

S29, explanation of proposed changes:

§1. Who may make a Will. Simplification, including by omission description of Will function which is in §3, to avoid inconsistencies and redundancy. Example: “devise” is historically, for hundreds of years, the term for a testamentary gift (gift at death) of real property, but the Uniform Probate Code uses the term for all testamentary gifts. We have tried to use more generic terms when available, such as dispose of or transfer. Those who have been emancipated by court order are acknowledged to have capacity to make a Will; among the criteria are self sufficiency and demonstrated capacity to manage personal financial affairs.

§2 Deposit of Will for safekeeping with probate court.

(a) Avoid ambiguity about whether only testator may deposit Will. Simplify language.

(b) Simplify and modernize language about deposit requirements.

(c) Simplify and delete redundancies.

(d) repealed as pointless

(e) emphasize confidentiality of Will during testator’s life.

§3. Property passing by Will. Clarify, simplify , and avoid apparent limitation to after acquired real estate.

§4. Repeal as pointless.

§5. Execution of Will. Clarify, delete nuncupative Will (Will in testator’s handwriting, signed, dated, without witnesses) as not serving any useful purpose.

§6 Nuncupative Will. Repeal as pointless.

§7 Soldiers, sailors, military wills.

(a) Eliminate language that applies to undefined workers employed in water travel that does not require that they be away from land to do “what he or she might otherwise have done.”

(b) Clarify that calling something a military Will needs to require that it be executed according to the federal law for military wills.

§8. Witness subsequent incompetency. Repealed as pointless. The standards for satisfying execution requirements of a Will are applied at the time of making the Will or

at subsequent time of "self proving" affidavit. Incompetency of witness is no more significant than any other unavailability of a witness.

§10. Testamentary gift to witness. We elected to expand to testamentary gifts to heirs at law the potential voiding of the gift by Will so that the court could consider the circumstances of the witnessing and the possible self serving actions of such witnesses that may have intruded on the independence of the testator. One objection to this by other lawyers was that heirs at law were not formerly subject to this limitation but we chose to allow a court to consider their actions when a Will would usually override benefits to an heir at law.

§ 11 Revoking a Will. We chose to replace the current language with more specifics because revocation or partial revocation of a Will has significant potential for abuse by others and ambiguity of the circumstances of revocation. We adopted the language of the Uniform Probate Code with its more expansive description of procedures and elements of revocation.

Chapter 3

§101 Will effective when allowed. Simplification and proper court reference.

§102 Allowance concludes proper execution. When allowed, including through any appeal, the Will is conclusively determined to be properly executed and valid. This does not address the meaning of the provisions.

§103. Delivery. Court reference corrected for where to deliver a Will after Testator's death.

§104. Executor willing to serve. Add certificate of death to items to file petition, if willing to serve, change time to reasonable promptness to reflect the reality of when probate actions are actually started, sometimes with a sense of urgency, sometimes with no sense of time sensitivity. Eliminate surplus language. Recognize that Wills can be filed with no assets to be administered.

§105. Penalty for late or failed filing eliminated, deferred to later section where harm for delay or failure may occur.

§106. Duty to file Will with court increases when demand made by interested party with sanctions as contempt.

§107. Allowance of Will.

(a) Makes clear that Will can be allowed on consent without any hearing, to

neutralize a recent Supreme Court decision. Reduces number of consents required, essentially to those who would benefit if there were no Will.

(b) Requires 3 days prior notice of objections to allowance or Will can be allowed on self-proof procedure. Purpose to avoid unnecessary hearings.

(c) Clarifies named executor's power to preserve assets regardless of Will delivery to court and status of Will before allowance.

§108. Self-proved Wills. This has been an objective for many years of a procedure allowed in most states, to avoid a hearing even without consents if the self-proof standards are met. The key hurdle overcome is the heir at law who perceives no incentive to give consent but has no plan to object to the Will. Standard described is consistent with general procedure throughout the country.

§109. Nonresident witness. Repealed as pointless.

§110. Absence of witness. Allows proof of proper execution of a Will when sufficient witnesses to the actual execution are not available. Word individual is substituted for "witness" when witness is not one who witnessed the execution of the Will. Confirmed Court's broad discretion to require more or more reliable proof of proper execution.

§111. Notice of allowance. Shortened time for court to issue order allowing or disallowing Will, to avoid confusion about appeal period, and added those who are not "interested parties" to those receiving the order if they had standing and objected to the Will. The beneficiary of a prior Will might be one such category of persons.

§112. Wills made out of state. Confirms comprehensive effect of Will allowed when executed in accordance with law of state of execution.

§113. Ancillary administration. Court reference.

§114. Petition, hearing for ancillary administration. Will admitted in proceeding out of state will be allowed here, without hearing, if no interested party objections within two weeks. This second chance objection procedure could also be changed to provide that if admitted in another jurisdiction, it would be admitted automatically here with this "second chance" to object.

§116 and 117 repealed as pointless.

§118. Referral to superior court. Allows direct referral of a Will allowance proceeding to the superior court, with that court's permission, to avoid a probate court proceeding for which it is virtually certain that one party will appeal for a de novo proceeding (starting

over).

Chapter 42. Descent and Survivor's Rights. Much of this chapter was materially revised in 2009 to give surviving spouse greater protections of inheritance.

§311. Share of surviving spouse. Corrected introduction to recognize support allowance to spouse and children as having priority over other spousal rights.

§312. Changes surviving spouse rights to furniture and furnishings when there are no descendants of decedent to object. Gives court discretion to decide about objections by decedent's descendants (who are not descendants of surviving spouse), to evaluate rationale for challenges, claims, spousal interests.

§316. Allowances for surviving spouse and children during administration (with priority over debts). Clarify nature of allowance as necessary.

§317. Allowance for children, to age 18. Clarifies that provision can be made for minor children for their reasonable support and maintenance to be set aside to get them to age 18, again ahead of creditors.

§318. Allowance for minor children but after provision for debts, set aside to age 18.

§319. Spouse elective share.

(a) edit, "probate" estate

(b) added "agent" to those who can make election for incapacitated spouse, to acknowledge there may be others with authority than guardian or power of attorney agent, such as social security representative payee. An objection has been made that this introduces an unnecessary ambiguity about what kind of agent there could be.

(c) allows for court proceeding to determine validity of agent's authority

(d) eliminates election against Will for spouse who has effectively waived the right of election (new section proposed)

(e) Established time limit for making election but gives court broad authority to expand the time because there are many circumstances for which the specific time allowed would not be sufficient.

(f) Gives specific additional election time when inventory amended.

§320. Effect of divorce. Some editing but specifically nullifies fiduciary appointment of person named while married to decedent but not married to decedent at time of death. Nullification of benefit under Will already in the law.

§321 Conveyance to defeat spouse's interest. Amplified the spousal protection, by

identifying methods of recovering assets that would compensate for the deprivation of other rights. It also refers to the waiver possibility under new section 323.

§323. Waiver of spousal rights. Something like this was proposed in 2009 and rejected. We believed then and this new group believes now that this gives greater protection and flexibility to a spouse who might otherwise suffer substantial risk and harm if not able to enter into an agreement during marriage, made under circumstances that are substantially identical to the protections that apply to those who make agreements before marrying. It also allows for spouses of a second or later marriage to protect their separate families when they didn't make those agreements before the marriage. Objections in 2009 focused on the likelihood that women would be dominated by their husbands, and suffer accordingly; we reject that theory but others may still embrace it.

§332. Afterborn child. Minor edit.

§333. Omitted descendant. When it is determined that a descendant of a decedent was mistakenly omitted from a Will, the omitted person can take an intestate share. This can lead to significant distortions comparing Will benefits to descendants. For example, if most of an estate were given to charity but one of three children were found to have been omitted by mistake, that child would take a third of the estate, compared to little or nothing for other children. We were unable to come up with an alternative that seemed to address the situation more equitably, such as the same benefit as the largest gift to any child, the average gift to any child, the lowest gift to any child. As this comes up so infrequently, none of the committee had encountered it, we left it as is.

Chapter 49. Escheats.

§684. Court reference. Revised the late appearance of a beneficiary of a no-beneficiary estate, from full entitlement to the possibly limited rights to a portion of an estate, for example, a specific bequest or devise.

Chapter 61. Executors and Administrators.

§902. Letters of administration. Generalized term of authorizing document, some editorial changes.

§903 introduction gives Court authority on choice of fiduciary, notwithstanding list of preferred candidates, other edits.

- (1) gender edits
- (2) gives more flexible time for appointment of alternate
- (3) editorial changes

(4) clarifies reference to fiduciary for quiet title action (action to determine proper ownership of real estate)

§904. Non resident fiduciary

(a) simplifies Court discretion about appointing out of state fiduciary

(b) simplifies language for appointment of resident agent (Vermont resident who will be official document service recipient for out of state fiduciary).

§905. Simplify and clarify fiduciary appointment when probate appointment was appealed.

§906. Fiduciary bond. Introduction clarifies various issues for bond, surety and beneficiaries.

(1) extends inventory filing time to 60 days from 30, as 30 is rarely sufficient, and simplify language.

(2) simplify and modernize language

(3) simplify language, correct court reference

(4) Edits

(5) court reference

§907 Residuary legatee as executor. Repealed as redundant.

§908. Bonds, joint fiduciaries. Court reference, clarify surety requirement

§909. Executor not accepting appointment. Clarifies and simplifies language for responding to refusal of named fiduciaries to accept appointment or to give required bond

§910 Minor as fiduciary. Clarifies procedure when a minor is named as fiduciary.

§911. Executor of executor. Repealed as pointless and potentially inappropriately limiting. Appoint of fiduciary comes from court and no one succeeds deceased executor unless similarly appointed.

§912. Married woman as fiduciary. Repealed as archaic and unnecessary.

§913. Fiduciary's cessation to serve. Simplify language of continuing remaining fiduciary or appointment of successor or co-fiduciary.

§914. Modernize language

§915. Remove superfluous language.

§916. Modernize language

§917. Court regulation of fiduciaries. Court references. Added award of attorneys' fees as part of sanctions for misconduct

§918. One fiduciary disqualified. Simplify language.

§919. Missing persons. Clarifies language about management of estate for someone unheard of or from for 5 years.

§920 protection of fiduciary, rights of returned person previously unheard of or from for five years. Clarification.

§921. Missing military, management of assets by conservator, simplify language.

§922. Court reference.

§923. Conservatorship termination. Court reference.

§924. Intestate estate after later discovery of Will. Court reference.

§928. Court authority to compel. Court reference.

§929. Buildings maintained. Court reference.

§931. Creditor claim limits. Reduce absolute limitation on claims from three years down to one, consistent with surrounding states and with principle that creditors need to take action and not leave estate and beneficiaries hanging.

§961 Special Administrator. Court reference

§962 Delay; Special Administrator. Court reference

§963 Special Administrator. Powers. Court reference.

§964 Special Administrator. Liability for debts. Court reference

§965 Special Administrator. Bond. Court reference

§966 Special Administrator. Powers cease. Spelling change

Chapter 63, Inventory, Appraisal, and Accounts

§1052. Appraisers. Consolidate to one section. Clarify use of more than one appraiser. B and C eliminated as redundant to new §1053 (replacing prior repealed section)

§1053. Supplemental Inventory. Restates procedure and challenge rights for items added to inventory or change in values of inventory items.

§1054. Assets not inventoried. Editing for consistent reference to property. Restated exclusion from probate of wearing apparel and items that are likely to be consumed in household maintenance, subject to right to challenge for items of special economic value to the estate.

§1055 Fiduciary accounts; time; examination. Restated right of court to order accounting at any time, in addition to one year and annual. Edit.

§1056 Liability on Bond. Court reference. Use of term fiduciary for improved paragraph structure (Fiduciary is a defined term in 14 VSA §204).

§1057. For what to account. Restated contents of an accounting and expanded presentation options of accounting, to allow for computerized accounting systems. Some probate courts still want the old forms but they can be quite labor intensive.

§1058 No gain or loss to fiduciary. Edited language protecting fiduciary from personal liability for losses on sales

§1059 Account when property ordered sold. Deleted as redundant.

§1060 Sale proceeds in estate. Deleted as redundant.

§1061 Not accountable for certain debts due. Debts owed to decedent, edit for gender neutrality.

§1062 Use or other benefit of assets by or to fiduciary. Edited for clarity.

§1063. Losses by neglect. Edit for gender neutrality; edit for simplified statement of fiduciary liability

§1064 Costs allowed. Edit for gender neutrality and fiduciary identification.

§1065 Fees and expenses. Edit to simplify

§1066 Accounting verification; inquiry of heirs. Clarified effect of accounting submitted with consents, Court retains discretion for further inquiry and interested parties may be examined under oath.

§1068 Surety intervention and appeal. Court reference.

§1069 Waiver of Final Accounting. A final accounting is often a significant challenge and source of delay and expense. This is a new provision that allows the interested parties to affirm to the court that they are satisfied with the administration of the estate and waive the final accounting by the fiduciary, upon satisfaction of certain conditions.

We are aware that this could lead to some deception or misconduct by the fiduciary but we elected to let interested parties take that risk, as the accounting provides little more than arithmetic reconciliation. Deception and misconduct can still occur with accounting..

Chapter 71. Actions by or against Executors and Administrators

§1410. Compromise of claims. Court reference; simplify language.

§1411 Disputed claims may be referred. Gives court authority to refer a disputed claim between fiduciary and another to a master without consent of parties. Court determines validity of master's conclusions. Omit unnecessary language about appeal status.

§1413 Debt as Personalty; mortgage foreclosure. Edit for simplification of decedent reference.

§1414. Equity of Redemption in trust. Deleted as superfluous.

§1415 Disposal of land taken in foreclosure. Deleted as superfluous.

§1416. Suit barred when master appointed. Court reference.

§1417. Prosecution of action. Simplify language.

§1418 Costs not taxed against estate. Deleted as unnecessary.

§1455 Time of suit by heir. Court reference.

§1492 Wrongful death action

- b. and c. simplify language, using spouse in place of husband/wife
- c3. added failure of support to abandonment by mother
- c.5. clarifying language about spousal neglect of surviving spouse
- c.6. Court reference

Chapter 73. Recovery for embezzlement and fraudulent conveyance. Seldom used but we elected to edit the language for both clarity and improved enforcement authority.

§1551, person suspected. Replacement language in two sections to simplify authority of fiduciary to seek investigative authority of person suspected of embezzlement or fraudulent conveyance, and court's authority to order suspect's appearance, with contempt sanction available.

§1552, person entrusted with estate assets subject to inquiry. Clarified and strengthened language for obtaining an accounting from a person other than fiduciary who has possession or control of estate assets.

§1553. Forfeiture by embezzler. Simplified language for recovery of assets embezzled or converted before fiduciary appointed.

§1554. Recovery of fraudulent conveyance by decedent. Rewritten to improve clarity, standards for application of remedy, expanded scope of property subject to recovery.

§1556. Enforcement authority. Deleted as superfluous.

§1557. Sale of fraudulently conveyed property; creditor rights. Fiduciary action requires creditor action, because recovery is for benefit of creditors.

§1558. Creditor may act. Creditors' recovery authority restated in separate subsections for clarity.

Chapter 75. License to sell, convey real and personal property. Note distinction between necessary sale to pay obligations, and beneficial sale which is more convenient to the parties, usually for distribution

§1611. Court may order sale. Edited for clarity.

§1612. Realty may be sold though there remains personal property. Deleted as redundant

to revised 1611.

§1613. When whole of real estate may be sold. Deleted as redundant to restated 1611.

§1614. Interested persons may block sale. Edited for consistency with defined terms.

§1615. Claims assignable. Deleted as superfluous.

§1616. Purchaser of claims may sue. Deleted as superfluous.

§1651. License to sell estate; procedure. Court reference. This general edit reflects in part the historical change in our economy from real estate as the base of financial assets to the current but long standing situation that non real estate investment assets have become far more important in the combination of many individuals' assets. The goal of protecting real estate for the family and disposing of personal property, including investments, is no longer justifiable as an automatic priority.

1. Debts alone are not the basis for a beneficial license, as contrasted with a necessary license. The fiduciary presents facts supporting the need or desirability of sales.

2. Consents. Language changed to adapt to concept of "interested persons" with continuing interests in the estate.

3. Hearing. Required when required consents cannot be provided.

4. Bond. Bond may be adjusted when sale is allowed, to reflect greater protection need for readily disposable cash as resulting asset.

5. Court reference.

6. Evidence supporting sale is used to support a Court order allowing necessary or beneficial sale, eliminating confusing language.

7. Clarified procedural references to documents authorizing sale.

8. Clarified and simplified language of authorization to fiduciary for sale.

9. Report of sale on court order only, to avoid reports that will be repeated in periodic accounting.

10. Restated long standing law that when a Will authorizes the sale of assets, the court is required to issue a license without notice or hearing before issuance.

11. Beneficial licenses are not to be issued that contradict the Will terms:, for example, devise of a piece of real estate to someone who wants that real estate would be inconsistent with clearly declared intention of the testator, and essentially can't be beneficial. A license could still be issued if necessary.

§1652 Deed of Executor or Administrator. Language changed for consistency with court approval document (order or license). Omitted superfluous language.

§1653. License to Sell; When Beneficial. Omitted as absorbed into 1651.

§1654. Disposal of proceeds of beneficial sale. Clarified that proceeds of sale of property as beneficial are to be distributed to those who would otherwise receive the property.

§1655. Realty taken on execution may be sold. Omitted as redundant to 1651.

§1656 Sale for debts owed in other state proceeding. Clarifying language when necessary sale can be effected to pay debts owed in a probate proceeding in another jurisdiction.

§1657 Real estate sold to pay legacy. Clarifying language that payment of legacy with priority may be paid from real estate sale proceeds as for a debt.

§1658 Cessation to serve of fiduciary. Clarifying language only. When there is a fiduciary change, the successor fiduciary may obtain a replacement license within two years of the prior license issuance.

§1659. License when deceased under contract to sell.

a. Clarifying language and amplification of those who can sign a deed if the fiduciary is the buyer.

b. Court can block sale if proceeds will not suffice to pay creditors and property appears more valuable than contract provides.

§1660 License or hearing. Repealed as redundant to other protections for creditors.

§1661 Real estate in trust; license to convey. Court may license sale when beneficiary of a sale is a trust beneficiary or a debt holder with a claim to the property sold securing the debt. Edited for clarity.

§1662. Sale of encumbered property; disposition of surplus. Simplified and clarified language.

§1663. Sale of encumbered property. Omitted as redundant.

§1664 Encumbered property sale; disposition of surplus. Omitted because substance absorbed into §1662.

§1665 Exception; application of law. Simplified language acknowledging surviving spouse marital and homestead rights to proceeds of sale of encumbered property.

Chapter 77. Decrees of Distribution or partition of estates

§1721. Distribution; Court to Order; Persons entitled to shares may recover. Changes are substantive.

a After payment or provision (e.g., set aside) for priority claims,

1. Without court order, half of remaining estate may be distributed. This is proposed because, regardless of instructions to the contrary, fiduciaries will make these distributions without court order so this seeks to acknowledge the realities of fiduciary practices when distributions can be safely made because priority claims having been paid or provided for.

2. Other partial distributions may be made on court order;

3. After approval of final accounting and receipt of Vermont tax clearance, balance of estate to be distributed by order of court.

b. Eliminate option for court to require proof of proper disposition of decedent's remains (relying instead on fiduciary's representation to that effect) ; the probate courts vary in their treatment of this option. It is mandatory in some courts, ignored in others.

Simplify repayment obligation where distributions made and it was error to believe that claims were sufficiently provided for; give contribution claims to those who repay against those who do not repay.

c. Implement representation by fiduciary of proper disposition of decedent's remains, eliminating erratic application of option to require paid receipt as proof.

§1722 Parties interested may have order on giving bond. Edited language which allows

for distribution to interested parties if conditions for distribution (adequate payment or provision for debts, taxes, costs of administration) not shown.

§1723. Advances; how asserted; what constitutes. Restated description of advancements (gifts during life intended to satisfy testamentary gifts), burden of proof, procedure for calculating effects. *One of the objectives was to expand the transactions that might be classified as advancements but this proved too difficult to change without protections of testamentary formalities - too much opportunity to circumvent the requirements for proper execution of a Will.*

a. restated for clarity the treatment of real estate advanced.

b. similar editing for personal property advancements.

c. Added beneficiaries to consent process as term "heirs" is generally linked to intestate rights.

§1726. Advancement reckoned toward share of representative of deceased heir. Use "recipient" to identify beneficiary of advancement, and clarify effect on the recipient's estate if the recipient dies before that effect has been implemented.

§1727. Valuation of advancement. Clarifying language about value of advancement as declared by the one who gave it or by estimate of value at the time of the advancement.

§1728. Court to determine questions of advancement. Clarifies procedure for court order finding and implementing advancement.

§1729 Partition (in probate matter). Partition is usually dealt with under Title 12 but there are special provisions for partition in probate. The special treatment of partition by probate court decision has been changed to default to the Title 12 procedure, but with consent of the Court, to let the court decide. The probate decision is likely to be simpler and less costly but input from probate judges suggests they would sometimes prefer to have the more independent process provided for in Title 12, with commissioners to determine value.

§1730. Partition of real estate in different counties. Modified to reflect different options for determining partition value (and divisibility of property).

§1731 Partition unnecessary when parties agree. Court reference; edit for consistent reference to probate assets.

§1735. Shares, how set out in partition. Clarifying language, avoid legalese.

§1736. Severance from estate of third persons. Clarifying, simplifying language.

§1737. When estate cannot be divided without injury; to be sold, procedure. Court reference, simplifying language.

§1739. Final Decree of Distribution or partition; bond. Protect rights of those outside Vermont and serving in military, clarification.

§1740. Payment of expenses; from estate if sufficient. Edit for consistent language.

§1741. Parties to pay cost of partition, when. Clarifying language about allocation and enforcement of partition costs when estate assets cannot cover costs.

§1742. Record of decrees. Court reference and avoid legalese.

§1743. Partial distributions. Deleted as absorbed into §1721.

Chapter 79 Conveyance when record holder deceased.

§1801. Title in name of deceased person; petition to court. Court references

§1802 Determination by Court. Edit to avoid legalese (such, thereof, etc.)

§1804. Appearance; appeal. Court references, clarification.

Chapter 80 Waiver of Administration (NEW, taken from New Hampshire law)

This chapter is proposed to avoid almost all formalities of administration if the sole executor or sole administrator is also the sole beneficiary. There are two stages: first is the petition with a request to waive the court's supervision (not available if there is real estate in the estate, to avoid disruption of the process of court decree of distribution of real estate); second, is the affidavit required as part of closing the estate, that all debts and obligations of the estate have been satisfied, and the State of Vermont has been paid.

The formalities of probate administration serve no useful purpose when the only interested party both as beneficiary and fiduciary are the same person. Opportunities for deception to disadvantage creditors are not greater than in the usual procedures and as with many other aspects of the components of S29, the burden is on creditors to pursue their claims and not let them sit unattended.

Chapter 101. Probate bonds, fiduciaries

§2101. Probate bonds, fiduciaries. Court references.

§2103 Foreign company; certificate of authority. Proof of foreign insurance company authority to serve as surety, editing for simplicity

§2104 Insufficient bond. Court reference, edit for clarity

§2105 Surety motion for new bond and settlement; removal. Court references.

§2106 New bond. Court reference; editing for clarity

§2107 Discharge of fiduciary; account; release of surety. Court reference. Simplification of proof of proper distribution.

§2108 How bonds prosecuted. Court references., edit for clarity

§2109 Person injured under bond, action. Edit for clarity and gender neutrality.

§2110 Bond claim prosecution. Edit for simplicity.

Chapter 103. Mortgages and Leases by fiduciary.

§2201. Mortgage by fiduciary.

a. Simplified statement of standards and procedure for mortgaging estate property, by consent or after hearing

b. Changed approval process to allow for greater flexibility in describing financial terms of proposed mortgage, benefit standard, not necessity, to allow for issuance of license while specifics of mortgage loan are only generally known, avoiding chicken-egg problem.

§2202 motion; decree (mortgage license). Absorbed into §2201(b).

§2203 Lease by fiduciary; court approval.

a. Simplification similar to that for mortgages, benefit standard, not necessity.

b. Contents of motion to approve lease; flexibility of final terms while lease

negotiated, to avoid delays when lease parties are ready to proceed.

Chapter 105. Trusts and Trustees.

All but testamentary additions to trust repealed, deferring to Trust Code.

Chapter 107. Conveyances and devises to uncertain beneficiaries.

§2401 Uncertain beneficiaries, appoint agent or attorney. Switch authority from Governor to probate court to appoint someone to represent those not identified with certainty, to allow progress with estate administration.

§2402. Appoint trustees. Court references.

§2403. Trustees, when appointed. Court reference.

§2404 Certain fiduciary duties. Repeal as superfluous.

Chapter Philanthropic Trusts. Repealed to defer to Trust Code.