

**WILLS,**  

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**TRUSTS And**  

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**ESTATE ADMINISTRATION**  

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**for the**  
**PARALEGAL**  

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**Second Edition**

**Dennis R. Hower**  

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# Wills, Trusts, and Estate Administration for the Paralegal

Second Edition

Dennis R. Hower  
University of Minnesota

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## Preface

A new vocational opportunity has emerged within the legal profession. It is called paralegalism. By definition, a paralegal is a person trained to perform legal skills who works under the supervision of an attorney or who is otherwise authorized by law to use those skills.

While this text is primarily for paralegals, it can also be used by trust officers working in banks and personal representatives selected and appointed to handle the affairs of a deceased person.

As an adviser and instructor in the paralegal program at the University of Minnesota, I have become aware that a serious deficiency in our program, and similar pioneer programs around the nation, is the lack of appropriate textbook materials for legal specialty courses. The detailed work required in a paralegal career necessitates resource books that explain the practical, everyday duties of the paralegal in the basic fields of law and that prepare the paralegal to undertake these skills. These books should also serve as a reference to other related materials and as a supplement to the lecture and discussions presented by the instructor in the specialty classes. The purpose of this writing is to meet this need in the area of wills, trusts, and estate administration.

The text identifies the responsibilities and duties that can be performed by the paralegal under the supervision of the attorney handling an estate. After reviewing the general principles of law and terminology that are basic to an understanding of the field of estate administration, a chronological treatment of the procedural steps required to complete the administration is presented including an update of the current federal and state tax consequences with the appropriate tax forms.

The administration of estates is a complex field utilizing interrelated principles of law that apply throughout the procedure discussed. Some of these principles and associate definitions have been intentionally repeated in several different sections or chapters to decrease the need for cross references to other pages or chapters in the text. However, frequent cross references are necessary and are used to establish cohesiveness within and among the chapters.

Terminology is a problem. Much confusion exists when describing or defining how the decedent's property is transferred and when naming the persons entitled to receive such property. The statutes of the various states, some authors of legal texts, and practitioners have contributed to the confusion by failing to select and use uniform terms. Such terms as devise, legacy, bequest, heirs, distributee, legatee, devisee, next-of-kin, successor, and the like are examples. Since several terms are used interchangeably, it is easy to understand the cause of the confusion. To avoid any such problem in this text, those terms recommended and defined by the Uniform Probate Code, hereinafter referred to as U.P.C., will be used. The terminology of the U.P.C. is cited both within the chapters of the text and in the glossary. The entire text of the U.P.C., without comments, has been included in Appendix C.

A few sample forms for the preparation of wills, the creation of trusts, and the administration of a decedent's estate are included in the body of the text, but most will be found in Appendix A. It should be emphasized that the forms and the statutes of the state in which a paralegal practices must always be checked, since the courts of that state will use forms different from those illustrated. This effort will be encouraged by frequent questions asking the student to compare his or her own state's provisions, court rules, and probate forms with those given in the text.

The author is indebted to the American Law Institute for granting permission to cite numerous sections of the Restatement (Second) on Trusts, and to the National Conference of Commissioners on Uniform State Laws and the American Bar Association for permission to include the Uniform Probate Code in this text.

DENNIS R. HOWER

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# Chapter 1

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## Introduction and the Sources of Law

The chapters of this book follow a consistent pattern: the Scope of the Chapter; the Competencies the student should acquire from the chapter; the body of the chapter, supplemented by terminology, appropriate statutes (using the Uniform Probate Code for comparison), student assignments (within the chapter or at the end of the chapter). *Sample forms referred to in the text are found in Appendix A.*

The reader will undoubtedly come across unfamiliar legal terms. In each case, he or she is urged to turn to the extensive Glossary at the end of the book for the definition of the term or a reference to a page where the definition may be found. Another study aid is student assignments requiring answers to questions and problems based on the statutes, probate code, and court rules of the state in which the paralegal intends to reside and work.

### Scope of the Chapter

This chapter contains an introduction to the objectives of the text and the format of the succeeding chapters, followed by a topic fundamental to all legal texts: the forms or sources of the law in the United States.

### Competencies

After completing this course, the paralegal should have acquired the following general competencies:

- Mastery of the technical vocabulary necessary to understand and use the legal language in the practice of the profession and to develop the habit of thinking in legal terms
- An understanding of the functions of wills and trusts