

SELECTED
STATUTES ON
TRUSTS AND ESTATES
2015 EDITION

MARK L. ASCHER
GRAYSON M.P. MCCOUCH



 WEST
ACADEMIC
PUBLISHING

SELECTED STATUTES ON TRUSTS AND ESTATES

2015 Edition

Selected and Edited by

MARK L. ASCHER

*Joseph D. Jamail Centennial Chair in Law
University of Texas*

GRAYSON M.P. McCOUCH

*Gerald Sohn Professor of Law
University of Florida,
Levin College of Law*

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PREFACE

This volume contains fourteen uniform acts relevant to courses dealing with wills, trusts, decedents' estates and related topics:

1. the Uniform Probate Code;
2. the Uniform Custodial Trust Act;
3. the Uniform Disclaimer of Property Interests Act (1999);
4. the Uniform Estate Tax Apportionment Act (2003);
5. the Uniform Fiduciary Access to Digital Assets Act;
6. the Uniform Power of Attorney Act (2006);
7. the Uniform Powers of Appointment Act;
8. the Uniform Principal and Income Act (1997);
9. the Uniform Prudent Investor Act;
10. the Uniform Real Property Transfer on Death Act;
11. the Uniform Simultaneous Death Act (1940);
12. the Uniform Statutory Rule Against Perpetuities;
13. the Uniform Transfers to Minors Act; and
14. the Uniform Trust Code;

These acts and the accompanying official comments are promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), and are reproduced here with permission. The official comments explain the purpose and intent of the statutory provisions and the changes they make in prior law. From time to time, the NCCUSL continues to update both the acts themselves and the official comments. We have attempted to reproduce each in its most current version. We have included most, but not all, of the statutory provisions, indicating all omissions. As to the official comments, we have been more selective. Within any particular comment, we have indicated all omissions, but, when omitting an entire comment, we have done so without additional indication.

We welcome comments and suggestions.

MARK L. ASCHER
GRAYSON M.P. McCOUCH

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UNIFORM PROBATE CODE*

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GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

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PART 1**SHORT TITLE, CONSTRUCTION,
GENERAL PROVISIONS****Section 1-101. Short Title.**

This [act] shall be known and may be cited as the Uniform Probate Code.

Section 1-102. Purposes; Rule of Construction.

(a) This [code] shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this [code] are:

(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of his property;

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

(4) to facilitate use and enforcement of certain trusts;

(5) to make uniform the law among the various jurisdictions.

Section 1-103. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this [code], the principles of law and equity supplement its provisions.

Section 1-104. Severability.

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

Section 1-105. Construction Against Implied Repeal.

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

Section 1-106. Effect of Fraud and Evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this [code] or if fraud is used to avoid or circumvent the provisions or purposes of this [code], any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Section 1-107. Evidence of Death or Status.

In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual [is determined to be dead under the Uniform Determination of Death Act (1978/1980)] [has sustained either (i) irreversible cessation of circulatory and respiratory functions or (ii) irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death must be made in accordance with accepted medical standards].

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of five years, during which he [or she] has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His [or her] death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in paragraph (2) or (3), a document described in paragraph (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

Section 1-108. Acts by Holder of General Power.

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

Section 1-109. Cost of Living Adjustment of Certain Dollar Amounts.

(a) In this section:

(1) "CPI" means the Consumer Price Index (Annual Average) for All Urban Consumers (CPI-U): U.S. City Average—All items, reported by the Bureau of Labor Statistics, United States Department of Labor or its successor or, if the index is discontinued, an equivalent index reported by a federal authority. If no such index is reported, the term means the substitute index chosen by [insert appropriate state agency]; and

(2) "Reference base index" means the CPI for calendar year [insert year immediately preceding the year in which this section takes effect].

(b) The dollar amounts stated in Sections 2-102, [2-102A,] 2-202(b), 2-402, 2-403, 2-405, and 3-1201 apply to the estate of a decedent who died in or after [insert year in which this section takes effect], but for the estate of a decedent who died after [insert year after the year in which this section takes effect], these dollar amounts must be increased or decreased if the CPI for the calendar year immediately preceding the year of death exceeds or is less than

the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the CPI for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of \$100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next multiple of \$100, but for the purpose of Section 2-405, the periodic installment amount is the lump-sum amount divided by 12. If the CPI for [insert year immediately before the effective date of this section] is changed by the Bureau of Labor Statistics, the reference base index must be revised using the rebasing factor reported by the Bureau of Labor Statistics, or other comparable data if a rebasing factor is not reported.

(c) Before February 1, [insert year after the year in which this section takes effect], and before February 1 of each succeeding year, the [insert appropriate state agency] shall publish a cumulative list, beginning with the dollar amounts effective for the estate of a decedent who died in [insert year after the year in which this section takes effect], of each dollar amount as increased or decreased under this section.]

PART 2

DEFINITIONS

Section 1-201. General Definitions.

Subject to additional definitions contained in the subsequent [articles] that are applicable to specific [articles], [parts], or sections, and unless the context otherwise requires, in this [code]:

(1) “Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care, and an individual authorized to make decisions for another under a natural death act.

(2) “Application” means a written request to the Registrar for an order of informal probate or appointment under [Part] 3 of [Article] III.

(3) “Beneficiary,” as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a “beneficiary of a beneficiary designation,” refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a “beneficiary designated in a governing instrument,” includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) “Beneficiary designation” refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) “Child” includes an individual entitled to take as a child under this [code] by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) “Claims,” in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or

after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) “Conservator” is as defined in Section 5–102.

(8) “Court” means the [. Court or branch] in this state having jurisdiction in matters relating to the affairs of decedents.

(9) “Descendant” of an individual means all of his [or her] descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this [code].

(10) “Devise,” when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) “Devisee” means a person designated in a will to receive a devise. For the purposes of [Article] III, in the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) “Distributee” means any person who has received property of a decedent from his [or her] personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his [or her] hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(13) “Estate” includes the property of the decedent, trust, or other person whose affairs are subject to this [code] as originally constituted and as it exists from time to time during administration.

(14) “Exempt property” means that property of a decedent’s estate which is described in Section 2–403.

(15) “Fiduciary” includes a personal representative, guardian, conservator, and trustee.

(16) “Foreign personal representative” means a personal representative appointed by another jurisdiction.

(17) “Formal proceedings” means proceedings conducted before a judge with notice to interested persons.

(18) “Governing instrument” means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), transfer on death (TOD) deed, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(19) “Guardian” is as defined in Section 5–102.

(20) “Heirs,” except as controlled by Section 2–711, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(21) “Incapacitated person” means an individual described in Section 5–102.

(22) “Informal proceedings” means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(23) “Interested person” includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(24) “Issue” of an individual means descendant.

(25) “Joint tenants with the right of survivorship” and “community property with the right of survivorship” includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party’s contribution.

(26) “Lease” includes an oil, gas, or other mineral lease.

(27) “Letters” includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(28) “Minor” has the meaning described in Section 5–102.

(29) “Mortgage” means any conveyance, agreement, or arrangement in which property is encumbered or used as security.

(30) “Nonresident decedent” means a decedent who was domiciled in another jurisdiction at the time of his [or her] death.

(31) “Organization” means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

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

(33) “Payor” means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(34) “Person” means an individual or an organization.

(35) “Personal representative” includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. “General personal representative” excludes special administrator.

(36) “Petition” means a written request to the court for an order after notice.

(37) “Proceeding” includes action at law and suit in equity.

(38) “Property” includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(39) “Protected person” is as defined in Section 5–102.

(40) “Protective proceeding” means a proceeding under [Part] 4 of [Article] V.

(41) "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.

(42) "Registrar" refers to the official of the court designated to perform the functions of Registrar as provided in Section 1-307.

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

(44) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(A) to execute or adopt a tangible symbol; or

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

(46) "Special administrator" means a personal representative as described by Sections 3-614 through 3-618.

(47) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(48) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(49) "Successors" means persons, other than creditors, who are entitled to property of a decedent under his [or her] will or this [code].

(50) "Supervised administration" refers to the proceedings described in [Article] III, [Part] 5.

(51) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under Section 2-104 or 2-702. The term includes its derivatives, such as "survives," "survived," "survivor," "surviving."

(52) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(53) "Testator" includes an individual of either sex.

(54) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in [Article] VI, custodial arrangements pursuant to [each state should list its legislation, including that relating to [gifts] [transfers] to minors, dealing with special custodial situations], business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits

of any kind, and any arrangement under which a person is nominee or escrowee for another.

(55) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(56) "Ward" means an individual described in Section 5-102.

(57) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

[FOR ADOPTION IN COMMUNITY
PROPERTY STATES]

[(58) "Separate property" (if necessary, to be defined locally in accordance with existing concept in adopting state).

(59) "Community property" (if necessary, to be defined locally in accordance with existing concept in adopting state).]

PART 3

SCOPE, JURISDICTION AND COURTS

Section 1-301. Territorial Application.

Except as otherwise provided in this code, this code applies to:

- (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state,
- (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state,
- (3) incapacitated persons and minors in this state,
- (4) survivorship and related accounts in this state, and
- (5) trusts subject to administration in this state.

Section 1-302. Subject Matter Jurisdiction.

(a) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to

- (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons;
- (2) protection of minors and incapacitated persons; and
- (3) trusts.

(b) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

(c) The court has jurisdiction over protective proceedings and guardianship proceedings.

(d) If both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

Section 1-303. Venue; Multiple Proceedings; Transfer.

(a) Where a proceeding under this [code] could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

Section 1-304. Practice in Court.

Unless specifically provided to the contrary in this [code] or unless inconsistent with its provisions, the rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this [code].

Section 1-305. Records and Certified Copies.

The [Clerk of Court] shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this [code], including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the Registrar or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

Section 1-306. Jury Trial.

(a) If duly demanded, a party is entitled to trial by jury in [a formal testacy proceeding and] any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

Section 1-307. Registrar; Powers.

The acts and orders which this [code] specifies as performable by the Registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the court.

Section 1-308. Appeals.

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the rules applicable to the appeals to the [Supreme Court] in equity cases from the [court of general jurisdiction], except that in proceedings where jury trial has been had as a matter of right, the rules applicable to the scope of review in jury cases apply.

Section 1-309. Qualifications of Judge.

A judge of the court must have the same qualifications as a judge of the [court of general jurisdiction.]

Section 1-310. Oath or Affirmation on Filed Documents.

Except as otherwise specifically provided in this [code] or by rule, every document filed with the court under this [code] including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

PART 4**NOTICE, PARTIES AND REPRESENTATION IN ESTATE
LITIGATION AND OTHER MATTERS****Section 1-401. Notice; Method and Time of Giving.**

(a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(1) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(2) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or

(3) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for 3 consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Section 1-402. Notice; Waiver.

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding. A person for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice.

Section 1-403. Pleadings; When Parties Bound by Others; Notice.

In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following rules apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in another appropriate manner.

(2) A person is bound by an order binding another in the following cases:

(A) An order binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(B) To the extent there is no conflict of interest between them or among persons represented:

(i) an order binding a conservator binds the person whose estate the conservator controls;

(ii) an order binding a guardian binds the ward if no conservator of the ward's estate has been appointed;

(iii) an order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a former fiduciary, and in proceedings involving creditors or other third parties;

(iv) an order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(v) an order binding a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(C) Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained person is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) If no conservator or guardian has been appointed, a parent may represent a minor child.

(4) Notice is required as follows:

(A) The notice prescribed by Section 1-401 must be given to every interested person or to one who can bind an interested person as described in paragraph (2)(A) or (B). Notice may be given both to a person and to another who may bind the person.

(B) Notice is given to unborn or unascertained persons who are not represented under paragraph (2)(A) or (B) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(5) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall state its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

