upon the clerk's written order, duly proved by the oath of a subscribing witness; or

(3) after the testator's death to the persons named in the indorsement on the wrapper of such will, if any indorsement be made thereon.

(d) If a will has been deposited with the clerk of the Superior Court for safe keeping and has not been delivered as provided for in subsection (c) , the clerk of the court, after the death of the testator, shall publicly open and examine the same, and make known the contents thereof, and shall file the same in the clerk's office, thereto remain until it shall have been duly proved, if capable of proof, and then to be delivered to the person entitled to the custody thereof; or until required by the authority of some competent court to produce the same in such court.

§2-516. Duty of Custodian of Will; Liability.

After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. A person who willfully fails

to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

§2-517. Penalty Clause for Contest.

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

PART 6. RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

§2-601. Scope.

In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

§2-602. Will May Pass All Property and After-Acquired Property.

A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

§2-603. Anti-lapse; Deceased Devisee; Class Gifts.

(a) Definitions. In this section:

(1) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a non-residuary devise only if the will specifically provides that, upon lapse or failure, the non-residuary devise, or non-residuary devises in general, pass under the residuary clause.

(2) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual

survived the testator.

(3) "Descendant of a grandparent", as used in subsection (b), means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the (i) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift or (ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

(4) "Descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in subsections (b)(1) and (2), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will.

(5) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(6) "Devisee" includes (i) a class member if the devise is in the form of a class gift, (ii) an individual or class member who was deceased at the time the testator executed the will as well as an individual or class member who was then living but who failed to survive the testator, and (iii) an appointee under a power of appointment exercised by the testator's will.

(7) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator or donor.

(8) "Surviving", in the phrase "surviving devisees" or "surviving descendants", means devisees or descendants who neither predeceased the testator nor are deemed to have predeceased the testator under Section 2-702.

(9) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(b) Substitute Gift. If a devisee fails to survive the testator and is a grandparent, a

descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(1) Except as provided in paragraph (4), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(2) Except as provided in paragraph (4), if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the surviving devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(3) For the purposes of Section 2-601, words of survivorship, such as in a devise to an individual "if he [or she] survives me," or in a devise to "my surviving children," are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(4) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative devise if:

(A) the alternative devise is in the form of a class gift, and one or more members of the class is entitled to take under the will; or

(B) the alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

(5) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(c) More Than One Substitute Gift; Which One Takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) Except as provided in paragraph (2), the devised property passes under the primary substitute gift.

(2) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) In this subsection:

(A) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(B) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(C) "Younger-generation devise" means a devise that (i) is to a descendant of a devisee of the primary devise, (ii) is an alternative devise with respect to the primary devise, (iii) is a devise for which a substitute gift is created, and (iv) would have taken effect had all the deceased devisees who left surviving descendants

survived the testator except the deceased devisee or devisees of the primary devise.

(D) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

§2-604. Failure of Testamentary Provision.

(a) Except as provided in § 2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(b) Except as provided in § 2-603, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

§2-605. Increase in Securities; Accessions.

(a) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;

(2) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or

(3) securities of the same organization acquired as a result of a plan of reinvestment.

(b) Distributions in cash before death with respect to a described security are not part of the devise.

§2-606. Nonademption of Specific Devises; Unpaid Proceeds of Sale, Condemnation, or Insurance; Sale by Conservator or Agent.

(a) A specific devisee has a right to specifically devised property in the testator's estate at the testator's death and to:

(1) any balance of the purchase price, together with any security agreement, owed by a purchaser at the testator's death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(4) any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;

(5) any real property or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real property or tangible personal property; and

(6) if not covered by paragraphs (1) through (5), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

(b) If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal or a condemnation award, insurance proceeds, or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an

incapacitated principal the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(c) The right of a specific devisee under subsection (b) is reduced by any right the devisee has under subsection (a).

(d) For the purposes of the references in subsection (b) to a conservator, subsection (b) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased, and the testator survived the adjudication for at least one year.

(e) For the purposes of the references in subsection (b) to an agent acting within the authority of a durable power of attorney an incapacitated principal, (i) "incapacitated principal" means a principal who is an incapacitated person, (ii) no adjudication of incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

§2-607. Non-exoneration.

A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

§2-608. Exercise of Power of Appointment.

In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if (i) the power is a general power exercisable in favor of the powerholder's estate and the creating instrument does not contain an effective gift if the power is not exercised or (ii) the testator's will manifests an intention to include the property subject to the power.

§2-609. Ademption by Satisfaction.

(a) Property a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if: (i) the will provides for deduction of the gift; (ii) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or (iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(b) For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2-603 and 2-604, unless the testator's contemporaneous writing provides otherwise.

PART 7. RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

§2-701. Scope.

In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

§2-702. Requirement of Survival by 120 Hours.

(a) Requirement of Survival by 120 hours Under Probate Code. For the purposes of this code, except as provided in subsection (d), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

(b) Requirement of Survival by 120 Hours under Governing Instrument. Except as provided in subsection (d), for purposes of a provision of a governing instrument that relates

to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

(c) Co-owners With Right of Survivorship; Requirement of Survival by 120 Hours. Except as provided in subsection (d), if (i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours and (ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners. For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

(d) Exceptions. Survival by 120 hours is not required if:

(1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; but survival of the event or the specified period must be established by clear and convincing evidence;

(3) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under

§ 2-901(a)(1), (b)(1), or (c)(1) or to become invalid under § 2-901(a)(2), (b)(2), or (c)(2); but survival must be established by clear and convincing evidence; or

(4) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

(e) Protection of Payors and Other Third Parties.

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(2) Written notice of a claimed lack of entitlement under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located the judicial division in which the decedent was domiciled, or if the decedent was not domiciled in the Virgin Islands, the judicial division in which property of the decedent was located, consistent with §3-201.

The court shall hold the funds or items of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(f) Protection of Bona Fide Purchasers; Personal Liability of Recipient.

(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-703. Choice of Law as to Meaning and Effect of Governing Instrument.

The meaning and legal effect of a governing instrument is determined by the local law of the territory or state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share governed by section 2-202"; and the

provisions relating to exempt property and allowances described in Part 4, or any other public policy of the Virgin Islands otherwise applicable to the disposition.

§2-704. Power of Appointment; Compliance with Specific Reference Requirement.

A powerholder's substantial compliance with a formal requirement of appointment imposed in a governing instrument by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) the powerholder knows of and intends to exercise the power; and

(2) the powerholder's manner of attempted exercise does not impair a material purpose of the donor in imposing the requirement.

§2-705. Class Gifts Construed to Accord with Intestate Succession; Exceptions.

(a) Definitions.

In this section:

(1) "Assisted reproduction" has the meaning set forth in Section 2-104.

(2) "Distribution date" means the time when an immediate or a postponed class gift is to take effect in possession or enjoyment.

(3) "Gestational period" has the meaning set forth in Section 2-104.

(4) "In-law" includes a step relative or a former step relative.

(5) "Relative" has the meaning set forth in Section 2-115.

(b) Terms of Relationship. Except as otherwise provided in subsections (c) and (d), a class gift in a governing instrument which uses a term of relationship to identify the class members is construed in accordance with the rules for intestate succession.

(c) In-Laws. A class gift in a governing instrument excludes in-laws unless:

(1) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(2) the language or circumstances otherwise establish that in-laws were intended to be included.

(d) Transferor Not Parent. In construing a class gift in a governing instrument of a transferor who is not a parent of an individual, the individual is not considered the child of the parent unless:

(1) the parent, a relative of the parent, or the spouse or surviving spouse of the parent or of a relative of the parent performed functions customarily performed by a parent before the individual reached eighteen (18) years of age; or

(2) the parent intended to perform functions under paragraph (1) but was prevented from doing so by death or another reason, if the intent is proved by clear and convincing evidence.

(e) Class-Closing Rules. The following rules apply for purposes of the class-closing rules:

(1) If a particular time is during a gestational period that results in the birth of an individual who lives at least one hundred twenty (120) hours after birth, the individual is deemed to be living at that time.

(2) If the start of a pregnancy resulting in the birth of an individual occurs after the death of the individual's parent and the distribution date is the death of the parent, the individual is deemed to be living on the distribution date if the person with the power to appoint or distribute among the class members received notice or had actual knowledge, not later than six months after the parent's death, of an intent to use genetic material in assisted reproduction and the individual lives at least (120) hours after birth, and:

(A) the embryo was in utero not later than 36 months after the deceased parent's death; or

(B) the individual was born not later than 45 months after the deceased parent's death.

(3) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

§2-706. Life Insurance; Retirement Plan; Account With POD Designation; Transfer-on-Death Registration; Deceased Beneficiary.

(a) Definitions.

In this section:

(1) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition precedent, condition subsequent, or any other form.

(2) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes (i) a class member if the beneficiary designation is in the form of a class gift and (ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(3) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(4) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(5) "Descendant of a grandparent", as used in subsection (b), means an individual who qualifies as a descendant of a grandparent of the decedent under the (i)

rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift or (ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.

(6) "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (b)(1) and (2), means the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation.

(7) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.

(8) "Surviving", in the phrase "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the decedent nor are deemed to have predeceased the decedent under § 2-702.

(b) Substitute Gift. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:

(1) Except as provided in paragraph (4), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(2) Except as provided in paragraph (4), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled, had all of them survived the decedent, passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes

the share to which he would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(3) For the purposes of § 2-701, words of survivorship, such as in a beneficiary designation to an individual "if he (or she) survives me," or in a beneficiary designation to "my surviving children," are not, in the absence of additional evidence, sufficient indications of an intent contrary to the application of this section.

(4) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative beneficiary designation if:

(A) the alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(B) the alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(c) More Than One Substitute Gift; Which One Takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) Except as provided in paragraph (2), the property passes under the primary substitute gift.

(2) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) In this subsection:

(A) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(B) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(C) "Younger-generation beneficiary designation" means a beneficiary designation that (A) is to a descendant of a beneficiary of the primary beneficiary designation, (B) is an alternative beneficiary designation with respect to the primary beneficiary designation, (C) is a beneficiary designation for which a substitute gift is created, and (D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(D) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(d) Protection of Payors.

(1) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(2) The written notice of the claim must be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the

claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial division in which the decedent was domiciled, or if the decedent was not domiciled in the Virgin Islands, the judicial division in which property of the decedent was located, consistent with §3-201. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(e) Protection of Bona Fide Purchasers; Personal Liability of Recipient.

(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-707. Survivorship with Respect to Future Interests under Terms of Trust; Substitute Takers.

(a) Definitions.

In this section:

(1) "Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition precedent, condition subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a non-residuary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(2) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(3) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(4) "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in subsection (b)(1) and (2), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

(5) "Distribution date," with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but can occur at a time during the course of a day.

(6) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(7) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment

to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(8) "Surviving", in the phrase "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under § 2-702.

(b) Survivorship Required; Substitute Gift. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(1) Except as provided in paragraph (4), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(2) Except as provided in paragraph (4), if the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled to had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased

beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(3) For the purposes of § 2-701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition precedent, condition subsequent, or any other form.

(4) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative future interest if:

(A) the alternative future interest is in the form of a class gift, and one or more members of the class is entitled to take in possession or enjoyment; or

(B) the alternative future interest is not in the form of a class gift, and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(c) More Than One Substitute Gift; Which One Takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) Except as provided in paragraph (2), the property passes under the primary substitute gift.

(2) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) In this subsection:

(A) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(B) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(C) "Younger-generation future interest" means a future interest that (i) is to a descendant of a beneficiary of the primary future interest, (ii) is an alternative future interest with respect to the primary future interest, (iii) is a future interest for which a substitute gift is created, and (iv) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(D) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation's future interest.

(d) If No Other Takers, Property Passes Under Residuary Clause or to Transferor's Heirs. Except as provided in subsection (e), if, after the application of subsections (b) and (c), there is no surviving taker, the property passes in the following order:

(1) if the trust was created in a non-residuary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(2) if no taker is produced by the application of paragraph (1), the property passes to the transferor's heirs under § 2-711.

(e) If No Other Takers and If Future Interest Created by Exercise of Power of Appointment. If, after the application of subsections (b) and (c), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(1) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(2) if no taker is produced by the application of paragraph (1), the property passes as provided in subsection (d). For purposes of subsection (d), "transferor" means the donor if the power was a non-general power and means the donee if the power was a general power.

§2-708. Class Gifts to "Descendants," "Issue," or "Heirs of the Body"; Form of Distribution if None Specified.

If a class gift in favor of "descendants," "issue," or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

§2-709. Representation; Per Capita at Each Generation; Per Stirpes.

(a) Definitions.

In this section:

(1) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under Section 2-702.

(2) "Distribution date," with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but can occur at a time during the course of a day.

(3) "Surviving ancestor," "surviving child," or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under Section 2-702.

(b) Representation; Per Capita at Each Generation. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per capita at each generation," the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants (ii) and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(c) Per Stirpes. If a governing instrument calls for property to be distributed "per stirpes," the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants. Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(d) Deceased Descendant With No Surviving Descendant Disregarded. For the purposes of subsections (b) and (c), an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

§2-710. Worthier-Title Doctrine Abolished.

The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

§2-711. Interests in "Heirs" and Like.

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs," "heirs at law," "next of kin," "relatives," or "family," or language of similar import, the property passes to those persons, including the state, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

PART 8. GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

§2-801. Reserved.

§2-802. Effect of Divorce, Annulment, and Decree of Separation.

(a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the marriage is not a divorce for purposes of this section.

(b) For purposes of Parts 1, 2, 3, and 4 of this Article, and of § 3-203, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in the Virgin Islands under Title 16 of the Virgin Islands Code, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as spouses;

(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

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

§2-803. Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designations.

(a) Definitions.

In this section:

(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) "Governing instrument" means a governing instrument executed by the decedent.

(3) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation, in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the killer and whether or not the decedent then had capacity to exercise the power.

(b) Forfeiture of Statutory Benefits. An individual who feloniously and intentionally kills the decedent forfeits all benefits under this Article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the intestate share.

(c) Revocation of Benefits Under Governing Instruments. The felonious and intentional killing of the decedent:

(1) revokes any revocable (i) disposition or appointment of property made by the decedent to the killer in a governing instrument, (ii) provision in a governing instrument

conferring a general or non-general power of appointment on the killer, and (iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(2) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship transforming the interests of the decedent and killer into equal tenancies in common.

(d) Effect of Severance. A severance under subsection (c)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(e) Effect of Revocation. Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(f) Wrongful Acquisition of Property. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(g) Felonious and Intentional Killing; How Determined. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the

individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(h) Protection of Payors and Other Third Parties.

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of a claimed forfeiture or revocation under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial division in which the decedent was domiciled, or if the decedent was not domiciled in the Virgin Islands, the judicial division in which property of the decedent was located, consistent with §3-201. The court shall hold the funds or items of property and, upon its determination under this section, shall order disbursement in accordance with the determination.

Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(i) Protection of Bona Fide Purchasers; Personal Liability of Recipient.

(1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-804. Revocation of Probate and Nonprobate Transfers by Divorce; No Revocation by other Changes of Circumstances.

(a) Definitions.

In this section:

(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage which would exclude the spouse as a surviving spouse within the meaning of § 2-802 and is recognized as valid under Title 16 of the Virgin Islands Code. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(3) "Divorced individual" includes an individual whose marriage has been annulled.

(4) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by application of the rules establishing parent-child relationships under Subpart 2 of Part 1 or affinity and who, after the divorce or annulment, is not related to the divorced individual by application of the rules establishing parent-child relationships under Subpart 2 of Part 1 or affinity.

(6) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the former spouse or relative of the former spouse and whether or not the divorced individual then had the capacity to exercise the power.

(b) Revocation Upon Divorce. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(A) disposition or appointment of property made by a divorced individual to the divorced individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse,

(B) provision in a governing instrument conferring a general or non-general power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and

(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

(c) Effect of Severance. A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) Effect of Revocation. Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) Revival if Divorce Nullified. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(f) No Revocation for Other Change of Circumstances. No change of circumstances other than as described in this section and in § 2-803 effects a revocation.

(g) Protection of Payors and Other Third Parties.

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subsection (g)(1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial division in which the decedent was domiciled, or if the decedent was not domiciled in the Virgin Islands, the judicial division in which property of the decedent was located, consistent with §3-201. The court shall hold the funds or item of property and, upon its determination under this

section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(h) Protection of Bona Fide Purchasers; Personal Liability of Recipient.

(1) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

§2-805. Reformation to Correct Mistakes.

The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

§2-806. Modification to Achieve Transferor's Tax Objectives.

To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

PART 9. STATUTORY RULE AGAINST PERPETUITIES

§2-901. Statutory Rule Against Perpetuities.

(a) Validity of Nonvested Property Interest. A nonvested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) the interest either vests or terminates within 90 years after its creation.

(b) Validity of General Power of Appointment Subject to a Condition Precedent. A general power of appointment, not presently exercisable because of a condition precedent, is invalid unless:

(1) when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) Validity of Non-general or Testamentary Power of Appointment. A non-general power of appointment or a general testamentary power of appointment is invalid unless:

(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) Possibility of Post-death Child Disregarded. In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) Effect of Certain "Later-of" Type Language. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

§2-902. When Nonvested Property Interest or Power of Appointment Created.

(a) Except as provided in subsections (b) and (c) and in Section 2-905(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this Part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in

Section 2-901(b) or (c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this Part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

§2-903. Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by Section 2-901(a)(2), 2-901(b)(2), or 2-901(c)(2) if:

(1) a nonvested property interest or a power of appointment becomes invalid under Section 2-901 (statutory rule against perpetuities);

(2) a class gift is not but might become invalid under Section 2-901 (statutory rule against perpetuities) and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by Section 2-901(a)(1) can vest but not within 90 years after its creation.

§2-904. Exclusions from Statutory Rule Against Perpetuities.

Section 2-901 (statutory rule against perpetuities) does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a non-donative transfer, except a nonvested property interest or a power of appointment arising out of:

(A) a premarital or post-marital agreement,

(B) a separation or divorce settlement,

(C) a spouse's election,

(D) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties,

(E) a contract to make or not to revoke a will or trust,

(F) a contract to exercise or not to exercise a power of appointment,

(G) a transfer in satisfaction of a duty of support, or

(H) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

§2-905. Prospective Application.

(a) Except as extended by subsection (b), this Part applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this Part. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before the effective date of this Part and is determined in a judicial proceeding, commenced on or after the effective date of this Part, to violate this state's rule against perpetuities as that rule existed before the effective date of this Part, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

§2-906. Supersession. This Part supersedes the common law rule against perpetuities as adopted in the Virgin Islands, including any case law or judicial precedent applying that rule.

PART 10. VIRGIN ISLANDS UNIFORM INTERNATIONAL WILLS ACT

INTERNATIONAL WILL; INFORMATION REGISTRATION

§2-1001. Definitions.

In this part:

(1) "International will" means a will executed in conformity with §s 2-1002 through 2-1005.

(2) "Authorized person" and "person authorized to act in connection with international wills' mean a person who by § 2-1009, or by the laws of the United States,

including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

§2-1002. International Will; Validity.

(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this Part.

(b) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(c) This Part does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

§2-1003. International Will; Requirements.

(a) The will must be made in writing. It need not be written by the testator. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the signature.

(d) When the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for the testator's inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for the testator, if the

authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for the testator.

(e) The witnesses and the authorized person shall be there and then attest the will by signing in the presence of the testator.

§2-1004. International Will; Other Points of Form.

(a) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if the testator is unable to sign, by the person signing on the testator's behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(b) The date of the will is the date of its signature by the authorized person. That date must be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the testator's will. If so and at the express request of the testator, the place where the testator intends to have the will kept must be mentioned in the certificate provided for in § 2-1005

(d) A will executed in compliance with § 2-1003 is not invalid merely because it does not comply with this section.

§2-1005. International Will; Certificate.

The authorized person shall attach to the will a certificate to be signed by that person establishing that the requirements of this Part for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

(1) I, (name, address and capacity), a person authorized to act in connection with international wills

(2) Certify that on (date) at (place)

(3) (testator) (name, address, date and place of birth) in my presence and that of the witnesses

(4)(a) (name, address, date and place of birth)

(b) (name, address, date and place of birth) has declared that the attached document is his or her will and that he or she knows the contents thereof.

(5) I furthermore certify that:

(6)(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged the signature previously affixed.

(2) was unable to sign the will for the following reason, I have mentioned this declaration on the will

* the signature has been affixed by __ (name and address)

(7)(b) the witnesses and I have signed the will;

(8) * (c) each page of the will has been signed by and numbered;

(9)(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(10)(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

(11) *(f) the testator has requested me to include the following statement concerning the safekeeping of his or her will:

(12) PLACE OF EXECUTION

(13) DATE

(14) SIGNATURE and, if necessary, SEAL

* *to be completed if appropriate*

§2-1006. International Will; Effect of Certificate.

In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this Part. The absence or irregularity of a certificate does not affect the formal validity of a will under this Part.

§2-1007. International Will; Revocation.

The international will is subject to the ordinary rules of revocation of wills under Title 15 of the Virgin Islands Code.

§2-1008. Source and Construction.

§2-1001 through 2-1007 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this Part, regard must be had to its international origin and to the need for uniformity in its interpretation.

§2-1009. Persons Authorized to Act in Relation to International Will; Eligibility; Recognition by Authorizing Agency.

Individuals who have been admitted to practice law before the courts of the Virgin Islands and who are in good standing as active law practitioners in the Virgin Islands, are declared to be authorized persons in relation to international wills.

§2-1010. International Will Information Registration.

The Office of the Lieutenant Governor shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or any other individual identifying number established by law, address, and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The Lieutenant

Governor, at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in the Virgin Islands.

PART 11. VIRGIN ISLANDS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

§2-1101. Short Title. This part may be cited as the "Virgin Islands Uniform Disclaimer of Property Interests Act".

§2-1102. Definitions.

In this part:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

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

(5) "Jointly held property" means property in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

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

(7) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United

States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a State.

(8) "Trust" means:

(A) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

§2-1103. Scope.

This part applies to disclaimers of any interest in or power over property, whenever created.

§2-1104. Part Supplemented By Other Law.

(a) Unless displaced by a provision of this part, the principles of law and equity supplement this part.

(b) This part does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this Part.

§2-1105. Power To Disclaim; General Requirements; When Irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of the Virgin Islands or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument

other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in § 2-1112. In this subsection:

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

(2) "signed" means, with present intent to authenticate or adopt a record, to;

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic sound, symbol, or process.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to § 2-1112 or when it becomes effective as provided in §§ 2-1106 through 2-1111, whichever occurs later.

(f) A disclaimer made under this part is not a transfer, assignment, or release.

§2-1106. Disclaimer of Interest In Property.

(a) In this section:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(2) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(b) Except for a disclaimer governed by § 2-1107 or 2-1108, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in paragraph (2), the following rules apply:

(A) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(B) If the disclaimant is an individual, except as otherwise provided in subparagraphs (C) and (D), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(C) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(D) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including, the state, but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the

transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

§2-1107. Disclaimer of Rights of Survivorship in Jointly Held Property.

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

§2-1108. Disclaimer of Interest by Trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

§2-1109. Disclaimer of Power of Appointment or Other Power Not Held in Fiduciary Capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

§2-1110. Disclaimer by Appointee, Object, or Taker in of Exercise of Power of Appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

§2-1111. Disclaimer of Power Held in Fiduciary Capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

§2-1112. Delivery or Filing.

(a) In this section, “beneficiary designation” means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with the Superior Court of the Virgin Islands to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is serving, it must be filed with the Superior Court of the Virgin Islands to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with the Superior Court of the Virgin Islands to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

(1) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) the disclaimer of an interest in real property must be recorded in the Office of the Recorder of Deeds for the district in which the real property that is the subject of the disclaimer is located.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with the Superior Court of the Virgin Islands.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's or to the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with the Superior Court of the Virgin Islands.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

§2-1113. When Disclaimer Barred or Limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) a judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so, provided by law other than this part.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this part had the disclaimer not been barred.

§2-1114. Tax Qualified Disclaimer.

Notwithstanding any other provision of this part, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of title 26 United

States Code, or any successor statute thereto, and the regulations promulgated under that statute, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this part.

§2-1115. Recording Of Disclaimer.

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in Section 2-1112(g)(2), failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§ 2-1116. Application To Existing Relationships.

Except as otherwise provided in § 2-1113, an interest in or power over property existing on the effective date of this part as to which the time for delivering or filing a disclaimer under law superseded by this part has not expired may be disclaimed after the effective date of this part.

§2-1117. Relation to Electronic Signatures in Global and National Commerce Act.

This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of the act (15 U.S.C. § 7003(b)).

ARTICLE III. PROBATE OF WILLS AND ADMINISTRATION

PART 1. GENERAL PROVISIONS

§3-101. Devolution of Estate at Death; Restrictions.

The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to the person's property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, the person’s real and personal property devolves to the persons to whom it is devised by the person’s last

will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to the person's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

§3-102. Necessity of Order of Probate For Will.

Except as provided in § 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the Clerk of Court, or an adjudication of probate by the court.

§3-103. Necessity of Appointment For Administration.

Except as otherwise provided in Article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or Clerk of Court, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

§3-104. Claims Against Decedent; Necessity of Administration.

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in § 3-1004 or from a former personal representative individually liable as provided in § 3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the security except as to any deficiency judgment which might be sought therein.

§3-105. Proceedings Affecting Devolution and Administration; Jurisdiction of Subject Matter.

Persons interested in decedents' estates may apply to the Clerk of Court for determination in the informal proceedings provided in this article and may petition the court for orders in formal proceedings within the Court's jurisdiction including but not limited to those described in this article. The Court has exclusive jurisdiction of formal proceedings to determine how decedents' estates, subject to the laws of the Virgin Islands, are to be administered, expended and distributed. The Court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

§3-106. Proceedings Within the Exclusive Jurisdiction of Court; Service; Jurisdiction Over Persons.

In proceedings within the exclusive jurisdiction of the Court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be open for administration, interested persons may be bound by the orders of the Court in respect to property in or subject to the laws of the Virgin Islands, by notice in conformity with § 1-403. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

§3-107. Scope of Proceedings; Proceedings Independent; Exception.

Unless supervised administration as described in Part 5 is involved,

(1) each proceeding before the Court or Clerk of Court is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the Court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of

this Article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

§3-108. Probate, Testacy and Appointment Proceedings; Ultimate Time Limit.

(a) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death;

(4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate

administration has occurred within the three year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in § 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and

(5) a formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(b) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(c) In cases under subsection (a)(1) or (2), the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

§3-109. Statutes of Limitation on Decedent's Cause of Action.

No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled.

§3-110. Publication of Notice; Qualified Online News Publication.

(a) Whenever this Article requires or permits notice to be given by publication, including under §§3-319, 3-403, and 3-801, the notice may be published in a newspaper of general circulation in the Virgin Islands or in a qualified online news publication.

(b) In this article, "qualified online news publication" means an online-only news publication that:

(1) publishes regularly updated general news coverage of the Virgin Islands;

(2) has published at least once per week for at least 50 of the preceding 52 weeks;

(3) has a clear and easily found link to its public notice section on its website homepage;

(4) provides free access to public notices, even if it charges for other content on its website; and

(5) keeps the notice continuously available on its website for the entire publication period and furnishes the person giving the notice an affidavit of publication stating the dates on which the notice was posted.

PART 2. VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

§3-201. Venue for First and Subsequent Estate Proceedings; Location of Property.

(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(1) in the judicial division where the decedent was domiciled at the time of death; or

(2) if the decedent was not domiciled in the Virgin Islands in any judicial division where property of the decedent was located at the time of death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in § 1-303 or (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

§3-202. Appointment or Testacy Proceedings; Conflicting Claim of Domicile in Another State.

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in the Virgin Islands, and in a testacy or appointment proceeding after notice pending at the same time in another state, the Superior Court of the Virgin Islands must stay, dismiss, or permit suitable amendment in the proceeding in this jurisdiction unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in the Virgin Islands.

§3-203. Priority Among Persons Seeking Appointment as Personal Representative.

(a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent;

(6) 45 days after the death of the decedent, any creditor.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (a) apply except that:

(1) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(c) A person entitled to letters under (2) through (5) of (a) above, and a person age 18 and over who would be entitled to letters but for the person's age, may nominate a qualified person to act as personal representative. Any person, age 18 and over, may renounce the right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(d) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(e) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

(f) No person is qualified to serve as a personal representative who is:

(1) under the age of 21;

(2) a person whom the court finds unsuitable in formal proceedings.

(g) A personal representative appointed by a court of the decedent's domicile outside the Virgin Islands has priority over all other persons except where the decedent's will nominates different persons to be personal representative in the Virgin Islands and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

§3-204. Demand for Notice of Order or Filing Concerning Decedent's Estate.

Any person desiring notice of any order or filing pertaining to a decedent's estate in which the person has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of the person's interest in the estate, and the person's address or that of the person's attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in § 1-403 to the person making the demand or the person's attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the person who made the demand and shall cease upon the termination of the person's interest in the estate.

PART 3. INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS; SETTLEMENT WITHOUT ADMINISTRATION

§3-301. Informal Probate or Appointment Proceedings; Application; Contents.

(a) Applications for informal probate or informal appointment must be directed to the Clerk of Court, and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative must contain the following:

(i) a statement of the interest of the applicant;

(ii) the name and age of the decedent, the decedent's date of death, and the district and territory or state of the decedent's domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the Virgin Islands at the time of death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in the Virgin Islands or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in the Virgin Islands or elsewhere; and

(vi) that the time limit for informal probate or appointment as provided in this Article has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed,

circumstances as described by § 3-108 authorizing tardy probate or appointment have occurred.

(2) An application for informal probate of a will must state the following in addition to the statements required by (1):

(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed;

(iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy must state in addition to the statements required by paragraph (1):

(i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property located in the Virgin Islands or otherwise subject to Virgin Islands jurisdiction under Article I of the Virgin Islands Code, or, a statement why any such instrument of which the applicant may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under § 3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in § 3-610(c), or whose appointment has been terminated by death or removal, must adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

(b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant.

§3-302. Informal Probate; Duty of Clerk of Court; Effect of Informal Probate.

Upon receipt of an application requesting informal probate of a will, the Clerk of Court, upon making the findings required by §3-303 shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

§3-303. Informal Probate; Proof and Findings Required.

(a) In an informal proceeding for original probate of a will, the Clerk of Court shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in § 1-201(23);

(4) based on the statements in the application, venue is proper;

(5) an original, duly executed and apparently unrevoked will is in the Clerk of Court's possession;

(6) any notice required by § 3-204 has been given and that the application is not within § 3-304; and

(7) it appears from the application that the time limit for original probate has not expired.

(b) The application must be denied if it indicates that a personal representative has been appointed in another judicial division of this territory or except as provided in subsection (d), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will that appears to have the required signatures and which contains an attestation clause showing that requirements of execution under § 2-502, 2-503 or 2-506 have been met shall be probated without further proof In other cases, the Clerk of Court may assume execution if the will appears to have been properly executed, or the Clerk of Court may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether the person was a witness to the will.

(d) Informal probate of a will that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place that does not provide for probate of a will after death and which is not eligible for probate under subsection (a), may be probated in the Virgin Islands upon receipt by the Clerk of Court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

§3-304. Informal Probate; Unavailable in Certain Cases.

Applications for informal probate which relate to one or more of a known series of testamentary instruments, other than a will and one or more codicils to a will, the latest of which does not expressly revoke the earlier, shall be declined.

§3-305. Informal Probate; Clerk of Court Not Satisfied.

If the Clerk of Court is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of §§ 3-303 and 3-304 or any other reason, the Clerk of Court may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

§3-306. Informal Probate; Notice Requirements.

(a) The moving party must give notice as described by § 1-403 of the party's application for informal probate to any person demanding it pursuant to § 3-204, and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

(b) If an informal probate is granted, within 30 days thereafter, the applicant shall give written information of the probate to the heirs and devisees. The information must include the name and address of the applicant, the name and location of the Court granting the informal probate, and the date of the probate. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by § 3-705. An applicant's failure to give information

as required by this section is a breach of duty to the heirs and devisees but does not affect the validity of the probate.

§3-307. Informal Appointment Proceedings; Delay in Order; Duty of Clerk of Court; Effect of Appointment.

(a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in § 3-614, if at least 120 hours have elapsed since the decedent's death, the Clerk of Court, after making the findings required by § 3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a non-resident, the Clerk of Court shall delay the order of appointment until 30 days have elapsed since death, unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that the decedent's estate be subject to the laws of the Virgin Islands.

(b) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment and the office of personal representative created thereby, is subject to termination as provided in sections 3-608 through 3-612 but is not subject to retroactive vacation.

§3-308. Informal Appointment Proceedings; Proof and Findings Required.

(a) In informal appointment proceedings, the Clerk of Court must determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in §1-201(23);

(4) based on the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by § 3-204 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling the person to the appointment.

(b) Unless §3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in §3-610(c) has been appointed in this or another judicial division of this territory, that, unless the applicant is the domiciliary personal representative or that personal representative's nominee, the decedent was not domiciled in this territory and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

§3-309. Informal Appointment Proceedings; Clerk of Court Not Satisfied.

If the Clerk of Court is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of §3-307 and 3-308, or for any other reason, the Clerk of Court may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

§3-310. Informal Appointment Proceedings; Notice Requirements.

The moving party must give notice as described by Section 1-403 of an intention to seek an appointment informally: (1) to any person demanding it pursuant to 3-204; and (2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.

§3-311. Informal Appointment Unavailable in Certain Cases.

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this territory, and which is not filed for probate in the court, the Clerk of Court shall decline the application.

§3-312. Reserved.

§3-313. Reserved.

§3-314. Reserved.

§3-315. Petition for Settlement without Administration.

Whenever a person dies intestate, leaving no debts, or such debts as their heirs choose to assume and pay, the heirs may collectively present to the court a petition duly verified by two witnesses, which shall state:

(1) the name and residence of the decedent;

(2) the date of the decedent's death, supported by certificate of death when available and procurable;

(3) that the decedent died intestate;

(4) the names and capacities of the heirs;

(5) that there are no debts, or that the heirs choose to assume and pay such debts as there may be;

(6) that the heirs accept the estate purely, simply and unconditionally, making them and the property of the decedent responsible for any debts that may be owing by the decedent; and

(7) the proportion due to each heir.

The petition shall end with a prayer that the heirs be recognized as the legal heirs of the deceased and as such be placed in full possession of the decedent's estate, real and personal.

§3-316. Petition for Recognition of Domestic Will, Devisees, and Legatees.

Whenever a person dies intestate or partially intestate, leaving no debts, or such debts as their devisees and legatees choose to assume and pay, the devisees and legatees (and heirs, in the event of partial intestacy) may, along with any nominated personal representative, collectively present to the court a petition duly verified by two witnesses, which shall state:

(1) the name and residence of the decedent;

(2) the date of the decedent's death, supported by certificate of death when available and procurable;

(3) the date of the decedent's will;

(4) the name and address of the nominated personal representative, if any;

(5) the names and capacities of the heirs who would be entitled to estate had the decedent not left the will or are entitled to any intestate portion of the estate;

(6) the names and capacities of the devisees or legatees entitled under the will to the property comprising the estate;

(7) that there are no debts, or that the devisees and legatees (and heirs, in the event of partial intestacy) choose to assume and pay such debts as there may be;

(8) that the devisees and legatees (and heirs, in the event of partial intestacy) accept the estate in the Virgin Islands purely, simply and unconditionally, making them and the property of the decedent responsible for any debts that may be owing by the decedent.

The petition shall end with a prayer that the will be admitted to probate, that no personal representative be appointed, and that devisees and legatees be recognized as the persons entitled under the will to the property in the Virgin Islands and that as such (along with any heirs, in the event of partial intestacy) be placed in full possession such property. Attached to said petition shall be the decedent's original will and affidavits proving execution of the will.

§3-317. Petition for Recognition of Foreign Will, Devisees, and Legatees.

Where real or personal property, or both, or an interest therein, situated within the Virgin Islands has been devised or bequeathed by the written will of a nonresident testator executed in conformity with the laws of the testator's domicile and the will has been established or admitted to probate in the testator's domicile, the devisees or legatees entitled under the will to the property in the Virgin Islands may, along with the domiciliary personal representative, collectively present to the court a petition duly verified by two witnesses, which shall state:

(1) the name and residence of the decedent;

(2) the date of the decedent's death, supported by certificate of death when available and procurable;

(3) the date of the decedent's will;

(4) the name of the court in which the will was established or admitted to probate;

(5) the date on which the will was established or admitted to probate;

(6) the name and address of the domiciliary personal representative;

(7) the names and capacities of the heirs who would be entitled to estate had the decedent not left the will;

(8) the names and capacities of the devisees or legatees entitled under the will to the property in the Virgin Islands;

(9) that there are no debts, or that the devisees and legatees choose to assume and pay such debts as there may be and which may not be paid by the domiciliary personal representative;

(10) that the devisees and legatees accept the estate in the Virgin Islands purely, simply and unconditionally, making them and the property of the decedent responsible for any debts that may be owing by the decedent; and the petition shall end with a prayer that the devisees and legatees be recognized as the persons entitled under the will to the property in the Virgin Islands and that as such be placed in full possession such property.

Attached to said petition shall be true copies of the decedent's will and the order establishing the will or admitting the will to probate.

§3-318. Inventory to be annexed to petition.

An inventory of all property left by the decedent shall be annexed to a petition referred to in §3-315 or 3-316. An inventory of all property in the Virgin Islands left by the decedent shall be annexed to a petition referred to in §3-317. The inventory shall state the true and fair value of the property at the time of the decedent's death and shall be sworn to by two responsible persons.

§3-319. Notice to Creditors.

Upon receipt of a petition that conforms to the criteria set forth in §3-315, §3-316, or §3-317 and an inventory that conforms to the criteria set forth in §3-318, the clerk shall issue an order to the devisees, legatees or heirs that notice to creditors of the decedent shall be published once a week for four weeks in a newspaper of general circulation in the Virgin Islands.

§3-320. Judgment Recognizing Heirs and Placing them in Possession.

Upon proof of compliance with the order to publish set forth in §3-319, the clerk shall issue a judgment recognizing the devisees, legatees, and/or heirs and placing them in possession of the property comprising the estate. Notwithstanding the foregoing, if the estate contains any interest in real property, the court shall issue the judgment recognizing the devisees, legatees and/or heirs and placing them in possession of the property comprising the estate.

§3-321. Judgment prima facie proof of title.

In the judgment recognizing the devisees, legatees, and/or heirs and placing them in possession of the estate of the deceased, the real estate shall be described in detail. The recordation in the office of the proper recorder of deeds of said judgment, or a certified copy thereof, in the appropriate Office of the Recorder of Deeds for the district in which the real

property is located—either St. Croix or St. Thomas-St. John— shall be prima facie proof of the decedent's interest and title, whatever that may be, in the devisees and/or heirs therein named.

§3-322. Creditor's lien.

Any creditor may obtain and preserve a lien against all property of the decedent by filing with the court and, if real property, recording in the proper office of the recorder of deeds, within one year after the filing of a petition that complies with §3-315, §3-316, or §3-317, a sworn itemized account of his claim and from the date of filing said claim shall become a lien upon the assets of the estate until such lien is discharged by payment or cancelled by judgment of court in appropriate proceedings.

§3-323. Service of process upon absent devisee, legatee or heir.

Any devisee, legatee, and/or heir, non-resident of the Virgin Islands, or who shall remove therefrom after having been placed in possession of any of the assets of an estate under this chapter in relation to any claim against said estate is presumed to have consented to be sued in the Superior Court of the Virgin Islands and service on any such absent devisee, legatee and/or heir shall be sufficient if made upon the clerk of the Superior Court. The clerk of the Superior Court, upon receipt of the summons, is required to forward the summons promptly by registered mail to the devisee, legatees, and/or heir named in the proceedings addressed to his last known address; provided that the time for filing the answer shall be 60 days from the date of the service by the marshal on the clerk of the court.

§3-324. Prescribed period when transactions voidable by creditor.

In the interval between the entry of a judgment placing devisees, legatees, and/or heirs in possession as provided for in this subpart and 120 days thereafter, any alienation, transfer, assignment, mortgage or encumbrance of the assets of the estate shall be voidable as against any creditor prejudiced thereby, and any such creditor may cause the acts to be declared null as done in fraud of his rights by filing an appropriate petition in the Superior Court of the Virgin Islands.

PART 4. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

§3-401. Formal Testacy Proceedings; Nature; When Commenced.

A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in §3-402(a) in which the person requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with §3-402(b) for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the will or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the Clerk of Court shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising the power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

§3-402. Formal Testacy or Appointment Proceedings; Petition; Contents.

(a)(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will:

(A) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(B) contains the statements required for informal applications as stated in the six subparagraphs under §3-301(a)(1), the statements required by subparagraphs (ii) and (iii) of §3-301(a)(2), and

(C) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

(2) If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by paragraphs (1) and (4) of §3-301(a) and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subparagraph (ii) of § 3-301(a)(4) above may be omitted.

§3-403. Formal Testacy Proceedings; Notice of Hearing on Petition.

(a)(1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by § 1-403 by the

petitioner to the persons enumerated in this subsection and to any additional person who has filed a demand for notice under § 3-204 of this code.

(2) Notice must be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the Superior Court of the Virgin Islands, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(b) if it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at the alleged decedent's last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable including any or all of the following methods:

(1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(3) by engaging the services of an investigator.

(c) The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

§3-404. Formal Testacy Proceedings; Written Objections to Probate.

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in the party's pleadings the party's objections to probate of the will.

§3-405. Formal Testacy Proceedings; Uncontested Cases; Hearings and Proof.

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of § 3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

§3-406. Formal Testacy Proceedings; Contested Cases

In a contested case in which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to § 2-504, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(2) If the will is notarized pursuant to § 2-502(a)(3)(B), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will.

(3) If the will is witnessed pursuant to § 2-502(a)(3)(A), but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within the Virgin Islands, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

§3-407. Formal Testacy Proceedings; Burdens in Contested Cases.

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

§3-408. Formal Testacy Proceedings; Will Construction; Effect of Final Order in Another Jurisdiction.

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

§3-409. Formal Testacy Proceedings; Order; Foreign Will.

After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by § 3-108, it shall determine the decedent's domicile at death, the decedent’s heirs and the state of the decedent’s testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by § 3-612. The petition shall be

dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place that does not provide for probate of a will after death, may be proved for probate in the Virgin Islands by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

§3-410. Formal Testacy Proceedings; Probate of More Than One Instrument.

If two or more instruments are offered for probate before a final order is entered into a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order must indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how many provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of §3-412.

§3-411. Formal Testacy Proceedings; Partial Intestacy.

If it becomes evident during a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

§3-412. Formal Testacy Proceedings; Effect of Order; Vacation.

Subject to appeal and subject to vacation as provided in this section and in §3-413, a formal testacy order under §3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later offered will:

(i) were unaware of its existence at the time of the earlier proceeding: or

(ii) were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of the decedent's death or were given no notice of any proceeding concerning the estate, except by publication.

(3) A petition for vacation under paragraph (1) or (2) must be filed prior to the earlier of the following time limits:

(A) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement;

(B) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by § 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or

(C) 12 months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by

registered or certified mail addressed to the alleged decedent at the alleged decedent's last known address and the court finds that a search under §3-403(b) was made.

(6) If the alleged decedent is not dead, even if notice was sent and search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all the circumstances.

§3-413. Formal Testacy Proceedings; Vacation of Order For Other Cause.

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

§3-414. Formal Proceedings Concerning Appointment of Personal Representative.

(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by § 3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by § 3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceedings commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy,

any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under §3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under §3-611.

PART 5. SUPERVISED ADMINISTRATION

§3-501. Supervised Administration; Nature of Proceeding.

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

§3-502. Supervised Administration; Petition; Order.

A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the

request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(1) if the decedent's will directs supervised administration, the court shall order supervised administration unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(2) if the decedent's will directs unsupervised administration, the court shall order supervised administration only upon a finding that it is necessary for protection of persons interested in the estate; or

(3) in other cases, if the court finds that supervised administration is necessary under the circumstances.

§3-503. Supervised Administration; Effect on Other Proceedings.

(a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by §3-401.

(c) After a personal representative has received notice of the filing of a petition for supervised administration, the personal representative who has been appointed previously shall not exercise the power to distribute any estate. The filing of the petition does not affect other powers and duties unless the court restricts the exercise of any of the powers and duties pending full hearing on the petition.

§3-504. Supervised Administration; Powers of Personal Representative.

Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but the supervised personal representative may not exercise the power to make any distribution

of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the Court must be endorsed on the letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

§3-505. Supervised Administration; Interim Orders; Distribution and Closing Orders.

Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under §3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

PART 6. PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

§3-601. Qualification.

Before receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

§3-602. Acceptance of Appointment; Consent to Jurisdiction.

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate which may be instituted by any interested person. Notice of any proceeding must be delivered to the personal representative, or mailed to the personal representative by ordinary first class mail at personal representative's address as listed in the application or petition for appointment or as thereafter reported to the court and to the personal representative's address as then known to the petitioner.

§3-603. Bond Not Required Without Court Order, Exceptions.

No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express

requirement of bond; or (3) when bond is required under §3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed within formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of the Virgin Islands to secure performance of the personal representative's duties.

§3-604. Bond Amount; Security; Procedure; Reduction.

If bond is required and the provisions of the will or order do not specify the amount, unless stated in the application or petition, the person qualifying shall file a statement under oath with the Clerk of Court indicating the best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and the person qualifying shall execute and file a bond with the Clerk of Court, or give other suitable security, in an amount not less than the estimate. The Clerk of Court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The Clerk of Court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in §6-101, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

§3-605. Demand for Bond by Interested Person.

Any person apparently having an interest in the estate worth more than $5,000, or any creditor having a claim more than $5,000, may make a written demand that a personal representative give bond. The demand must be filed with the Clerk of Court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in §3-603 or §3-604. After receiving notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the personal representative's office except as necessary to preserve the estate. Failure of the personal representative to meet the requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for the personal representative's removal and appointment of a successor personal representative.

§3-606. Terms and Conditions of Bonds.

(a) The following requirements and provisions apply to any bond required by this part:

(1) Bonds shall name the Government of the Virgin Islands as obligee for the benefit of the persons interested in the estate and must be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties must be stated in the bond.

(3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding must be delivered to the surety or mailed to the surety by registered or certified mail at the address of the surety as listed with the court where the bond is filed and to address of the surety as then known to the petitioner.

(4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

§3-607. Order Restraining Personal Representative.

(a) On petition of any person who appears to have an interest in the estate, the court, by temporary order, may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of the personal representative's office, or make any other order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(b) The matter must be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and the personal representative's attorney of record, if any, and to any other parties named defendant in the petition.

§3-608. Termination of Appointment; General.

Termination of appointment of a personal representative occurs as indicated in §3-609 to 3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at

any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve the personal representative of the duty to preserve assets subject to the personal representative's control, to account for the assets and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates the authority to represent the estate in any pending or future proceeding.

§3-609. Termination of Appointment; Death or Disability.

The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates the personal representative's appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by the decedent or ward at the time the appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon appointment and qualification.

§3-610. Termination of Appointment; Voluntary.

(a) An appointment of a personal representative terminates as provided in §3-1003, one year after the filing of a closing statement.

(b) An order closing an estate as provided in § 3-1001 or 3-1002 terminates an appointment of a personal representative.

(c) A personal representative may resign the position by filing a written statement of resignation with the Clerk of Court after the personal representative has given at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed

statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to the successor.

§3-611. Termination of Appointment by Removal; Cause; Procedure.

(a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice must be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in §3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment either personally or for a nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in the Virgin Islands to administer local assets.

§3-612. Termination of Appointment; Change of Testacy Status.

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent

to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although the personal representative's powers may be reduced as provided in §3-401. Termination occurs upon appointments in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative, upon request, may be appointed personal representative under the subsequently probated will, or as in intestacy, as the case may be.

§3-613. Successor Personal Representative.

Parts 3 and 4 of this article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if the appointment had not been terminated.

§3-614. Special Administrator; Appointment.

A special administrator may be appointed:

(1) informally by the Clerk of Court on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in § 3-609;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

§3-615. Special Administrator; Who May Be Appointed.

(a) If a special administrator is to be appointed pending the probate of a will that is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

§3-616. Special Administrator; Appointed Informally; Powers and Duties.

A special administrator appointed by the Clerk of Court in informal proceedings under § 3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefore and to deliver them to the general personal representative upon the representative's qualification. The special administrator has the power of a personal representative under the code necessary to perform the special administrator's duties.

§3-617. Special Administrator; Formal Proceedings; Power and Duties.

A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

§3-618. Termination of Appointment; Special Administrator.

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other

cases, the appointment of a special administrator is subject to termination as provided in §s 3-608 through 3-611.

PART 7. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

§3-701. Time of Accrual of Duties and Powers.

The duties and powers of a personal representative commence upon appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

§3-702. Priority Among Different Letters.

A person to whom general letters are issued first has exclusive authority under the letters until the person's appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

§3-703. General Duties; Relation and Liability to Persons Interested in Estate; Standing to Sue.

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described in title 15 Virgin Islands Code. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred by this code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

(b) A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(c) Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in Virgin Islands at death has the same standing to sue and be sued in the Courts of the Virgin Islands and the courts of any other jurisdiction as the decedent had immediately prior to death.

§3-704. Personal Representative to Proceed Without Court Order; Exception.

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but the personal representative may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

§3-705. Duty of Personal Representative; Information to Heirs and Devisees.

Not later than 30 days after appointment every personal representative, except any special administrator, shall give information of the appointment to the heirs and devisees, including, if

there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information must include the name and address of the personal representative, indicate that it is being sent to people who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The information must state that the estate is being administered by the personal representative under the Virgin Islands 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. The personal representative's failure to give this information is a breach of duty to the people concerned but does not affect the validity of the appointment or the personal representative's powers or other duties. A personal representative may inform other people of the appointment by delivery or ordinary first-class mail.

§3-706. Duty of Personal Representative; Inventory and Appraisement.

(a) Within three months after appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

(b) The personal representative shall send a copy of the inventory to interested persons who request it. The personal representative may also file the original of the inventory with the court.

§3-707. Employment of Appraisers.

The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different people may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items appraised.

§3-708. Duty of Personal Representative; Supplementary Inventory.

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

§3-709. Duty of Personal Representative; Possession of Estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled the property unless, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for

possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title to the property.

§3-710. Power to Avoid Transfers.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means which is in law void or voidable as against creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

§3-711. Powers of Personal Representatives; In General.

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

(b) A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Uniform Fiduciary Access to Digital Assets Act, 15 V.I.C. Ch. 65, or by order of the court.

§3-712. Improper Exercise of Power; Breach of Fiduciary Duty.

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of the representative's fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in §§3-713 and 3-714.

§3-713. Sale, Encumbrance or Transaction Involving Conflict of Interest; Voidable; Exceptions.

Any sale or encumbrance to the personal representative, the personal representative's spouse, agent or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest, or any transaction that is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless (1) the will or a contract entered into by the decedent expressly authorized the transaction; or (2) the transaction is approved by the court after notice to interested persons.

§3-714. Persons Dealing with Personal Representative; Protection.

A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in § 3-504, no provision in any will or order of the court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

§3-715. Transactions Authorized for Personal Representatives; Exceptions.

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in § 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries, or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally, consistent with any applicable investment standards under Virgin Islands law;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered on behalf of the estate; and

(27) satisfy and settle claims and distribute the estate as provided in this code.

§3-716. Powers and Duties of Successor Personal Representative.

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but the successor may not exercise any power expressly made personal to the executor named in the will.

§3-717. Co-Representatives; When Joint Action Required.

If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-

representative if actually unaware that another has been appointed to serve or if advised by the personal representative with whom they deal that the personal representative has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

§3-718. Powers of Surviving Personal Representative.

Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.

§3-719. Compensation of Personal Representative.

A personal representative is entitled to reasonable compensation for services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

§3-720. Expenses in Estate Litigation.

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative or nominee is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred, subject to review and approval by the Court as reasonable under the circumstances.

§3-721. Proceedings for Review of Employment of Agents and Compensation of Personal Representatives and Employees of Estate.

After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person

by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation for the personal representative's services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

PART 8. CREDITORS' CLAIMS

§3-801. Notice to Creditors.

(a) Unless notice has already been given under this section, a personal representative upon appointment may publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the Virgin Islands announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred.

(b) A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present the creditor's claim within four months after the published notice, if given as provided in subsection (a), or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) or a similar notice.

(c) The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

§3-802. Statutes of Limitations.

(a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.

(b) The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death, but resumes thereafter as to claims not barred by other sections.

(c) For purposes of a statute of limitations, the presentation of a claim pursuant to section 3-804 is equivalent to commencement of a proceeding on the claim.

§3-803. Limitations on Presentation of Claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the Government of the Virgin Islands and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or non-claim statute, are barred against the estate, the personal representative, the heirs and devisees and non-probate transferees of the decedent, unless presented within the earlier of the following:

(1) one year after the decedent's death; or

(2) the time provided by § 3-801(b) for creditors who are given actual notice, and within the time provided in § 3-801(a) for all creditors barred by publication.

(b) A claim described in subsection (a) which is barred by the non-claim statute of the decedent's domicile before the giving of notice to creditors in the Virgin Islands is barred in the Virgin Islands.

(c) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the Government of the Virgin Islands and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due; or

(2) any other claim, within the later of four months after it arises, or the time specified in subsection (a)(1).

(d) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which there is protection through liability insurance; or

(3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

[Note: This section is intended to apply to all claims, including those of the Government of the Virgin Islands, unless expressly exempted by other provisions of law.]

§3-804. Manner of Presentation of Claims.

(a) Claims against a decedent's estate may be presented as follows:

(1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by the Virgin Islands Rules of Probate and Fiduciary Proceedings (V.I.R.Prob.), with the clerk of the court. The claim is deemed presented upon the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of a claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required regarding matters claimed in proceedings against the decedent which were pending at the time of death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim that is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period; or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.

§3-805. Classification of Claims.

(a) if the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral expenses;

(3) debts and taxes with preference under federal law;

(4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(5) debts and taxes with preference under other laws of the Virgin Islands;

(6) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable is not entitled to a preference over claims not due.

§3-806. Allowance of Claims.

(a) As to claims presented in the manner described in §3-804 within the time limit prescribed in §3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes a decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change the disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim that is disallowed in whole, or in part, by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on a claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(b) After allowing or disallowing a claim the personal representative may change the allowance or disallowance as hereafter provided. The personal representative may prior to payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (a). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (a); after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(c) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the Clerk of Court in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal

representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(d) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(e) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

§3-807. Payment of Claims.

(a) Upon the expiration of the earlier of the time limitations provided in §3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.

(b) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

(1) payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority.

§3-808. Individual Liability of Personal Representative.

(a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in a fiduciary capacity during administration of the estate unless the personal representative fails to reveal the representative capacity and identify the estate in the contract.

(b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed during administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a personal representative in a fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in a fiduciary capacity, whether or not the personal representative is individually liable therefor.

(d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

§3-809. Secured Claims.

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders the security; otherwise, payment is upon the basis of one of the following:

(1) if the creditor exhausts the security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security determined by

converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

§3-810. Claims Not Due and Contingent or Unliquidated Claims.

(a) If a claim that will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases, the personal representative or, an petition of the personal representative or the claimant in a special proceeding for the purpose, the Court may provide for payment as follows:

(1) if the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account;

(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

§3-811. Counterclaims.

In allowing a claim the personal representative may deduct any counterclaim the estate has against the claimant. In determining a claim against an estate, a Court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

§3-812. Execution and Levies Prohibited.

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

§3-813. Compromise of Claims.

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

§3-814. Encumbered Assets.

If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

§3-815. Administration in More Than One State; Duty of Personal Representative.

(a) All assets of estates being administered in the Virgin Islands are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(b) If the estate either in the Virgin Islands or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in the Virgin islands or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of the claim. If a preference or security regarding a claim is allowed in another jurisdiction but

not in the Virgin Islands, the creditor so benefited is to receive dividends from local assets only upon the balance of the claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and the Virgin Islands is not the state of the decedent's last domicile, the claims allowed in the Virgin Islands shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in the Virgin Islands the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this territory is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this territory from assets in other jurisdictions.

§3-816. Final Distribution to Domiciliary Representative.

The estate of a non-resident decedent being administered by a personal representative appointed in the Virgin Islands shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless: (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of the Virgin Islands without reference to the local law of the decedent's domicile; (2) the personal representative of this territory, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under § 3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.

PART 9. SPECIAL PROVISIONS RELATING TO DISTRIBUTION

§3-901. Successors' Rights if No Administration.

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

§3-902. Distribution; Order in Which Assets Appropriated; Abatement.

(a) Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

(1) property not disposed of by the will;

(2) residuary devises;

(3) general devises;

(4) specific devises.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement is achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

§3-903. Right of Retainer.

The amount of a non-contingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense that would be available to the successor in a direct proceeding for recovery of the debt.

§3-904. Interest in General Pecuniary Devise.

General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

§3-905. Penalty Clause for Contest.

A provision in a will seeking to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

§3-906. Distribution in Kind; Valuation; Method.

(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to the devisee, and a spouse or child who has selected particular assets of an estate as provided in §2-403 receives the items selected.

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind if:

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets that do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate shall be distributed in any equitable manner.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution based on the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

§3-907. Distribution in Kind; Evidence.

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

§3-908. Distribution; Right or Title of Distributee.

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

§3-909. Improper Distribution; Liability of Distributee.

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

§3-910. Purchasers from Distributees Protected.

If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to the distributee, as well as a purchaser from or lender to any other distributee

or the distributee's transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a government documentary fee is noted pursuant to 28 V.I.C. § 133 shall be prima facie evidence that such transfer was made for value.

§3-911. Partition for Purpose of Distribution.

When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

§3-912. Private Agreements Among Successors to Decedent Binding on Personal Representative.

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to the obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of the office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly,

trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

§3-913. Distributions to Trustee.

(a) Before distributing to a trustee, the personal representative may require reasonable written assurances from the trustee that the trust exists and that the trustee will administer the trust in accordance with its terms and applicable law. The personal representative may also require that the trustee inform beneficiaries of the distribution and the trustee's duties, consistent with fiduciary principles under Virgin Islands law.

(b) If the trust instrument does not excuse the trustee from giving bond, and the personal representative reasonably believes that distribution might jeopardize the interests of persons who are not able to protect themselves, the personal representative may petition the Superior Court to require that the trustee post bond. The personal representative may withhold distribution until the court acts.

(c) No inference of negligence on the part of the personal representative shall be drawn from the failure to exercise the authority conferred by subsections (a) and (b).

§3-914. Disposition of Unclaimed Assets.

(a) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to the person's conservator, if any, otherwise to the Office of the Lieutenant Governor to become a part of the unclaimed property fund, in accordance with the Uniform Unclaimed Property Act, (title 28 Virgin Islands Code, chapter 29).

(b) The money received by Office of the Lieutenant Governor shall be paid to the person entitled on proof of the person's right thereto or, if the Lieutenant Governor refuses or fails to pay, the person may petition the court which appointed the personal representative, whereupon the court, upon notice to the Lieutenant Governor, may determine the person entitled to the money and order the Lieutenant Governor to pay it to the person. No interest is

allowed thereon and the heir, devisee or claimant shall pay all costs and expenses incident to the proceeding. If no petition is made to the court within 10 years after payment to the Lieutenant Governor the right of recovery is barred.

§3-915. Distribution to Person Under Disability.

(a) A personal representative may discharge the obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(b) Unless contrary to an express provision in the will, the personal representative may discharge the obligation to distribute to a minor or person under other disability as authorized by §5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(c) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(1) an attorney in fact who has authority under a power of attorney to receive property for that person; or

(2) the spouse, parent or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $ 10,000 a year, or property not exceeding $ 50,000 in value, unless the court authorizes a larger amount or greater value.

Persons receiving money or property for the disabled person are obligated to apply the money or property to the support of that person but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection.

§3-916. [RESERVED]

PART 9A. APPORTIONMENT OF ESTATE TAXES

§3-9A-101. Short Title.

This part may be cited as the Uniform Estate Tax Apportionment Act.

§ 3-9A-102. Definitions.

In this part:

(1) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(A) any claim or expense allowable as a deduction for purposes of the tax;

(B) the value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(C) any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(2) "Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(3) "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

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

(5) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(6) "Time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise

of discretion that could transfer a beneficial interest to another person. The term does not include a co-tenancy unless the co-tenancy itself is a time-limited interest.

(7) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

§3-9A-103. Apportionment by Will or Other Dispositive Instrument

(a) Except as otherwise provided in subsection (c), the following rules apply:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly.

(2) Any portion of an estate tax not apportioned pursuant to paragraph (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph:

(A) a trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(B) the date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(3) If any portion of an estate tax is not apportioned pursuant to paragraph (1) or (2), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be

applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(b) Subject to subsection (c), and unless the decedent expressly and unambiguously directs the contrary, the following rules apply:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest,

(A) the tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument, or

(B) if the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

(3) Except as otherwise provided in paragraph (4), if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under § 3-9A-107, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist

and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests.

(c) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

§3-9A-104. Statutory Apportionment of Estate Taxes.

To the extent that apportionment of an estate tax is not controlled by an instrument described in §3-9A-103 and except as otherwise provided in §3-9A-106 and 3-9A-107, the following rules apply:

(1) Subject to paragraphs (2), (3), and (4), the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to whom the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of Section 2044 of the Internal Revenue Code of 1986, or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in §3-9A-103(b)(4) and except as to property to which §3-9A-107 applies, an estate tax apportioned to persons holding interests in

property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

§3-9A-105. Credits and Deferrals.

Except as otherwise provided in §s 3-9A-106 and 3-9A-107, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

§3-9A-106. Insulated Property: Advancement of Tax.

(a) In this section:

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (c).

(3) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

(b) If an estate tax is to be advanced pursuant to subsection (c) by persons holding interests in uninsulated property subject to a time-limited interest other than property to which §3-9A-107 applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

(c) Subject to §3-9A-109(b) and (d), an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under §3-9A-102(1)(B) as if those interests were in uninsulated property.

(d) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(e) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(f) Upon a distribution of insulated property for which, pursuant to subsection (d), the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder.

§3-9A-107. Apportionment and Recapture of Special Elective Benefits

(a) In this section:

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(A) a reduced valuation of specified property that is included in the gross estate;

(B) a deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(C) an exclusion forth the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

(b) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the

decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

§3-9A-108. Securing Payment of Estate Tax from Property in Possession of Fiduciary

(a) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

§3-9A-109. Collection of Estate Tax by Fiduciary

(a) A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

(b) Except as otherwise provided in § 3-9A-106, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) any person having an interest in the apportionable estate which is not exonerated from the tax;

(2) any other person having an interest in the apportionable estate;

(3) any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person pursuant to this part may not exceed the value of the person's interest.

§3-9A-110. Right of Reimbursement

(a) A person required under §3-9A-109 to pay an estate tax greater than the amount due from the person under §3-9A-103 or 3-9A-104 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by §3-9A-103 or 3-9A-104 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under §3-9A-109(b).

(b) A fiduciary may enforce the right of reimbursement under subsection (a) on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

§3-9A-111. Action to Determine or Enforce Part.

A fiduciary, transferee, or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce this part.

§3-9A-112. Reserved.

§3-9A-113. Reserved.

PART 10. CLOSING ESTATES

§3-1001. Formal Proceedings Terminating Administration; Testate or Intestate; Order of General Protection.

(a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative; except that no petition under this section may be entertained until the time for presenting claims that arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine

heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition or an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

§3-1002. Formal Proceedings Terminating Testate Administration; Order Construing Will Without Adjudicating Testacy.

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims that arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and

distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those the personal representative represents. If it appears that a part of the estate is intestate, the proceedings must be dismissed or amendments made to meet the provisions of §3-1001.

§3-1003. Closing Estates; By Sworn Statement of Personal Representative.

(a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the Superior Court of the Virgin Islands no earlier than six months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representatives or a previous personal representative, has:

(1) determined that the time limited for presentation of creditors' claims has expired.

(2) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or state in detail other arrangements that have been made to accommodate outstanding liabilities; and

(3) sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither

paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

(b) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

§3-1004. Liability of Distributees to Claimants.

After assets of an estate have been distributed and subject to §3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee is liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts more than the value of the distributee's distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied during administration. Any distributee who fails to notify other distributees of a demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against the distributee loses the right of contribution against other distributees.

§3-1005. Limitations on Proceedings Against Personal Representative.

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

§3-1006. Limitations on Actions and Proceedings Against Distributees.

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a

successor personal representative acting in their behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of three years after the decedent's death or one year after the time of its distribution, but all claims of creditors of the decedent, are barred one year after the decedent's death. This section does not bar an action to recover property or value received because of fraud.

§3-1007. Certificate Discharging Liens Securing Fiduciary Performance.

After an appointment has terminated, the personal representative, the personal representative's sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the Clerk of Court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

§3-1008. Subsequent Administration.

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the Superior Court of the Virgin Islands upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

§3-1009. Recording of Final Decrees and Closing Statements.

(a) Within 60 days after the entry of a final order or decree closing an estate under this Part, or the filing of a closing statement under section 3-1003 or section 3-1204, the personal representative shall cause a certified copy of the final order, decree, or closing statement, and

of any will admitted to probate, to be recorded in the Office of the Recorder of Deeds, Office of the Lieutenant Governor, for each district, St. Croix or St. Thomas-St. John, in which is located real property that the decedent owned at the time of death or that is devised by the decedent's will.

(b) A final order, decree, or closing statement, when recorded under subsection (a), is notice to all persons of any devise or other disposition of real property located in the district in which it is recorded.

(c) The recording required by this section is in addition to, and does not limit, the recording of a judgment under section 3-321.

PART 11. COMPROMISE OF CONTROVERSIES

§3-1101. Effect of Approval of Agreements Involving Trusts, Inalienable Interests, or Interests of Third Persons.

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

§3-1102. Procedure for Securing Court Approval of Compromise.

The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise must be set forth in an agreement in writing which must be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims that will or may be affected by the

compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative, if any, or a trustee, then may submit the agreement to the Superior Court of the Virgin Islands for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of any estate and all affected trustees of trusts, the Court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

PART 12. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

§3-1201. Collection of Personal Property by Affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed $150,000.00; and

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

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

§3-1202. Effect of Affidavit.

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. The person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefore to any personal representative of the estate or to any other person having a superior right.

§3-1203. Small Estates; Summary Administration Procedure.

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal

representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in § 3-1204.

[For purposes of this section, homestead allowance, exempt property, family allowance, and funeral expenses must be determined in accordance with Title 15 of the Virgin Islands Code.]

§3-1204. Small Estates; Closing by Sworn Statement of Personal Representative.

(a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of §3-1203 by filing with the Court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the administration to the distributees whose interests are affected.

(b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

(c) A closing statement filed under this section has the same effect as one filed under §3-1003."

§3-1205. Summary Procedure for Modest Estates.

An estate whose value, less liens and encumbrances, does not exceed $150,000.00 may be administered in a summary manner under rules prescribed by the Superior Court, consistent with this part.

SECTION 2. Title 15 Virgin Islands Code is amended by adding the following Article IV:

"ARTICLE IV. FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION

PART 1. DEFINITIONS

§4-101. Definitions.

In this article:

(1) "local administration" means administration by a personal representative appointed in the Virgin Islands pursuant to appointment proceedings described in Article III.

(2) "local personal representative" includes any personal representative appointed in the Virgin Islands pursuant to appointment proceedings described in Article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to § 4-205.

(3) "Resident creditor" means a person domiciled in, or doing business in the Virgin Islands, who is, or could be, a claimant against an estate of a non-resident decedent."

PART 2. POWERS OF FOREIGN PERSONAL REPRESENTATIVES

"§ 4-201. Payment of Debt and Delivery of Property to Domiciliary Foreign Personal Representative Without Local Administration.

At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control

of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of the representative's appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of the death of the nonresident decedent,

(2) that no local administration, or application or petition therefor, is pending in the Virgin Islands,

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

[This section does not affect any reporting obligations under the Uniform Unclaimed Property Act, Title 28, Chapter 29 of the Virgin Islands Code]

§4-202. Payment or Delivery Discharges.

Payment or delivery made in good faith based on the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

§4-203. Resident Creditor Notice.

Payment or delivery under §4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

§4-204. Proof of Authority Bond.

If no local administration or application or petition for local administration is pending in the Virgin Islands, a domiciliary foreign personal representative may file with a court in

the Virgin Islands in the judicial district in which property belonging to the decedent is located, authenticated copies of the representative's appointment and of any official bond.

§4-205. Powers.

A domiciliary foreign personal representative who has complied with § 4-204 may exercise as to assets in the Virgin Islands all powers of a local personal representative and may maintain actions and proceedings in the Virgin Islands subject to any conditions imposed upon nonresident parties generally.

§4-206. Power of Representatives in Transition.

The power of a domiciliary foreign personal representative under §4-201 or §4-205 shall be exercised only if there is no administration or application for administration pending in the Virgin Islands. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under §4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed the person's position in reliance upon the powers of a foreign personal representative may be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for the foreign personal representative in any action or proceedings in the Virgin Islands.

§4-207. Ancillary and Other Local Administrations; Provisions Governing.

In respect to a nonresident decedent, the provisions of Article III of this code govern:

(1) proceedings, if any, in a court of the Virgin Islands for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

PART 3. JURISDICTION OVER FOREIGN REPRESENTATIVES

§4-301. Jurisdiction by Act of Foreign Personal Representative.

A foreign personal representative submits personally to the jurisdiction of the courts of the Virgin Islands in any proceeding relating to the estate by

(1) filing authenticated copies of the foreign personal representative's appointment as provided in §4-204,

(2) receiving payment of money or taking delivery of personal property under §4-201, or

(3) doing any act as a personal representative in the Virgin Islands which would have given the courts of the Virgin Islands jurisdiction over the foreign personal representative as an individual.

Jurisdiction under paragraph (2) is limited to the money or value of personal property collected.

§4-302. Jurisdiction by Act of Decedent.

In addition to jurisdiction conferred by §4-301, a foreign personal representative is subject to the jurisdiction of the courts of the Virgin Islands to the same extent that the decedent was subject to jurisdiction immediately prior to death.

§4-303. Service on Foreign Personal Representative.

(a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to the foreign personal representative's last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service

could have been made under other laws of the Virgin Islands on either the foreign personal representative or the decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a) the foreign personal representative must be allowed at least 30 days within which to appear or respond.

PART 4. JUDGMENTS AND PERSONAL REPRESENTATIVES

§4-401. Effect of Adjudication For or Against Personal Representative.

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the personal foreign representative were a party to the adjudication."

SECTION 3. (a) This act takes effect on January 1, 2028, or six months after enactment, whichever is later.

(b) On the effective date of this act:

(1) This act applies to governing instruments executed by decedents dying on or after the effective date.

(2) This act applies to any court proceedings pending or commenced on or after the effective date, regardless of the decedent's date of death, except to the extent that the court finds that application of former law is necessary in the interest of justice or due to the infeasibility of applying this act's provisions.

(3) Any act done before the effective date of this act in any proceeding, and any right accrued before that date, is not impaired by this act. If a right was acquired, extinguished, or barred upon the expiration of a prescribed period that began running under any statute in effect before the effective date, the former law shall continue to govern that right.

(4) Sections 3-9A-103 through 3-9A-107 do not apply to:

(A) the estate of a decedent who dies on or within three years after the effective date of this act; or

(B) the estate of a decedent who dies more than three years after the effective date of this act if the decedent continuously lacked testamentary capacity from the expiration of the three-year period until the date of death.

In these cases, estate taxes must be apportioned in accordance with the law in effect immediately before the effective date of this act.

(5) Any rule of construction or presumption established under this act applies to governing instruments executed before the effective date unless there is a clear indication of contrary intent.

SECTION 4. Nothing in this Act repeals or limits the Virgin Islands Uniform Electronic Wills Act, 15 V.I.C. §§ 51–62. In the case of an electronic will, chapter 1A governs to the extent of any inconsistency with article II, part 5 of this Act.

SECTION 5. Title 15 Virgin Islands Code is amended in the following instances:

(1) in Part 11, chapter 11, section 168, by striking "intestate" and inserting "a period after "died".

(2) in Part 11, chapter 13, subchapter 111, section 216 in the section heading by adding at the end the phrase "and revocation" and designating the existing language as subsection (a) and inserting the following subsection (b):

"(b) REVOCATION OF REVOCABLE TRANSFER ON DEATH DEED

IMPORTANT NOTICE: THIS FORM MUST BE RECORDED TO BE EFECTIVE

This revocation form MUST be RECORDED before your death, or it will not be effective. This revocation form only affects a transfer on death deed that YOU made. A

transfer on death deed made by a co-owner of your property is not affected by this revocation form. A co-owner who wants to revoke a transfer on death deed that he/she made must complete and RECORD a SEPARATE revocation form.

PROPERTY DESCRIPTION

Print the legal description of the property affected by this revocation:

_____

_____

_____

REVOCATION

I, _____, am the transferor under the Revocable TOD deed dated _____ and recorded on ____ as Instrument No. _____ in Book _____, Page/Image _____, of Official Records of the Recorder of Deeds for the district of, _____ which named as beneficiary(ies) _____.

I hereby revoke any TOD deed to transfer the described property that I executed before executing this form, including the TOD deed described above.

SIGNATURE AND DATE

Sign and print your name below (your name should exactly match the name shown on your title documents):

Date:_____ _____
(Signature of declarant)

_____
(Typed or written name of declarant)

Territory of the Virgin Islands)

District of _____)

On _____ before me, _____ personally appeared _____ who proved to me on the basis of satisfactory evidence to be the

person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under the PENALTY OF PERJURY under the laws of the Territory of the Virgin Islands that the forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

My Commission Expires: _____".

(3) in Part 11, chapter 15, section 237 is repealed and the following new section 237 with amendments is inserted:

"§237. Priority of husband and wife as administrator

If the deceased was a married woman or married man, the administration of the respective decedent's of her estate shall in all cases be granted to her husband, if he is qualified and applies therefor within 45 days from the spouse's decease, unless by force of a marriage settlement or otherwise decedent's has made some testamentary disposition of his or her property which renders it necessary and proper to grant the administration to some other person."

SECTION 6. Title 15 Virgin Islands Code, part I, chapter 1 (15 V.I.C. §§ 1–42), Part I, chapter 3 (15 V.I.C. §§ 81–89), and Part II are repealed on the effective date of this Act; provided, however, that 15 V.I.C. §§ 10, 201, 201a, and 202 through 217, inclusive, are not repealed by this Act and remain in effect unless and until expressly amended, repealed, or recodified by subsequent legislation.

BILL SUMMARY

This bill enacts a comprehensive probate code for the Virgin Islands by establishing procedures for the administration of decedents' estates, including testate and intestate succession, appointment and duties of personal representatives, supervised and unsupervised administration, the handling of creditors' claims, and closing of estates. The bill also addresses distribution of estate assets, apportionment of estate taxes, treatment of foreign personal representatives, summary administration for small estates, and compromise of controversies. Additionally, the bill includes protections for successors, payors, and bona fide purchasers, and provides for modernized definitions, time limits, and procedural safeguards.

This bill further repeals and replaces conflicting provisions and establishes a uniform framework aligned with modern probate practices and the needs of the Virgin Islands. Finally, the bill retains existing law under title 15, section 10 of the Virgin Islands Code governing the surviving spouse's right of election.

BR25-0193/May 5, 2026/KEH

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..\..\..\..\AMENDS\36th Legislature\FRANCIS, JR., NOVELLE E\Amendment 36-926\Amendment No. 36-926-DRAFTED ON YELLOW.docx