

New York Surrogate's Court Procedure Act § 103. Definitions

When used in this act, unless otherwise required by the context, or unless a contrary intent is expressly declared in the provision to be construed, the words, phrases or clauses hereafter shall be construed as follows:

1. **Acknowledged.** Acknowledged or proved in the same manner as a deed is required to be acknowledged or proved and authenticated to be recorded in that county, except that when executed within the state, no certificate of the county clerk shall be required.
2. **Administrator.** Any person to whom letters of administration have been issued.
3. **Administrator c.t.a.** Any person to whom letters of administration with the will annexed have been issued.
4. **Administrator d.b.n.** Any person to whom letters of administration have been issued as a successor to an administrator.
5. **Ancillary administrator.** Any person to whom ancillary letters of administration have been issued.
6. **Ancillary executor or administrator c.t.a.** Any person to whom ancillary letters testamentary or ancillary letters of administration c.t.a. have been issued.
7. **Ancillary guardian.** Any person to whom ancillary letters of guardianship, whether of the person, property, or both, of an infant have been issued.
8. **Beneficiary.** Any person entitled to any part or all of an estate.
9. **Bequest or legacy.** A transfer of personal property by will.
- 9-a. **Corporate trustee.** Any trust company, any bank authorized to exercise fiduciary powers and any national bank having a principal, branch or trust office in this state and duly authorized to exercise fiduciary powers.
10. **Court.** The surrogate's court, including any judge or surrogate assigned, elected or appointed to serve as judge of the court.
11. **Creditor.** Any person having a claim against a decedent or an estate.
12. **Devise.** When used as a noun, a transfer of real property by will. When used as a verb, to transfer real property by will.
13. **Devisee.** Any person to whom real property is transferred by will.

14. Distributee. Any person entitled to take or share in the property of a decedent under the statutes governing descent and distribution.
15. Domicile. A fixed, permanent and principal home to which a person wherever temporarily located always intends to return.
16. Domiciliary. A person whose domicile is within the state of New York.
17. Donee of a power during minority. Any person granted or deemed to have the power during minority to manage property vested in an infant.
18. Eligible to receive letters. Not disqualified on any of the grounds described in 707.
19. Estate. All of the property of a decedent, trust, absentee, internee or person for whom a guardian has been appointed as originally constituted, and as it from time to time exists during administration.
20. Executor. Any person to whom letters testamentary have been issued.
21. Fiduciary. An administrator, administrator c.t.a., administrator d.b.n., ancillary administrator, ancillary administrator c.t.a., ancillary executor, ancillary guardian, executor, guardian, preliminary executor, temporary administrator, testamentary trustee, to any of whom letters have been issued, and also the donee of a power during minority and a voluntary administrator and a public administrator acting as administrator or a public administrator or county treasurer to whom letters have been issued, and a lifetime trustee.
22. Funeral expense. Includes reasonable expense of a funeral, suitable church or other services as an integral part thereof, expense of interment or other disposition of the body, a burial lot and suitable monumental work thereon and a reasonable expenditure for perpetual care of a burial lot of the decedent.
23. Grantor. The creator of a lifetime trust.
24. Guardian. Any person to whom letters of guardianship have been issued by a court of this state, pursuant to this act, the family court act or article 81 of the mental hygiene law.
25. Incapacitated person. Any person who for any cause is incapable adequately to protect his or her rights, including a person for whom a guardian has been appointed pursuant to article 81 of the mental hygiene law.
26. Incompetent. Any person judicially declared incompetent to manage his affairs.
- 26-a. Individual trustee. Any trustee who is not a corporate trustee.
27. Infant. Any person under the age of eighteen years; provided, however, that for purposes of appointment of a guardian of an infant, the term infant also shall include a person who is under the age of twenty-one years who consents to the appointment of a guardian after the age of eighteen. It is further provided that such definition shall not be applicable to any provision relating to the New York Uniform Transfers to Minors Act, nor to section 1716 of this act.

28. Intestate. A person who dies without leaving a valid will. Where it is used with respect to particular property, a person who dies without effectively disposing of that property by will. When used as an adjective, to property not effectively disposed of by will.
29. Judicial settlement. A proceeding whereby the account of a fiduciary is settled and adjudicated by decree of the court.
30. Legal life tenant. Any person entitled for his life or for the life of another to the possession and use of real or personal property.
31. Lifetime trust. An express trust, including all amendments thereto, created during the grantor's lifetime other than a trust for the benefit of creditors, a resulting or constructive trust, a business trust where certificates of beneficial interest are issued to the beneficiary, an investment trust, voting trust, a security instrument such as a deed of trust and a mortgage, a trust created by the judgment or decree of a court, a liquidation or reorganization trust, a trust for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, instruments wherein persons are mere nominees for others, or a trust created in deposits in any banking institution or savings and loan institution.
32. Lifetime trustee. A trustee acting under a lifetime trust.
33. Legatee. Any person designated to receive a transfer by will of personal property.
34. Letters. Includes letters of administration, letters of administration c.t.a., letters of administration d.b.n., limited letters of administration, ancillary letters of administration, ancillary letters of guardianship, ancillary letters testamentary, letters of guardianship, letters of temporary administration, letters testamentary, preliminary letters testamentary and letters of trusteeship. A testamentary trustee who has qualified without the issuance of letters shall be deemed for the purposes of this act to have received letters of trusteeship.
35. Mailing or mail. A direction to mail or for mailing of process, notice or other paper requires deposit of such process, notice or other paper enclosed in a sealed postpaid envelope, directed to the person to be served or notified, in any post office or other depository under the exclusive care and custody of the United States Postal Service.
- 35-a. Mailing by express mail. Mailing in conformity with the requirements of the United States Postal Service respecting express mail.
36. Mailing by registered or certified mail. A direction for mailing of process, notice or other paper by registered or certified mail requires mailing in conformity with the requirements of the United States Postal Service respecting registered or certified mail, as the case may be.
37. Mailing by registered or certified mail; return receipt requested. Mailing in conformity with the requirements of the United States Postal Service respecting registered mail with return receipt requested or certified mail with return receipt requested, as the case may be.
- 37-a. Mailing by special mail service. A direction for mailing of process, notice or other paper by special mail service requires mailing by express mail or use of any designated delivery service within the

meaning of § 7502(f)(2) of the United States Internal Revenue Code of 1986, [FN1] as from time to time amended.

38. May. When used in this act, in relation to an act to be performed by the court, means in the discretion of the court.

39. Person interested. Any person entitled or allegedly entitled to share as beneficiary in the estate or the trustee in bankruptcy or receiver of such person. A creditor shall not be deemed a person interested. Where this act provides that a “person interested” may apply for relief, a verified allegation of an interest in fact, suffices for the purpose of the application, although the interest may be disputed, unless or until the fact of interest has been judicially determined and no appeal is pending therefrom.

40. Person under disability. Any person who is (a) an infant, (b) an incompetent, (c) an incapacitated person, (d) unknown or whose whereabouts are unknown or (e) confined as a prisoner who fails to appear under circumstances which the court finds are due to confinement in a penal institution.

40-a. Petition. A verified application in the manner provided in CPLR 3020, requesting action upon a matter or relief provided for in the estates, powers and trusts law or this act.

41. Preliminary executor. Any person to whom preliminary letters testamentary have been issued.

42. Presumptive distributee. Any person who would be a distributee as defined in this act, if the person alleged to be deceased, absentee or internee were dead.

43. Process. Citation, order to show cause, subpoena and any other mandate of the surrogate's court by which jurisdiction is obtained of a party.

44. Property. Anything that may be the subject of ownership and is real or personal property, or is a chose in action.

45. Respondent. Every party to a proceeding except a petitioner.

46. Safe deposit company. Any corporation authorized under the banking law to let out receptacles for safe deposit of personal property.

47. Temporary administrator. Any person to whom letters of temporary administration have been issued.

48. Testamentary trust. A trust created by will.

49. Testamentary trustee. Any person to whom letters of trusteeship have been issued.

50. Trust. A testamentary trust or a lifetime trust.

51. Upon the return of process. The time and place for the return of any process and any adjournment thereof, and implies that due proof has been made that the court has jurisdiction over all parties who appeared, have waived or been duly served.

52. Will. A last will, including all the codicils thereto.

Estates, Powers and Trusts Law Definitions

§ 1-2.1 Codicil

A codicil is a supplement to a will, either adding to, taking from or altering its provisions or confirming it in whole or in part by republication, but not totally revoking such will.

§ 1-2.3 Demonstrative disposition

A demonstrative disposition is a testamentary disposition of property to be taken out of specified or identified property.

§ 1-2.5 Distributee

A distributee is a person entitled to take or share in the property of a decedent under the statutes governing descent and distribution.

§ 1-2.7 Fiduciary

A fiduciary is a person who meets the description, in this part, of a "personal representative" or who is designated by the creator or by the court to act as an assignee for the benefit of creditors, or a committee, conservator, curator, custodian, guardian, trustee or donee of a power during minority.

§ 1-2.8 General disposition

A general disposition is a testamentary disposition of property not amounting to a demonstrative, residuary or specific disposition.

§ 1-2.9-a Infant or minor

As used in this chapter, the term "infant" or "minor" means a person who has not attained the age of eighteen years, provided, however, that such definition shall not be applicable to any provision relating to the New York Uniform Transfers to Minors Act, nor to section 13-3.4.

§ 1-2.10 Issue

(a) Unless a contrary intention is indicated:

(1) Issue are the descendants in any degree from a common ancestor.

(2) The terms "issue" and "descendants", in subparagraph (1), include adopted children.

§ 1-2.11 Per capita

A disposition or distribution of property is per capita when it is made to persons, each of whom is to take in his own right an equal portion of such property.

§ 1-2.14 Per stirpes

A per stirpes disposition or distribution of property is made to persons who take as issue of a deceased ancestor in the following manner:

The property so passing is divided into as many equal shares as there are (i) surviving issue in the generation nearest to the deceased ancestor which contains one or more surviving issue and (ii) deceased issue in the same generation who left surviving issue, if any. Each surviving member in such nearest generation is allocated one share. The share of a deceased issue in such nearest generation who left surviving issue shall be distributed in the same manner to such issue.

§ 1-2.16 Representation

By representation means a disposition or distribution of property made

in the following manner to persons who take as issue of a deceased ancestor:

The property so passing is divided into as many equal shares as there are (i) surviving issue in the generation nearest to the deceased ancestor which contains one or more surviving issue and (ii) deceased issue in the same generation who left surviving issue, if any. Each surviving member in such nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving issue of the deceased issue as if the surviving issue who are allocated a share had predeceased the decedent, without issue.

§ 1-2.17 Specific disposition.

A specific disposition is a disposition of a specified or identified item of the testator's property.

§ 1-2.19 Will

(a) A will is an oral declaration or written instrument, made as prescribed by 3-2.1 or 3-2.2 to take effect upon death, whereby a person disposes of property or directs how it shall not be disposed of, disposes of his body or any part thereof, exercises a power, appoints a fiduciary or makes any other provision for the administration of his estate, and which is revocable during his lifetime.

(b) Unless the context otherwise requires, the term "will" includes a "codicil".

§ 1-2.20 Lifetime trust

The term "lifetime trust" shall mean an express trust and all amendments thereto created other than by will and shall not include; a trust for the benefit of creditors, a resulting or constructive trust, a business trust where certificates of beneficial interest are issued to the beneficiary, an investment trust, voting trust, a security instrument such as a deed of trust and a mortgage, a trust created by the judgment or decree of a court, a liquidation or reorganization trust, a trust for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, instruments wherein persons are mere nominees for others, or a trust created in deposits in any banking institution or savings and loan institution.

Estates, Powers and Trusts Law

§ 6-2.2 When estate is in common, in joint tenancy or by the entirety

(a) A disposition of property to two or more persons creates in them a tenancy in common, unless expressly declared to be a joint tenancy.

(b) A disposition of real property to a husband and wife creates in them a tenancy by the entirety, unless expressly declared to be a joint tenancy or a tenancy in common.

(c) A disposition on or after January first, nineteen hundred ninety-six of the shares of stock of a cooperative apartment corporation allocated to an apartment or unit together with the appurtenant proprietary lease to a husband and wife creates in them a tenancy by the entirety, unless expressly declared to be a joint tenancy or a tenancy in the common.

(d) A disposition of real property, or a disposition on or after January first, nineteen hundred ninety-six of the shares of stock of a cooperative apartment corporation allocated to an apartment or unit together with the appurtenant proprietary lease, to persons who are not legally married to one another but who are described in the disposition as husband and wife creates in them a joint tenancy, unless expressly declared to be a tenancy in common.

(e) A disposition of property to two or more persons as executors, trustees or guardians creates in them a joint tenancy.

(f) Property passing in intestacy to two or more persons is taken by them as tenants in common.

§ 1310. Payment of certain debts without administration

1. As used in this section

(a) "Debt" means

(i) money or securities payable on account of a deposit in a bank, national bank, trust company, branch of a foreign banking corporation, savings bank, industrial bank, state or federal savings and loan association or state or federal credit union or with a private banker, or funds or securities invested with, held by or deposited with a broker-dealer or with, by or in securities of a management type investment company or trust payable or returnable to, or to the estate of, or to a beneficiary designated by, the depositor or

(ii) money payable by a state or federal savings and loan association or state or federal credit union to, or to the estate of, or to a beneficiary designated by, a member on account of the withdrawal value of his shares or

(iii) money payable by an insurance company or a savings bank authorized to conduct the business of life insurance under an annuity or pure endowment contract or a policy of life, group life, industrial life or accident and health insurance or a contract made by such an insurer, relating to the payment of proceeds or avails thereof, to, or to the estate of, or to a beneficiary designated by, the owner or the person purchasing the annuity or the person insured or the person effecting the insurance or the person effecting the supplemental contract or

(iv) money payable by a public corporation, a state or the federal government or an agency thereof, to, or to the estate of, or to a beneficiary designated by, any natural person or

(v) a pension or retirement or death benefit, profit share, earnings, wages, salary or bonus payable by an employer or by a pension, retirement or profit-sharing plan or system to, or to the estate of, or to a beneficiary designated by, an employee, or

(vi) a balance of money due on an accepted claim or account payable, on account of dividends payable by the superintendent of financial services in liquidation of bank assets, to, or to the estate of, or to a beneficiary designated by, a depositor or

(vii) any personal property deposited with a county treasurer by a coroner or county medical examiner pursuant to sections 785 and 786 of the code of criminal procedure, or

(viii) any personal property on deposit with a hospital, nursing home, residential health care facility or out-patient lodge described in section twenty-eight hundred one of the public health law at the time of the death of a decedent that is payable or returnable to the estate of the decedent;

(b) "Debtor" means the person or persons, partnership, corporation, government or government agency by whom a debt defined in this section is to be paid,

(c) "Creditor" means the employee, depositor, member, or other person, to whom, or to whose estate, or to a beneficiary designated by whom, a debt defined in this section is to be paid and shall include any beneficiary validly designated by such a creditor,

(d) A "designation of a beneficiary" means any writing, signed by the creditor and delivered to the debtor purporting to designate the person to whom a debt shall be paid on death of the creditor or any transaction which operates pursuant to statute as such a designation.

2. Upon the death of a creditor, unless otherwise provided by a designation of a beneficiary which is then in effect, it shall be lawful for the debtor forthwith to pay to the surviving spouse of the decedent not more than thirty thousand dollars of the debt, upon an affidavit made by the spouse showing that the payment and all other payments

received by the spouse under this subdivision do not in the aggregate exceed thirty thousand dollars.

3. Not less than thirty days after the death of a creditor, unless otherwise provided by a designation of a beneficiary which is then in effect, it shall be lawful for the debtor to pay not more than fifteen thousand dollars of the debt to

- (a) the surviving spouse,
- (b) one or more of the children eighteen years of age or older,
- (c) the father or mother,
- (d) the brother or sister,

(e) the niece or nephew of the decedent, preference being given in the order named if request for payment shall have been made by more than one such person,

(f) a creditor of the decedent or to a person who has paid or incurred the funeral expense of the decedent, upon the request of the surviving spouse or of one of such relatives.

Payment under this subdivision may be made upon an affidavit by the surviving spouse or relative to whom or at whose request the payment is made, showing

- (i) the date of the death of the decedent,
- (ii) the relationship of the affiant to the decedent,
- (iii) that no fiduciary has qualified or been appointed,
- (iv) the names and addresses of the persons entitled to and who will receive the money paid, and

(v) that such payment and all other payments made under this section by all debtors, known to the affiant, after diligent inquiry do not in the aggregate exceed fifteen thousand dollars. This subdivision does not limit the right of a debtor to make payment to a surviving spouse within less than thirty days after the death of the creditor as provided in subdivision two.

4. Not less than 6 months after the death of a creditor, unless otherwise provided by a designation of a beneficiary which is then in effect, it shall be lawful for the debtor to pay a debt which does not exceed \$5,000, or any part of such debt, to a distributee or, to the extent that the funds are not exempt from claims of creditors, to a creditor or to a person who has paid or incurred the funeral expenses upon an affidavit made by the person paid showing

- (a) the date of the death of the decedent,
- (b) that no fiduciary has qualified or been appointed,
- (c) that the decedent was not survived by a spouse or minor child,
- (d) that the affiant is entitled to the payment, and

(e) that such payment and all other payments made under this section by all debtors, known to the affiant, after diligent inquiry, do not in the aggregate exceed \$5,000.

5. A payment made in good faith under this section shall be a complete discharge to the debtor to the extent of the payment, even though the affidavit on which payment is made be false, and even though payment pursuant to subdivision 3 was not made in the order of preference indicated in that subdivision, provided only that the creditor be dead and that the required number of days elapse between death and payment and, in the case of a payment under subdivision 2 or subdivision 3 that the affiant in fact bear the stated relationship to the decedent and in the case of a payment under subdivision 4 that the affiant be in fact a distributee or creditor or have paid or incurred the funeral expenses.

6. Any person receiving payment pursuant to this section is accountable therefor to the fiduciary of the decedent if one be appointed or to the public administrator of the county having authority

to take possession of the money or property constituting the debt except

that a surviving spouse entitled to have property set aside to him or to her pursuant to EPTL 5-3.1 need not account for such payments to the extent of the exemption provided therein, and the amount so received shall be credited to such exemption.

7. Nothing in this section shall deprive any person of any right which he would otherwise have to receive payment of a debt, except as against a debtor who has made a payment which is a discharge under subdivision 5, nor shall anything in this section deprive any debtor of any right to make or refuse payment which it would otherwise have. This section does not limit article 26 of the tax law.

8. It shall be lawful for the debtor to pay a debt which does not exceed five thousand dollars or any part of such debt, under subdivision four of this section, to the department of social services or a social services district where the debt is money payable on account of a deposit with the debtor for the personal needs of the deceased creditor while residing in a medical institution or other facility, or otherwise, and the deceased creditor is indebted to the department or district on account of medical assistance furnished to or on behalf of the deceased creditor.

9. This section applies only to creditors who die on or after September 1, 1952.

Article 13 Administration of Small Estates

§ 1301. Definitions

In this article:

1. A small estate is the estate of a domiciliary or a non-domiciliary who dies leaving personal property having a gross value of \$30,000 or less exclusive of property required to be set off under EPTL 5-3.1 (a).
2. A voluntary administrator is a person who qualifies and undertakes to settle the estate of the decedent without the formality of court administration as hereinafter provided.

§ 1302. Kinds of property

This article is not applicable to any interest in real property in this state owned by a decedent, but his ownership of an interest in real property shall not prevent the use of this article in administering his personal property.

§ 1303. Persons who may become a voluntary administrator.

(a) If the deceased dies intestate, the right to act as a voluntary administrator is hereby given first to the surviving adult spouse, if any, of the decedent and if there be none or if the spouse renounce, then in order to a competent adult who is a child or grandchild, parent, brother or sister, niece or nephew or aunt or uncle of the decedent, or if there be no such person who will act, then to the guardian of the property of an infant, the committee of the property of any incompetent person or the conservator of the property of a conservatee who is a distributee and if none of the foregoing named persons will act or if there are no known distributees within the categories listed above, then to the chief fiscal officer of the county except in those counties in which a public administrator has been appointed under articles eleven and twelve of this act. After the surviving spouse, the first distributee within the class of persons entitled or if no distributee will act or there are no known distributees within the class of persons entitled, then the chief fiscal officer of the county as above who makes and files the required affidavit, is authorized to act as voluntary administrator, or as successor voluntary administrator in the event of the death or resignation of the voluntary administrator before the completion of the settlement of the estate.

(b) If the deceased dies testate, the named executor or alternate executor shall have the first right to act as voluntary administrator, upon filing the last will and testament with the surrogate's court. If the named executor or alternate executor renounces or fails to qualify by filing the required affidavit within thirty days after the last will and testament has been filed in the surrogate's court, then any adult person who would be entitled to petition for letters of administration with will annexed under section 1418 of this chapter may file the required affidavit and have the right to act as voluntary administrator.

(c) No person other than one hereinbefore mentioned can become a voluntary administrator.

§ 1304. Summary procedure

1. When available. No waiting period after the death of the decedent is required.

The procedure prescribed in this article may be used after the decedent's death.

2. Bond. The voluntary administrator need not give a bond.

3. Affidavit. A person may qualify as a voluntary administrator by making and filing with the clerk of the court of the decedent's

domicile, or in the case of a non-domiciliary, of the county in which his personal property is located, an affidavit in the form provided by the Official Forms appended to this act, and also a certified copy of the death certificate of the decedent.

4. Record. The clerk shall file the affidavit and assign it a number. The clerk shall enter each such proceeding in the records and indexes of the court. The clerk shall charge a fee of \$1 for filing the affidavit. No order of the court or other proceeding shall be necessary. The clerk shall mail to each distributee who has not renounced his or her right to act and to each beneficiary mentioned in the affidavit other than the affiant, a letter or postcard notice of the proceeding under this article. The giving of such notice is not jurisdictional.

5. Furnishing evidence of qualification and authority. A short certificate of the court showing the filing by the voluntary administrator of the required affidavit, shall evidence his, her or its qualification and authority to act. The clerk may indicate on the certificate that it is valid only for a transfer or transaction as specified thereon. The voluntary administrator shall deliver a certificate to each debtor, transfer agent, safe deposit company, bank, trust company or other person holding or having custody, possession or control of any personal property of the decedent which the voluntary administrator seeks to reduce to possession or otherwise affect the title thereof.

§ 1305. Discharge of debtor, transfer agent, safe deposit company, bank, trust company or other person

The delivery by a voluntary administrator to a debtor, transfer agent, safe deposit company, bank, trust company or other person holding or having custody or possession or control of any personal property of the decedent, of the short form certificate of the court, the receipt of the administrator, and the surrender of any evidentiary document, shall constitute a complete release and discharge for any payment of money or delivery of personal property made pursuant to the certificate, without such person being required to see to the application thereof and with the same effect as if made to any duly appointed fiduciary.

§ 1306. Powers

1. If any person to whom a certificate and receipt are presented by a voluntary administrator refuses to pay, deliver, transfer or issue to the voluntary administrator any personal property of the decedent, the voluntary administrator may maintain an action or proceeding to recover or compel the delivery of the property, or to enforce a contractual or quasi contractual claim owned by decedent, provided the amount claimed, together with all other assets of the estate to be administered under this article, does not exceed the monetary amount defined as a small estate pursuant to subdivision one of section 1301 of this article. In such action or proceeding, a certified copy of the affidavit shall be prima facie proof of the facts therein stated.

2. A voluntary administrator may sell for its reasonable value in cash any personal property of the decedent coming into the voluntary administrator's possession.

3. For the purpose of this article, a voluntary administrator shall be deemed to be the fiduciary of the estate until another fiduciary is appointed, and except as hereinafter provided, the voluntary administrator shall have the rights, powers and duties with respect to personal property of an administrator duly appointed for the estate. The voluntary administrator shall have no power to enforce a claim for

the wrongful death of or a claim for personal injuries to the decedent.
Upon the appointment and qualification of another fiduciary of the estate, the powers of the voluntary administrator shall cease.

§ 1307. Duties

A voluntary administrator shall

1. Deposit in an estate bank account to be opened by him in a bank, trust company, savings bank, savings and loan association or federal savings and loan association in this state, credit union or federal credit union in this state all money received. He shall sign all checks drawn on or withdrawals from the account in the name of the estate by himself as voluntary administrator. Without compensation for his services, he shall pay so far as possible out of the decedent's assets coming into his possession, the necessary expenses of administration, the reasonable funeral expenses of the decedent and the decedent's debts in the order provided by law. He shall then distribute the balance to the person or persons entitled and in the amount or amounts provided by EPTL 4-1.1 if decedent died intestate or if a will is filed which is valid on its face, he shall distribute to the persons named in such will, subject to the right of any person affected to contest such will at any time.

2. Account for all personal property of the decedent received and disbursed by him by filing with the clerk of the court a statement of all assets collected and of all payments and distributions made by him and receipts for or cancelled checks evidencing such payments and distributions. No fee shall be charged for the filing of such account.

§ 1308. Liability of voluntary administrator collecting assets

1. A voluntary administrator shall be answerable and accountable to all persons including creditors and distributees of the decedent, beneficiaries named in the will filed with the affidavit and to any fiduciary thereafter appointed, aggrieved by his administration of the decedent's estate under this article, in the same manner as now provided by this act concerning a fiduciary.

2. A voluntary administrator or other person who wilfully and knowingly makes a false affidavit in order to obtain personal property of the decedent as provided in this article, is subject to prosecution for perjury and upon conviction shall be punishable as provided by law in relation to such crime.

§ 1309. General provisions

1. The use of this article in the settlement of a small estate without the formality of court administration is permissive and not mandatory.

2. As a matter of comity a debtor, transfer agent, safe deposit company, bank, trust company or person in this state holding personal property of a non-domiciliary decedent, may recognize a certified copy of an affidavit or of a short certificate of a judge or clerk of a probate court made under a statute of another state, providing for the settlement of small estates without administration, for the purpose of collecting or obtaining possession of an asset of a decedent in his state, provided that debtors, transfer agents, safe deposit companies, banks, trust companies or persons in such other state holding personal property of a domiciliary decedent shall, whether pursuant to statute or otherwise, recognize and pay or transfer his personal property pursuant to a short certificate of the court made under this article.

3. A debtor, transfer agent, safe deposit company, bank, trust company

or person of another state, shall not be liable to any person in respect of any payment, transfer or delivery of personal property made to a voluntary administrator pursuant to such short certificate.

4. As used in this section, the word "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Estates, Powers, and Trusts Law 4-1.1

EPTL 4-1.1: Descent and distribution of a decedent's estate

EPTL 4-1.1

Descent and distribution of a decedent's estate

The property of a decedent not disposed of by will shall be distributed as provided in this section. In computing said distribution, debts, administration expenses and reasonable funeral expenses shall be deducted but all estate taxes shall be disregarded, except that nothing contained herein relieves a distributee from contributing to all such taxes the amounts apportioned against him or her under 2-1.8. Distribution shall then be as follows:

(a) If a decedent is survived by:

- (1) A spouse and issue, fifty thousand dollars and one-half of the residue to the spouse, and the balance thereof to the issue by representation.
- (2) A spouse and no issue, the whole to the spouse.
- (3) Issue and no spouse, the whole to the issue, by representation.
- (4) One or both parents, and no spouse and no issue, the whole to the surviving parent or parents.
- (5) Issue of parents, and no spouse, issue or parent, the whole to the issue of the parents, by representation.
- (6) One or more grandparents or the issue of grandparents (as hereinafter defined), and no spouse, issue, parent or issue of parents, one-half to the surviving paternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation, and the other one-half to the surviving maternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation; provided that if the decedent was not survived by a grandparent or grandparents on one side or by the issue of such grandparents, the whole to the surviving grandparent or grandparents on the other side, or if neither of them survives the decedent, to their issue, by representation, in the same manner as the one-half. For the purposes of this subparagraph, issue of grandparents shall not include issue more remote than grandchildren of such grandparents.

(7) Great-grandchildren of grandparents, and no spouse, issue, parent, issue of parents, grandparent, children of grandparents or grandchildren of grandparents, one-half to the great-grandchildren of the paternal grandparents, per capita, and the other one-half to the great-grandchildren of the maternal grandparents, per capita; provided that if the decedent was not survived by great-grandchildren of grandparents on one side, the whole to the great-grandchildren of grandparents on the other side, in the same manner as the one-half.

(b) For all purposes of this section, decedent`s relatives of the half blood shall be treated as if they were relatives of the whole blood.

(c) Distributees of the decedent, conceived before his or her death but born alive thereafter, take as if they were born in his or her lifetime.

(d) The right of an adopted child to take a distributive share and the right of succession to the estate of an adopted child continue as provided in the domestic relations law.

(e) A distributive share passing to a surviving spouse under this section is in lieu of any right of dower to which such spouse may be entitled.

Estates, Powers and Trusts

§ 5-3.1 Exemption for benefit of family

(a) If a person dies, leaving a surviving spouse or children under the age of twenty-one years, the following items of property are not assets of the estate but vest in, and shall be set off to such surviving spouse, unless disqualified, under 5-1.2, from taking an elective or distributive share of the decedent's estate. In case there is no surviving spouse or such spouse, if surviving, is disqualified, such items of property vest in, and shall be set off to the decedent's children under the age of twenty-one years:

(1) All housekeeping utensils, musical instruments, sewing machine, jewelry unless disposed of in the will, clothing of the decedent, household furniture and appliances, electronic and photographic devices, and fuel for personal use, not exceeding in aggregate value twenty thousand dollars. This subparagraph shall not include items used exclusively for business purposes.

(2) The family bible or other religious books, family pictures, books, computer tapes, discs and software, DVDs, CDs, audio tapes, record albums, and other electronic storage devices, including but not limited to videotapes, used by such family, not exceeding in value two thousand five hundred dollars.

(3) Domestic and farm animals with their necessary food for sixty days, farm machinery, one tractor and one lawn tractor, not exceeding in aggregate value twenty thousand dollars.

(4) The surviving spouse or decedent's children may acquire items referred to in subparagraphs (1), (2) and (3) of this paragraph, in excess of the values set forth in such subparagraphs by payment to the estate of the amount by which the value of the items acquired exceeds the amounts set forth in such subparagraphs. If any item so acquired by the spouse or children of the decedent was a specific legacy in decedent's will, the payment to the estate for such item shall vest in the specific legatee.

(5) One motor vehicle not exceeding in value twenty-five thousand dollars. In the alternative, if the decedent shall have been the owner of one or more motor vehicles each of which exceed twenty-five thousand dollars in value, the surviving spouse or decedent's children may acquire one such motor vehicle from the estate, regardless of the fact that the decedent may also have been the owner of another motor vehicle of lesser value than twenty-five thousand dollars, by payment to the estate of the amount by which the value of the motor vehicle exceeds twenty-five thousand dollars; in lieu of receiving such motor vehicle, the surviving spouse or children may elect to receive in cash an amount equal to the value of the motor vehicle, not to exceed twenty-five thousand dollars. If any motor vehicle so acquired by the spouse or children of the decedent was a specific legacy in decedent's will, the payment to the estate of the amount by which the value of the motor vehicle exceeds twenty-five thousand dollars shall vest in the specific legatee.

(6) Money including but not limited to cash, checking, savings and money market accounts, certificates of deposit or equivalents thereof, and marketable securities, not exceeding in value twenty-five thousand dollars, reduced by the excess value, if any, of acquired items referred to in subparagraphs (1), (2), (3) and (5) of this paragraph. However, where assets are insufficient to pay the reasonable funeral expenses of the decedent, the personal representative must first apply such money to defray any deficiency in such expenses.

(7) Any set off to a child under the age of twenty-one years not

exceeding ten thousand dollars shall be covered by the provisions of section twenty-two hundred twenty of the surrogate's court procedure act

as if the child were a beneficiary of the estate. Any excess amounts shall be governed by the guardianship statute, if applicable.

(8) The court shall have the authority to issue such documentation as necessary to effectuate the transfer of any items under this section.

(b) No allowance shall be made in money or other property if the items of property described in subparagraph (1), (2), (3) or (5) of paragraph (a) are not in existence when the decedent dies.

(c) The items of property, set off as provided in paragraph (a), shall, at least to the extent thereof, be deemed reasonably required for the support of the surviving spouse or children under the age of twenty-one years of the decedent during the settlement of the estate.

(d) As used in this section, the term "value" shall refer to the fair market value of each item, reduced by all outstanding security interests or other encumbrances affecting the decedent's ownership of said item.

Estates, Powers and Trusts

§ 3-2.1 Execution and attestation of wills; formal requirements

(a) Except for nuncupative and holographic wills authorized by 3-2.2, every will must be in writing, and executed and attested in the following manner:

(1) It shall be signed at the end thereof by the testator or, in the name of the testator, by another person in his presence and by his direction, subject to the following:

(A) The presence of any matter following the testator's signature, appearing on the will at the time of its execution, shall not invalidate such matter preceding the signature as appeared on the will at the time of its execution, except that such matter preceding the signature shall not be given effect, in the discretion of the surrogate, if it is so incomplete as not to be readily comprehensible without the aid of matter which follows the signature, or if to give effect to such matter preceding the signature would subvert the testator's general plan for the disposition and administration of his estate.

(B) No effect shall be given to any matter, other than the attestation clause, which follows the signature of the testator, or to any matter preceding such signature which was added subsequently to the execution of the will.

(C) Any person who signs the testator's name to the will, as provided in subparagraph (1), shall sign his own name and affix his residence address to the will but shall not be counted as one of the necessary attesting witnesses to the will. A will lacking the signature of the person signing the testator's name shall not be given effect; provided, however, the failure of the person signing the testator's name to affix his address shall not affect the validity of the will.

(2) The signature of the testator shall be affixed to the will in the presence of each of the attesting witnesses, or shall be acknowledged by the testator to each of them to have been affixed by him or by his direction. The testator may either sign in the presence of, or acknowledge his signature to each attesting witness separately.

(3) The testator shall, at some time during the ceremony or ceremonies of execution and attestation, declare to each of the attesting witnesses that the instrument to which his signature has been affixed is his will.

(4) There shall be at least two attesting witnesses, who shall, within one thirty day period, both attest the testator's signature, as affixed or acknowledged in their presence, and at the request of the testator, sign their names and affix their residence addresses at the end of the will. There shall be a rebuttable presumption that the thirty day requirement of the preceding sentence has been fulfilled. The failure of a witness to affix his address shall not affect the validity of the will.

(b) The procedure for the execution and attestation of wills need not be followed in the precise order set forth in paragraph (a) so long as all the requisite formalities are observed during a period of time in which, satisfactorily to the surrogate, the ceremony or ceremonies of execution and attestation continue.

Estates, Powers and Trusts

§ 3-2.2 Nuncupative and holographic wills

(a) For the purposes of this section, and as used elsewhere in this chapter:

(1) A will is nuncupative when it is unwritten, and the making thereof by the testator and its provisions are clearly established by at least

two witnesses.

(2) A will is holographic when it is written entirely in the handwriting of the testator, and is not executed and attested in accordance with the formalities prescribed by 3-2.1.

(b) A nuncupative or holographic will is valid only if made by:

(1) A member of the armed forces of the United States while in actual military or naval service during a war, declared or undeclared, or other armed conflict in which members of the armed forces are engaged.

(2) A person who serves with or accompanies an armed force engaged in actual military or naval service during such war or other armed conflict.

(3) A mariner while at sea.

(c) A will authorized by this section becomes invalid:

(1) If made by a member of the armed forces, upon the expiration of one year following his discharge from the armed forces.

(2) If made by a person who serves with or accompanies an armed force engaged in actual military or naval service, upon the expiration of one year from the time he has ceased serving with or accompanying such armed force.

(3) If made by a mariner while at sea, upon the expiration of three years from the time such will was made.

(d) If any person described in paragraph (c) lacks testamentary capacity at the expiration of the time limited therein for the validity of his will, such will shall continue to be valid until the expiration of one year from the time such person regains testamentary capacity.

(e) Nuncupative and holographic wills, as herein authorized, are subject to the provisions of this chapter to the extent that such provisions can be applied to such wills consistently with their character, or to the extent that any such provision expressly provides that it is applicable to such wills.

Estates, Powers and Trusts

§ 3-4.1 Revocation of wills; effect on codicils

(a) Except as otherwise provided in this chapter, a revocation or alteration, if intended by the testator, may be effected in the following manner only:

(1) A will or any part thereof may be revoked or altered by:

(A) Another will.

(B) A writing of the testator clearly indicating an intention to effect such revocation or alteration, executed with the formalities prescribed by this article for the execution and attestation of a will.

(2) A will may be revoked by:

(A) An act of burning, tearing, cutting, cancellation, obliteration, or other mutilation or destruction performed by:

(i) The testator.

(ii) Another person, in the presence and by the direction of the testator; in which case, the fact that the will was so revoked in the presence and by the direction of the testator shall be proved by at least two witnesses, neither of whom shall be the person who performed the act of revocation.

(b) In addition to the methods set forth in paragraph (a), a will may be revoked or altered by a nuncupative or holographic declaration of revocation or alteration made in the circumstances prescribed by 3-2.2 by any person therein authorized to make a nuncupative or holographic will. Any such nuncupative declaration of revocation or alteration must be clearly established by at least two witnesses; any such holographic declaration, by an instrument written entirely in the handwriting of the

testator, although not executed and attested in accordance with the formalities prescribed by this article for the execution and attestation of a will.

(c) The revocation of a will, as provided in this section, revokes all codicils thereto.

Surrogate's Court Procedure

§ 1405. When court may dispense with testimony of witness

1. The death, absence from the state or incompetency of an attesting witness required to be examined as prescribed in this or the preceding section or the fact that the witness cannot with due diligence be found within the state or cannot be examined as an attesting witness by reason of his physical or mental condition may be shown by affidavit or by any competent evidence and when so shown to its satisfaction, the court may by the decree on probate or by order either in writing or entered in the minutes dispense with the testimony of such attesting witness. Where the testimony of an attesting witness has been dispensed with as provided in this section and 1 attesting witness has been examined the will may be admitted to probate upon the testimony of the attesting witness who has been examined without further or additional proof.

2. Where an attesting witness is absent from the state and it is shown that his testimony can be obtained with reasonable diligence the court may and shall upon the demand of any party require his testimony be taken by commission.

3. Where an attesting witness has forgotten the occurrence or testifies against the execution of the will and at least 1 other attesting witness has been examined the will may be admitted to probate upon the testimony of the other witness or witnesses and such other facts as would be sufficient to prove the will.

4. If all of the attesting witnesses are dead or incompetent or unable to testify by reason of physical or mental condition or are absent from the state and their testimony has been dispensed with as provided in this section the will may nevertheless be admitted to probate upon proof of the handwriting of the testator and of at least one of the attesting witnesses and such other facts as would be sufficient to prove the will.

Estates, Powers and Trusts

§ 3-4.5 Insurance proceeds from specific disposition not subject to ademption

Where insurance proceeds from property which was the subject of a specific disposition are paid after the testator's death, such proceeds, to the extent received by the personal representative, are payable by him to the beneficiary of such disposition; and such proceeds retain the character of a specific disposition for all other purposes, including 12-1.2 and 13-1.3.

Estates, Powers and Trusts

§ 3-4.6 Revocation or alteration of later will not to revive prior will or any provisions thereof

(a) If after executing a will the testator executes a later will which revokes or alters the prior one, a revocation of the later will does not, of itself, revive the prior will or any provision thereof.

(b) A revival of a prior will or of one or more of its provisions may be effected by:

(1) The execution of a codicil which in terms incorporates by reference such prior will or one or more of its provisions.

(2) A writing declaring the revival of such prior will or of one or more of its provisions, which is executed and attested in accordance with the formalities prescribed by this article for the execution and attestation of a will.

(3) A republication of such prior will, whether to the original witnesses or to new witnesses, which shall require a re-execution and re-attestation of the prior will in accordance with the formalities prescribed by 3-2.1.

Surrogate's Court Procedure

§ 1402. Who may propound will; contents of petition; direction of court

1. Who may petition. A petition for the probate of a will may be presented by

(a) any person designated in the will as legatee, devisee, fiduciary or guardian or by the guardian of an infant legatee or devisee or the committee of an incompetent legatee or devisee, or the conservator of a legatee or devisee who has been designated a conservatee pursuant to article seventy-seven of the mental hygiene law;

(b) a creditor or any person interested or any person entitled to letters of administration with the will annexed under 1418;

(c) any party to an action brought or about to be brought in which action the decedent, if living, would be a party;

(d) the Public Administrator or County Treasurer on order of the court, where a will has been filed in the court and proceedings for its probate have not been instituted or diligently prosecuted.

2. Contents of petition. The petition for probate shall allege the citizenship of the petitioner and the testator and shall describe the will being offered for probate and any other will of the same testator on file in the court and shall set forth the names and post-office addresses so far as they can be ascertained with due diligence of all of the persons required to be cited and all of the legatees, devisees and fiduciaries named in the will or any other will so filed.

3. Direction of court.

(a) Where a petition for probate has been filed and the proceeding has not been diligently prosecuted the court may direct the Public Administrator or County Treasurer or authorize any party to take such steps as may be required to bring the proceeding to a decree.

(b) Where necessary, the court shall determine the text or tenor of the will as admitted to probate and may incorporate the will or any part thereof in the decree.

Surrogate's Court Procedure

§ 304. Contents of petition

In addition to such other requirements as may be applicable to the petition in a particular proceeding, a petition must substantially set forth:

1. The title of the proceeding, the name and domicile of the person to whose estate or person the proceeding relates and of the petitioner.

2. The facts upon which the jurisdiction of the court depends in the particular proceeding.

3. So far as they can be ascertained with due diligence, the names and addresses of all the persons interested upon whom service of process is required or concerning whom the court is required to have information; and in addition there shall be shown by petition or affidavit in form satisfactory to the court, the following:

(a) If any person be an infant, his age, the date of his birth, whether he has a guardian, whether his father, or if he be dead, his mother, is living, his connection with the estate, and the names and addresses of such persons and the person with whom the infant resides.

(b) If any person be an incompetent, the name and address of his committee, if any, and of the person or institution having his care and custody and if there be no committee, the name and address of an adult relative or friend having an interest in his welfare.

(c) If any person be an incapacitated person, the facts regarding his incapacity and if confined, the name and address of the institution having his care and custody and the name and address of an adult relative or friend having an interest in his welfare, and if a conservatee as designated in section 77.01 of the mental hygiene law, the name and address of his conservator.

(d) If any person be unknown or his name or whereabouts be unknown, a general description of such person, showing his connection with the estate and his interest in the proceeding and the facts showing what effort has been made to ascertain his name or whereabouts.

(e) If any person be a prisoner confined in this state or elsewhere, the name and address of the institution in which he is confined, and the name and address of an adult relative or friend having an interest in his welfare.

(f) If any person be included in a class, and his name be unknown, the names and addresses of those persons of the class who are known, and a general description of all other persons belonging to the class, their connection with the estate, and their interest in the proceeding.

4. That there are no other persons than those mentioned interested in the application or proceeding.

5. A request for the relief sought.

Surrogate's Court Procedure

§ 306. Citation. 1. A citation must substantially set forth:

(a) The name and domicile of the person to whose estate or person the proceeding relates and of the petitioner.

(b) The names of all persons to be served who have not waived issuance and service of process, or have not appeared. Where the number of persons of any class to be served exceeds 50, it need not specify the name of any person of the class but may be directed to the class by such appropriate designation as the court deems adequate.

(c) The time when and the place where the citation is returnable, which time must be not more than 4 months after the date of issuance.

(d) The object of the proceeding and the relief sought in the petition.

(e) The date when issued.

(f) The name, address and telephone number of the petitioner's attorney.

2. In addition it must substantially set forth:

(a) Where the names of some persons to be served comprising a class are unknown, the names of those persons of the class who are known and a general description of all other persons belonging to the class, showing their interest in the proceeding.

(b) Where the persons to be served are unknown, a general description of such persons, showing their interest in the proceeding.

In either of such cases, where the petitioner is ignorant of the name of a person to be served, he may designate that person in the citation by a fictitious name or so much of his name and identity as is known.

3. The citation shall be in substantially such form as may be provided by the Official Forms appended to this act.

4. The citation shall be attested in the name of the judge of the court and by the seal of the court, the original shall be filed by the clerk and a copy thereof shall be furnished to the petitioner.

Surrogate's Court Procedure

§ 307. Service of process

1. Service by personal delivery. Service of the process may be made on any person by personal delivery to him of a copy of the process either within or without the state.

2. Service by registered or certified mail, return receipt requested, or by special mail service, upon non-domiciliaries. Service of the process may be made by registered or certified mail, return receipt requested, or by special mail service, upon non-domiciliaries, whether or not they be natural persons.

3. Service by court order. As an alternative to service under subdivisions 1 and 2, service may be made in the manner directed by the court; but such service, except as provided by subdivision 6, shall not be ordered upon a domiciliary natural person unless it be shown that, with due diligence, service by personal delivery within the state cannot be effected, or where for good cause shown, personal service within the state would be impracticable. Any proof necessary hereunder may be submitted in the petition or by affidavit. The court may take into account the size of the estate and the remoteness of kinship of any person to be cited in determining the appropriate due diligence necessary to permit alternate service under this section. The court may direct service by any one or more of the following methods, which shall not, however, be exclusive:

(a) service by publication, such as is provided by CPLR 316, subject to 308 and 309, and to such variations of CPLR 316 as the court may provide, except that

(i) where persons are to be served by publication, publication in only 1 newspaper shall be required, or

(ii) where a person is alleged to be within a country with which the United States of America is at war or a place with which the United States of America does not maintain postal communication, the court may direct that a copy of the process shall be mailed on behalf of such person to the officer who may have been appointed to take possession of

the property of alien enemies, or

(iii) where the person to be served is an absentee or alleged to be deceased, the court may direct that in addition to the foregoing requirements, the process be published in a newspaper published at or near the place where the absentee was last known to be, or

(iv) in an adoption proceeding under article seven of the domestic relations law or in a proceeding under section three hundred eighty-four-b of the social services law, a single publication in only one newspaper shall be sufficient.

(b) service by mail, by registered or certified mail with or without return receipt requested, or by any manner of special mail service, as the court may direct;

(c) substituted service such as is provided by CPLR 308 (2) and (4), within or without the state, subject to 308 and 309, and to such variations of CPLR 308 as the court may provide;

(d) service within or without the state, by personal delivery to a person duly designated by respondent to receive process in his behalf, or to a person whose relationship, whatever its character, and by blood or otherwise to the respondent, indicates in the circumstances the probability that actual notice will reach the latter through him;

(e) if the interest of a non-domiciliary alien in the estate is less than \$2,500 or his address is unknown or such estate's gross assets are less than \$25,000, by delivery of a copy of the process to a consular official of the alien's nation.

4. Service upon an infant. Service upon an infant requires that service of process be made upon any one of the following, unless any such one of them is the petitioner, in which case no such service shall be required: his father, his mother, his guardian, any adult person having the care and control of him or with whom he resides, or such person interested in his welfare or education as the court shall by order direct, where it appears to the satisfaction of the court that need for such order exists; and if the infant be of the age of 14 years or over, also upon the infant in person.

5. Service upon an incompetent, conservatee and persons other than natural persons. Unless this act otherwise provides or the court in a given proceeding otherwise directs, CPLR 307, 309 (b), 309 (c), 310, 311, 312 and 1025 are applicable to service under the foregoing subdivisions of this section.

6. Service upon creditors. Process may be served upon creditors, regardless of the number thereof, by mailing a copy of the process to each of them whether or not they be natural domiciliaries.