

1 S.29

2 Introduced by Senator Flory

3 Referred to Committee on

4 Date:

5 Subject: Probate; decedents' estates

6 Statement of purpose of bill as introduced: This bill proposes to modernize
7 and restructure Vermont law regarding decedents' estates.

8 An act relating to decedents' estates

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 14 V.S.A. chapter 1 is amended to read:

11 CHAPTER 1. WILLS

12 § 1. WHO MAY MAKE

13 ~~A person of age and sound mind may devise, bequeath and dispose of his~~
14 ~~estate, real and personal, and of any right or interest which he has in any real or~~
15 ~~personal estate, by his last will and testament, and the word "person" shall~~
16 ~~include a married woman.~~ Every individual 18 years of age or over, or
17 emancipated by court order, who is of sound mind may make a will in writing.

18 § 2. DEPOSIT OF WILL FOR SAFEKEEPING; DELIVERY; FINAL
19 DISPOSITION

20 (a) ~~A testator may deposit a~~ A will may be deposited for safekeeping in the
21 Probate Division of the Superior Court for the district in which the testator
22 resides ~~on the~~ payment to the Court of the applicable fee required by 32 V.S.A.
23 § 1434(a)(17). The register shall give to the testator a ~~certificate of deposit~~
24 receipt, shall safely keep each will so deposited, and shall keep an index of the
25 wills so deposited.

26 (b) Each will so deposited shall be ~~inclosed~~ enclosed in a sealed ~~wrapper~~
27 having inscribed thereon envelope on which is written the name and residence
28 address of the testator, ~~the day when and the person by whom it was deposited,~~
29 names and ~~the wrapper may also have indorsed thereon the name~~ addresses of
30 ~~the person to whom executors named in the will is to be delivered after the~~
31 ~~death of the testator.~~ The ~~wrapper~~ will shall not be opened until it is delivered
32 to a person entitled to receive it or until otherwise disposed of ~~as hereinafter~~
33 provided by the court.

34 (c) During the life of the testator, that will shall be delivered only to the
35 testator, or in accordance with the testator's order in writing duly
36 acknowledged or otherwise proved by oath to the satisfaction of a subscribing
37 ~~witness~~ the court, but the testator's duly authorized legal guardian or attorney-
38 in-fact may at any time inspect and copy the will in the presence of the judge
39 or register. ~~After the death of the testator it shall be delivered on demand to~~
40 ~~the person named in the indorsement.~~

41 (d) ~~If the will is not called for by the person named in the indorsement, it~~
42 ~~shall be publicly opened at a time to be appointed by the Court as soon as may~~
43 ~~be after notice of the testator's death. If a petition to open a decedent's estate~~
44 ~~is filed in a district other than where the will has been kept, the will shall be~~
45 ~~delivered to the executor therein named or to the person whose name is~~
46 ~~indorsed on the wrapper or shall be filed in the other Court, as the Court may~~
47 ~~order. [Repealed.]~~

48 (e) Except as provided ~~herein in this section~~, wills deposited for
49 safekeeping or any index of wills so deposited are not open to public
50 inspection during the life of the testator.

51 § 3. ~~AFTER ACQUIRED REAL ESTATE MAY PASS BY WILL~~ MAY
52 PASS ALL PROPERTY AND AFTER-ACQUIRED PROPERTY

53 ~~Real estate acquired after making a will shall pass thereby as if the testator~~
54 ~~had possessed it at the time of making the will, if it appears by the will that~~
55 ~~such was his or her intention. A will may provide for the passage of all~~
56 ~~property the testator owns at death and all property acquired by the estate after~~
57 ~~the testator's death.~~ A will may provide for the passage of all
property the testator owns at death and all property acquired by the estate after
the testator's death.

58 § 4. ~~WHOLE INTEREST TO PASS; EXCEPTION~~

59 ~~A devise of land in a will shall convey all the estate which the deviser could~~
60 ~~devise in such lands, unless it clearly appears by the will that he or she~~
61 ~~intended to convey a less estate. [Repealed.]~~

62 § 5. EXECUTION OF WILL; REQUISITES

63 ~~Except such nuncupative wills as are hereinafter mentioned, a will shall not~~
64 ~~pass any real or personal estate, or charge or affect the same, unless it is~~ A will
65 shall be:

66 (1) in writing ~~and;~~

67 (2) signed in the presence of two or more credible witnesses by the
68 testator; or by in the testator's name written by some other person in the
69 testator's presence and by the testator's express direction; and

70 (3) attested and subscribed by ~~two or more credible~~ the witnesses in
71 the presence of the testator and ~~of~~ each other.

72 § 6. ~~NUNCUPATIVE WILL~~

73 ~~A nuncupative will shall not pass personal estate when the estate thereby~~
74 ~~bequeathed exceeds the value of \$200.00, nor shall such will be proved and~~
75 ~~allowed, unless a memorandum thereof is made in writing by a person present~~
76 ~~at the time of making such will, within six days from the making of it, nor~~
77 ~~unless it is presented for probate within six months from the death of the~~
78 ~~testator. [Repealed.]~~

79 § 7. HOW MADE BY SOLDIER OR SAILOR; MILITARY WILL

80 (a) The provisions of this chapter shall not prevent ~~a soldier~~ a person in
81 ~~actual active~~ military service, ~~or a mariner or seaman at sea,~~ from disposing of

82 his or her ~~wages or other personal~~ estate as he or she might otherwise have
83 done.

84 (b) Notwithstanding any other provision of law, a military will prepared
85 and executed in compliance with, and containing a provision stating that the
86 will is prepared pursuant to, 10 U.S.C. § 1044d shall be deemed to be legally
87 executed and shall be of the same force and effect as if executed in the mode
88 prescribed by the laws of this ~~state~~ State.

89 ~~§ 8. SUBSEQUENT INCOMPETENCY OF WITNESSES~~

90 ~~If the witnesses attesting the execution of a will are competent at the time of~~
91 ~~attesting, their becoming subsequently incompetent shall not prevent the~~
92 ~~probate and allowance of the will. [Repealed.]~~

93 ~~§ 10. DEVISE OR LEGACY TO WITNESS~~

94 ~~If a person, other than an heir at law, attests the execution of a will whereby~~
95 ~~he or she or his wife or her husband is given a beneficial devise, legacy or~~
96 ~~interest in or affecting real or personal estate, such devise, legacy or interest~~
97 ~~shall be void so far only as concerns such person or his wife or her husband or~~
98 ~~one claiming under such person, husband or wife, unless there are three other~~
99 ~~competent witnesses to such will. Such person so attesting shall be admitted as~~
100 ~~a witness as if such devise, legacy or interest had not been made or given. A~~
101 ~~mere charge on the real or personal estate of the testator for the payment of~~
102 ~~debts shall not prevent his creditors from being competent witnesses to his~~

103 ~~will. Any beneficial devise or legacy made or given in a will to a subscribing~~
104 ~~witness to the will or to the spouse of a subscribing witness shall be voidable~~
105 ~~unless there are two other competent, subscribing witnesses to the will.~~
106 ~~Notwithstanding this section, a provision in the will for payment of a debt shall~~
107 ~~not be void or disqualify the creditor as a witness to the will.~~

108 § 11. HOW REVOKED

109 ~~A will shall not be revoked, except by implication of law, otherwise than by~~
110 ~~some will, codicil or other writing, executed as provided in case of wills; or by~~
111 ~~burning, tearing, canceling or obliterating the same, with the intention of~~
112 ~~revoking it, by the testator himself, or by some person in his or her presence~~
113 ~~and by his or her express direction.~~

114 (a)(1) A will is revoked:

115 (A) by executing a subsequent will that revokes the previous
116 will expressly or by inconsistency; or

117 (B) by performing a revocatory act on the will, if the testator
118 performed the act with the intent and for the purpose of revoking the
119 will or part or if another individual performed the act in the testator's
120 conscious presence and by the testator's direction.

121 (2) As used in this subsection, "revocatory act on the will" includes
122 burning, tearing, canceling, obliterating, or destroying the will or any part of it.

123 A burning, tearing, or canceling is a “revocatory act on the will,” whether or
124 not the burn, tear, or cancellation touched any of the words on the will.

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

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

137 Sec. 2. 14 V.S.A. chapter 3 is amended to read:

138 CHAPTER 3. PROBATE AND PROCEDURE FOR
139 CONSTRUCTION OF WILL

140 § 101. WILL NOT EFFECTIVE UNTIL ALLOWED

141 ~~A will shall not pass either real or personal estate unless it is proved and To~~
142 ~~be effective, a will must be allowed in the probate division of the superior~~

143 ~~court~~ Probate Division of the Superior Court, or by appeal in the ~~superior or~~
144 ~~supreme court~~ Civil Division of the Superior Court or the Supreme Court.

145 § 102. ALLOWANCE CONCLUSIVE AS TO EXECUTION

146 The allowance of a will ~~of real or personal estate~~ shall be conclusive as to
147 its due execution and validity.

148 § 103. CUSTODIAN OF WILL TO DELIVER

149 If a person has the custody of a will, within 30 days after learning of the
150 death of the testator, the custodian shall deliver the will to ~~a probate division of~~
151 ~~the superior court~~ the Probate Division of the Superior Court where venue lies
152 or to the executor named in the will.

153 § 104. EXECUTOR TO PRESENT WILL AND ACCEPT OR REFUSE

154 TRUST

155 (a) A person named executor in a will ~~and~~ who has knowledge thereof
156 shall file a death certificate and petition to open the decedent's estate in the
157 ~~probate division of the superior court~~ Probate Division of the Superior Court
158 where venue lies with reasonable promptness.

159 (b) ~~If the person so named learns of the nomination prior to the testator's~~
160 ~~death, the petition shall be filed within 30 days of learning of the death. If~~
161 ~~learned after the testator's death, the petition shall be filed within 30 days of~~
162 ~~learning of being named executor. The person shall notify the court in the~~
163 ~~petition, or in another writing if a petition has been previously filed, whether~~

164 ~~the appointment as executor will be accepted by that person. A petition to~~
165 ~~open an estate need not be filed when no assets require probate administration.~~
166 The named executor may file with the court an original death certificate and
167 will without filing a petition to open an estate by notifying the court that no
168 assets appear to require probate administration.

169 § 105. ~~PENALTY~~

170 ~~Unless he or she gives a satisfactory excuse to the probate division of the~~
171 ~~superior court a person who neglects a duty required in sections 103 and 104 of~~
172 ~~this title shall forfeit \$10.00 for each month he or she so neglects after the 30~~
173 ~~days mentioned therein, to be recovered with costs in an action on this statute~~
174 ~~by any person having an interest in the will. [Repealed.]~~

175 § 106. ~~PERSON RETAINING WILL MAY BE COMMITTED~~ DUTY OF
176 CUSTODIAN OF WILL; LIABILITY

177 ~~If, after the death of the testator, a person having the custody of a will~~
178 ~~neglects without reasonable cause to deliver the same to a probate division of~~
179 ~~the superior court where venue lies, after order by the court and failure to~~
180 ~~deliver it, the court may issue a warrant committing the person to the custody~~
181 ~~of the commissioner of corrections until compliance is given.~~

182 (a) After the death of a testator and on request of an interested person, a
183 person having custody of a will of the testator shall deliver it with reasonable
184 promptness to an appropriate court. A person who intentionally refuses or fails

185 to deliver a will after being ordered to do so by the court in a proceeding
186 brought for the purpose of compelling delivery may be subject to proceedings
187 for civil contempt under 12 V.S.A. § 122.

188 (b) A person who suffers damages as a result of another person's
189 intentional failure to deliver a will shall have an action in Superior Court for
190 damages and injunctive relief.

191 § 107. ~~COURT TO SCHEDULE HEARING ON~~ ALLOWANCE OF WILL;
192 CUSTODY OF PROPERTY

193 (a) ~~When a will is delivered to a probate division of the superior court~~
194 ~~accompanied by a petition to commence a probate proceeding, the court shall~~
195 ~~schedule a hearing and notice shall be given as provided by the rules of probate~~
196 ~~procedure. If consents are filed by all the heirs at law and surviving spouse, a~~
197 ~~will may be allowed without hearing. If consents are not obtained, the court~~
198 ~~shall schedule a hearing and notice shall be given as provided by the Rules of~~
199 Probate Procedure.

200 (b) ~~The~~ Objections to allowance of the will must be filed in writing no less
201 than three business days prior to the hearing. In the event that no timely
202 objections are filed, the will may be allowed without hearing if it meets criteria
203 set out in section 108 of this title.

204 (c) After delivery of the will to the court, the person named as executor in
205 a the will shall have power after delivery of the will to the court, and pending

206 allowance thereof, to assume custody of the estate for its preservation, ~~unless~~
207 ~~or~~ until a special or other administrator is appointed and qualifies.

208 § 108. ~~HOW PROVED, WHEN UNCONTESTED~~ SELF-PROVED WILLS

209 ~~If a person does not appear to contest the allowance of a will at the time~~
210 ~~appointed, the court may allow the will on the testimony of only one of the~~
211 ~~subscribing witnesses, if the witness testifies that the will was executed as~~
212 ~~provided in chapter 1 of this title. If the allowance of the instrument is~~
213 ~~consented to in writing by the surviving spouse of the deceased, if any, and by~~
214 ~~all the heirs at law and next of kin, it may be allowed without testimony. A~~
215 will may be self-proved as to its execution, by the sworn acknowledgment of
216 the testator and the witnesses, made before a notary public or other official
217 authorized to administer oaths in the place of execution in the following
218 circumstances:

219 (1) The testator signed the instruction as the testator's will or
220 expressly directed another to sign for the testator in the presence of two
221 witnesses.

222 (2) The signing was the testator's free and voluntary act for the
223 purposes expressed in the will.

224 (3) Each witness signed at the request of the testator, in the
225 testator's presence, and in the presence of the other witness.

226 (4) To the best knowledge of each witness at the time of the
227 | signing, the testator was at least 18 years of age, or emancipated by court
228 | order, and was of sound mind and under no constraint or undue influence.

229 § 109. ~~WHEN WITNESS DOES NOT RESIDE IN STATE~~

230 ~~If none of the subscribing witnesses resides in the state at the time of the~~
231 ~~death of the testator, the court may admit the testimony of other witnesses to~~
232 ~~prove the sanity of the testator and the execution of the will although the~~
233 ~~subscribing witnesses are living. As evidence of the execution of the will,~~
234 ~~such court may admit proof of the handwriting of the testator and of the~~
235 ~~subscribing witnesses in cases where the names of such witnesses are~~
236 ~~subscribed to a certificate stating that the will was executed as provided in~~
237 ~~chapter 1 of this title. [Repealed.]~~

238 § 110. ABSENCE OF WITNESS, PROOF

239 When it appears to the court that a will cannot be proven as otherwise
240 provided by law, because one or more ~~or all~~ of the subscribing witnesses ~~to the~~
241 ~~will, at the time the will is offered for probate, are serving in or present with~~
242 ~~the armed forces of the United States or its allies or as merchant seamen, or by~~
243 ~~reason of such service are dead or mentally or physically~~ are unavailable ~~or~~
244 ~~incapable of testifying or otherwise unavailable,~~ the court may admit the will to
245 probate upon the testimony in person or by ~~deposition~~ affidavit of at least ~~two~~
246 | one credible disinterested ~~witnesses.~~ individual witness ~~that~~ the signature to

247 the will is in the handwriting of the person whose will it purports to be, or upon
248 other sufficient proof of ~~such~~ the handwriting, and the will on its face complies
249 with other legal requirements. ~~The foregoing provision~~ This section shall not
250 preclude the court, in its discretion, from requiring ~~in addition the~~ additional
251 ~~testimony in person or by deposition~~ of any available subscribing witness or
252 proof of ~~such~~ other pertinent facts and circumstances ~~as~~ that the court ~~may~~
253 ~~deem~~ deems necessary to admit the will to probate.

254 § 111. NOTICE TO BENEFICIARIES

255 | Within 30-10 days after the allowance of a will ~~containing a devise or a~~
256 ~~bequest,~~ the court shall mail, postage paid, a written notice thereof to each
257 | beneficiary, devisee, or legatee named in the will and to each other person who
258 | contested such allowance.

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259 § 112. WILLS MADE OUT OF STATE

260 (a) A last will and testament executed without this ~~state~~ State in the mode
261 prescribed by the law, either of the place where executed or of the testator's
262 domicile, shall be deemed to be legally executed and shall be of the same force
263 and effect as if executed in the mode prescribed by the laws of this ~~state~~ State,
264 provided that such last will and testament is in writing and subscribed by the
265 testator.

266 (b) When a will is allowed pursuant to subsection (a) of this section, the
267 Probate Division of Superior Court shall grant letters testamentary or letters of

268 administration with the will annexed, and such letters shall extend to all the
269 estate of the testator in this State. After the payment of ~~enforceable~~ debts
270 and expenses of administration, the estate shall be disposed of according to the
271 will so far as the will may operate upon it, and the residue shall be disposed of
272 as is provided in case of estates in this State belonging to persons who are
273 residents of another state or country.

274 § 113. WILLS ALLOWED OUT OF STATE—GENERALLY

275 A will allowed in any other state, or in a foreign country, according to the
276 laws of that state or country, may be the subject of ancillary administration in
277 the ~~probate division of the superior court~~ Probate Division of the Superior
278 Court.

279 § 114. PETITION AND HEARING ON

280 (a) When a will has been allowed in any other state or country, as provided
281 in section 113 of this title, an executor or other person interested may file a
282 petition for ancillary administration. The petition shall contain:

283 (1) ~~A~~ a duly authenticated copy of the decedent's will and
284 the allowance thereof (where probate is required by the laws of such
285 state or country); or

286 (2) ~~A~~ a duly authenticated certificate of the legal custodian
287 of such original will that the same is a true copy and that such will has

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288 become operative by the laws of such state or country (where probate is
289 not required by the laws of such state or country); or

290 (3) A a copy of a notarial will in possession of a notary in a
291 foreign state or country entitled to the custody thereof and duly
292 authenticated by such notary (the laws of such state or country
293 requiring that such will remain in the custody of such notary).

294 (b) After receiving a petition for ancillary administration, the ~~probate~~
295 ~~division of the superior court~~ Probate Division of the Superior Court shall
296 schedule a hearing, ~~and notice shall be given, as provided by the rules of~~
297 ~~probate procedure~~ and require notice as provided by the Rules of Probate
298 Procedure. Objections to allowance of the will in Vermont shall be filed in
299 writing no less than 14 business days prior to the hearing. In the event that no
300 objections are filed, the will shall be allowed without hearing.

301 § 115. ORDER FOR FILING

302 If the instrument is allowed in this ~~state~~ State as the last will and testament
303 of the deceased, the copy shall be filed and recorded and the will shall have the
304 same effect as if originally allowed in the same court.

305 § 116. ~~ADMINISTRATION UNDER; ESTATE, HOW DISPOSED OF~~

306 ~~When a will is thus allowed, the probate division of the superior court shall~~
307 ~~grant letters testamentary or letters of administration with the will annexed, and~~
308 ~~such letters shall extend to all the estate of the testator in this state. After the~~

309 ~~payment of just debts and expenses of administration, such estate shall be~~
310 ~~disposed of according to such will so far as such will may operate upon it and~~
311 ~~the residue shall be disposed of as is provided in case of estates in this state~~
312 ~~belonging to persons who are inhabitants of another state or country.~~

313 [Repealed.]

314 ~~§ 117. CONSTRUCTION BY SUPERIOR COURT AND SUPREME~~
315 ~~COURT~~

316 ~~In cases where the terms of a will are doubtful or in dispute, a person~~
317 ~~interested in the estate, either as legatee, devisee or heir at law, may bring a~~
318 ~~complaint before the superior court to have the will construed. The superior~~
319 ~~judge, or the supreme court on appeal, shall proceed to construe the will, and~~
320 ~~that decision shall be binding on parties who are served with process and all~~
321 ~~who appear in the cause, notwithstanding it appears that others may at some~~
322 ~~future time become interested under the will. [Repealed.]~~

323 § 118. REFERRAL TO SUPERIOR COURT

324 The Probate Division of the Superior Court may, on its own motion or upon
325 motion of an interested person, refer a matter directly to the Civil Division of
326 the Superior Court for the purpose of conserving judicial resources. The
327 Probate Division shall consult with and obtain the consent of the Civil Division
328 before making a transfer pursuant to this section.

329 Sec. 3. 14 V.S.A. chapter 42 is amended to read:

330 CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

331 Subchapter 1. General Provisions

332 § 301. INTESTATE ESTATE

333 (a) Any part of a decedent's estate not effectively disposed of by will
334 passes by intestate succession to the decedent's heirs, except as modified by
335 the decedent's will.

336 (b) A decedent's will may expressly exclude or limit the right of an
337 individual or a class to inherit property. If such an individual or member of
338 such a class survives the decedent, the share of the decedent's intestate estate
339 which would have passed to that individual or member of such a class passes
340 subject to any such limitation or exclusion set forth in the will.

341 (c) Nothing in this section shall preclude the surviving spouse of the
342 decedent from making the election and receiving the benefits provided by
343 section 319 of this title.

344 § 302. DOWER AND CURTESY ABOLISHED

345 The estates of dower and curtesy are abolished.

346 § 303. AFTERBORN HEIRS

347 For purposes of this chapter and chapter 1 of this title relating to wills, an
348 individual in gestation at a particular time is treated as living at that time if the
349 individual lives 120 hours or more after birth.

350 Subchapter 2. Survivors' Rights and Allowances

351 § 311. SHARE OF SURVIVING SPOUSE

352 After payment of the debts, funeral charges, allowances to the surviving
353 spouse and children pursuant to sections 316 and 317 of this title and expenses
354 of administration, the intestate share of the decedent's surviving spouse is as
355 follows:

356 (1) The surviving spouse shall receive the entire intestate estate if
357 no descendant of the decedent survives the decedent or if all of the decedent's
358 surviving descendants are also descendants of the surviving spouse.

359 (2) In the event there shall survive the decedent one or more
360 descendants of the decedent who are not descendants of the surviving spouse
361 and are not excluded by the decedent's will from inheriting from the decedent,
362 the surviving spouse shall receive one-half of the intestate estate.

363 § 312. SURVIVING SPOUSE TO RECEIVE HOUSEHOLD GOODS

364 Upon motion, the surviving spouse of a decedent may receive out of the
365 decedent's estate all furnishings and furniture in the decedent's household
366 ~~when the decedent leaves no descendants who object.~~ If any objection is made
367 ~~by any of the descendants, the probate division of the superior court~~ Probate
368 Division of the Superior Court shall decide what, if any, of such personalty
369 shall pass under this section. Goods and effects so assigned shall be in
370 addition to the distributive share of the estate to which the surviving spouse is
371 entitled under other provisions of law. In making a determination pursuant to

372 this section, the ~~probate division of the superior court~~ Probate Division of the
373 Superior Court may consider the length of the decedent's marriage, or civil
374 union, the sentimental and monetary value of the property, and the source of
375 the decedent's interest in the property.

376 § 313. SURVIVING SPOUSE; VESSEL, SNOWMOBILE, OR
377 ALL-TERRAIN VEHICLE

378 Whenever the estate of a decedent who dies intestate consists principally of
379 a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be
380 deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle, and
381 title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to
382 the surviving spouse. The surviving spouse may register the vessel,
383 snowmobile, or all-terrain vehicle pursuant to 23 V.S.A. § 3816.

384 § 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

385 (a) The balance of the intestate estate not passing to the decedent's
386 surviving spouse under section 311 of this title passes to the decedent's
387 descendants by right of representation.

388 (b) If there is no taker under subsection (a) of this section, the intestate
389 estate passes in the following order:

390 (1) to the decedent's parents equally if both survive or to the
391 surviving parent;

392 (2) to the decedent's siblings and the descendants of any
393 deceased siblings by right of representation;

394 (3) one-half of the intestate estate to the decedent's paternal
395 grandparents equally if they both survive or to the surviving paternal
396 grandparent and one-half of the intestate estate to the decedent's
397 maternal grandparents equally if they both survive or to the surviving
398 maternal grandparent and if decedent is survived by a grandparent, or
399 grandparents on only one side, to that grandparent or those
400 grandparents;

401 (4) in equal shares to the next of kin in equal degree.

402 (c) If property passes under this section by right of representation, the
403 property shall be divided into as many equal shares as there are children or
404 siblings of the decedent, as the case may be, who either survive the decedent or
405 who predecease the decedent leaving surviving descendants.

406 § 315. PARENT AND CHILD RELATIONSHIP

407 For the purpose of intestate succession, an individual is the child of his or
408 her parents, regardless of their marital status, but a parent shall not inherit from
409 a child unless the parent has openly acknowledged the child and not refused to
410 support the child. The parent and child relationship may be established in
411 parentage proceedings under 15 V.S.A. chapter 5, subchapter 3A ~~of chapter 5~~
412 of Title 15.

413 § 316. ~~SUPPORT OF~~ ALLOWANCES FOR SURVIVING SPOUSE AND
414 FAMILY DURING SETTLEMENT ADMINISTRATION

415 The ~~probate division of the superior court~~ Probate Division of the Superior
416 Court may make reasonable allowance for the necessary expenses of support
417 and maintenance of the surviving spouse and minor children or either,
418 constituting the family of a decedent, out of the personal estate or the income
419 of real or personal estate from date of death until settlement of the estate, but
420 for no longer a period than until their shares in the estate are assigned to them
421 or, in case of an insolvent estate, for not more than eight months after
422 administration is granted. This allowance may take priority, in the discretion
423 of the court, over debts of the estate.

424 § 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

425 ~~When a person dies leaving children under 18 years of age, an~~ The court
426 may make reasonable allowance ~~may be made~~ for the necessary expenses of
427 support and maintenance of ~~such~~ any children of the decedent until they
428 ~~become~~ reach 18 years of age. The court may order the executor or
429 administrator to retain sufficient estate assets for that purpose, except where
430 some provision is made by will for their support. Such allowance shall be
431 made before any distribution of the estate among creditors, heirs, or
432 beneficiaries by will.

433 § 318. ALLOWANCE TO CHILDREN ~~BEFORE~~ AFTER PAYMENT OF

434 DEBTS

435 Before any partition or division of an estate among the heirs or beneficiaries
436 by will, an allowance may be made for the necessary expenses of ~~the~~ support
437 and maintenance of the children of the decedent ~~under until they reach~~ 18 years
438 of age ~~until they arrive at that age~~. The ~~probate division of the superior court~~
439 Probate Division of the Superior Court may order the executor or administrator
440 to retain sufficient estate assets for that purpose, except where some provision
441 is made by will for their support.

442 § 319. ~~WAIVER ELECTIVE SHARE OF WILL BY SURVIVING SPOUSE;~~

443 NOTICE OF RIGHTS

444 (a) ~~A~~ Subject to subsection (d) of this section, a surviving spouse may
445 elect to waive the provisions of the decedent's will and in lieu thereof elect to
446 take one-half of the balance of the probate estate, after the payment of
447 allowances, claims, and expenses.

448 (b) The surviving spouse must be living at the time this election is made.
449 ~~If~~ An election under this section may be signed on behalf of the surviving
450 spouse ~~is mentally disabled and cannot make the election personally, by a~~
451 guardian, an agent, or ~~attorney-in-fact~~ an attorney-in-fact under a ~~valid durable~~
452 power of attorney ~~may do so that:~~

453 (1) expressly grants the authority to make the election; or

454 (2)(A) grants the agent or attorney-in-fact the authority to act in the
455 management and disposition of the principal's property that is as broad or
456 comprehensive as the principal could exercise for himself or herself; and

457 (B) does not expressly exclude the authority to make the election.

458 (c) An agent or attorney-in-fact may petition the Probate Division of the
459 Superior Court to determine whether a power of attorney described in
460 subdivision (b)(2) grants the agent or attorney-in-fact authority that is as broad
461 or comprehensive as that which the principal could exercise for himself or
462 herself.

463 (d) A surviving spouse may not elect against a deceased spouse's will
464 under this section if the surviving spouse has waived the right to elect against
465 the deceased spouse's will pursuant to section 323 of this title.

466 (e)(1) The court shall provide the surviving spouse with a notice of the
467 rights of the surviving spouse no later than 30 days from the filing of the initial
468 inventory.

469 (2) Unless otherwise ordered by the court, a surviving spouse shall
470 file with the court a written election to waive the provisions of a decedent's
471 will within four months of the later of the following dates:

472 (A) the date of service of the notice of rights of surviving spouse; or

473 (B) the date of service of the inventory.

474 (f) Upon the filing of any subsequent or amended inventory or any
475 accounting that reports previously undisclosed property owned by the decedent

476 as of the date of death, the surviving spouse shall have 30 days from the date of
477 service of the filing to elect against the newly reported property, unless
478 otherwise ordered by the court.

479 § 320. EFFECT OF DIVORCE ORDER

480 A final divorce or dissolution order from any state shall ~~have the effect of~~
481 ~~nullifying~~ nullify a gift by will ~~or inheritance by operation of law~~ to an
482 individual who was the decedent's spouse at the time the will was executed and
483 any nomination of the spouse as executor, executrix, trustee, guardian, or other
484 fiduciary as named in the will, if the decedent was no longer married to or in a
485 civil union with that individual at the time of death, unless ~~his or her~~ the
486 decedent's will specifically states to the contrary.

487 § 321. CONVEYANCE TO DEFEAT SPOUSE'S INTEREST

488 A voluntary transfer of any property by an individual during a marriage or
489 civil union and not to take effect until at or after the individual's death, made
490 without adequate consideration and for the primary purpose of defeating a
491 ~~surviving spouse in a claim to a~~ spouse's right to claim the survivor's intestate
492 or elective share of the decedent's property so transferred, shall be void and
493 inoperative to bar the claim. ~~The, unless the surviving spouse waived the~~
494 survivor's right to make a claim against the deceased spouse's estate or the
495 property transferred pursuant to section 323 of this title. If the surviving
496 spouse has not signed a waiver of spousal rights pursuant to section 323 of this

497 ~~title, then the~~ decedent shall be deemed at the time of his or her death to be the
498 owner ~~and seised of an interest in such~~ of the property sufficient for the
499 ~~purpose of assigning and setting out~~ and the court may:

500 (1) increase the surviving spouse's share of the decedent's probate
501 estate in an amount the court deems reasonable to account for the right the
502 surviving spouse would otherwise have had in the property so transferred; or

503 (2) if the assets of the decedent's probate estate are insufficient to
504 account for the right the surviving spouse would otherwise have had in the
505 property, then order any other equitable relief the court deems appropriate.

506 § 322. UNLAWFUL KILLING AFFECTING INHERITANCE

507 Notwithstanding sections 311 through 314 of this title or provisions
508 otherwise made, in any case in which an individual is entitled to inherit or
509 receive property under the last will of a decedent, or otherwise, such
510 individual's share in the decedent's estate shall be forfeited and shall pass to
511 the remaining heirs or beneficiaries of the decedent if the individual
512 intentionally and unlawfully kills the decedent. In any proceedings to contest
513 the right of an individual to inherit or receive property under a will or
514 otherwise, the record of that individual's conviction of intentionally and
515 unlawfully killing the decedent shall be admissible in evidence and shall
516 conclusively establish that such individual did intentionally and unlawfully kill
517 the decedent.

518 § 323. WRITTEN WAIVER OF SPOUSAL RIGHTS

519 (a) At any time before or during a marriage, a spouse may waive the right
520 to an elective share of a deceased spouse's estate, waive the right to a
521 homestead or other allowance, and waive any other spousal rights or interest in
522 property, in whole or in part, by a written instrument signed by the waiving
523 spouse.

524 (b) A written waiver of spousal rights is presumed to be valid unless the
525 party contesting the waiver demonstrates that:

526 (1) the waiver was not voluntary;
527 (2) the waiver was unconscionable when signed or is
528 unconscionable in its application due to a material change in
529 circumstances that arose subsequent to the execution of the instrument
530 through no fault or no action of the contesting party;

531 (3) before signing the waiver, the waiving spouse was not
532 provided fair and reasonable disclosure of the property and financial
533 obligations of the decedent; or

534 (4) before signing the waiver, the waiving spouse did not
535 have an opportunity for meaningful access to independent counsel.

536 (c) A waiver under this section may be signed on behalf of a waiving
537 spouse by a guardian or by an agent or an attorney-in-fact under a power of
538 attorney that:

539 (1) expressly grants the authority to make the election; or
540 (2)(A) grants the agent or attorney-in-fact the authority to act in the
541 management and disposition of the principal's property that is as broad or
542 comprehensive as the principal could exercise for himself or herself; and
543 (B) does not expressly exclude the authority to make the election.
544 (d) An agent or attorney-in-fact may petition the Probate Division of the
545 Superior Court to determine whether a power of attorney described in
546 subdivision (c)(2) grants the agent or attorney-in-fact authority that is as broad
547 or comprehensive as that which the principal could exercise for himself or
548 herself.

549 Subchapter 3. Descent, Omitted Issue, and Lapsed Legacies

550 § 331. DEGREES; HOW COMPUTED: KINDRED OF HALF-BLOOD

551 Kindred of the half-blood shall inherit the same share they would inherit if
552 they were of the whole blood.

553 § 332. SHARE OF AFTERBORN CHILD

554 When a child of a testator is born after the making of a will and provision is
555 not ~~made therein in the will~~ ~~made~~ for that child, he or she shall have the same
556 share in the estate of the testator as if the testator had died intestate unless it is
557 apparent from the will that it was the intention of the testator that provision
558 should not be made for the child.

559 § 333. SHARE OF CHILD OR DESCENDANT OF CHILD OMITTED

560 FROM WILL

561 When a testator omits to provide in ~~his or her~~ the testator's will for any ~~of~~
562 ~~his or her children~~ child of the testator, or for the descendants of a deceased
563 child, and it appears that the omission was made by mistake or accident, the
564 child or descendants, as the case may be, shall have and be assigned the same
565 share of the estate of the testator as if the testator had died intestate.

566 § 334. AFTERBORN AND OMITTED CHILD; FROM WHAT PART OF
567 ESTATE SHARE TAKEN

568 When a share of a testator's estate is assigned to a child born after the
569 making of a will, or to a child or the descendant of a child omitted in the will,
570 the share shall be taken first from the estate not disposed of by the will, if there
571 is any. If that is not sufficient, so much as is necessary shall be taken from the
572 devisees or legatees in proportion to the value of the estate they respectively
573 receive under the will. If the obvious intention of the testator, as to some
574 specific devise, legacy, or other provision in the will, would thereby be
575 defeated, the specific devise, legacy, or provision may be exempted from such
576 apportionment and a different apportionment adopted in the discretion of the
577 court.

578 § 335. BENEFICIARY DYING BEFORE TESTATOR; DESCENDANTS
579 TO TAKE

580 When a testamentary gift is made to a child or other kindred of the testator,
581 and the designated beneficiary dies before the testator, leaving one or more
582 descendants who survive the testator, such descendants shall take the gift that
583 the designated beneficiary would have taken if ~~he or she~~ the designated
584 beneficiary had survived the testator, unless a different disposition is required
585 by the will.

586 § 336. INDIVIDUAL ABSENT AND UNHEARD OF; SHARE OF ESTATE

587 If an individual entitled to a distributive share of the estate of a decedent is
588 absent and unheard of for six years, two of which are after the death of the
589 decedent, the ~~probate~~ court in which the decedent's estate is pending may order
590 the share of the absent individual distributed in accordance with the terms of
591 the decedent's will or the laws of intestacy as if such absent individual had not
592 survived the decedent. If the absent individual proves to be alive, he or she
593 shall be entitled to the share of the estate notwithstanding prior distribution,
594 and may recover in an action on this statute any portion thereof which any
595 other individual received under order. Before an order is made for the payment
596 or distribution of any money or estate as authorized in this section, notice shall
597 be given as provided by the Vermont Rules of Probate Procedure. § 337.

598 REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR

599 120 HOURS

600 Except as provided in the decedent's will, an individual who fails to survive
601 the decedent by 120 hours is deemed to have predeceased the decedent for
602 purposes of homestead allowance, exempt property, intestate succession, and
603 taking under decedent's will, and the decedent's heirs and beneficiaries shall
604 be determined accordingly. If it is not established by clear and convincing
605 evidence that an individual who would otherwise be an heir or beneficiary
606 survived the decedent by 120 hours, it is deemed that the individual failed to
607 survive for the required period. This section is not to be applied if its
608 application would result in escheat.

609 § 338. DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED;
610 ABATEMENT

611 (a)(1) Except as provided in subsection (b) of this section, shares of
612 distributees given under a will abate, without any preference or priority as
613 between real and personal property, in the following order:

- 614 (A) property not disposed of by the will;
615 (B) residuary devises and bequests;
616 (C) general devises and bequests;
617 (D) specific devises and bequests.

618 (2) For purpose of abatement, a general devise or bequest charged on
619 any specific property or fund is a specific devise or bequest to the extent of the
620 value of the property on which it is charged, and upon the failure or

621 insufficiency of the property on which it is charged, a general devise or bequest
622 to the extent of the failure or insufficiency. Abatement within each
623 classification is in proportion to the amounts of property each of the
624 beneficiaries would have received if full distribution of the property had been
625 made in accordance with the terms of the will.

626 (b) If the will expresses an order of abatement or if the testamentary plan
627 or the express or implied purpose of a devise or bequest would be defeated by
628 the order of abatement listed in subsection (a) of this section, the shares of the
629 distributees shall abate as may be necessary to give effect to the intention of
630 the testator.

631 (c) If the subject of a preferred devise or bequest is sold or used incident to
632 administration, abatement shall be achieved by appropriate adjustments in, or
633 contribution from, other interests in the remaining assets.

634 Sec. 4. 14 V.S.A. chapter 49 is amended to read:

635 **CHAPTER 49. ESCHEATS**

636 **§ 681. PERSONS DYING TESTATE OR INTESTATE WITHOUT HEIRS**
637 **OR KNOWN LEGATEES**

638 When a person dies testate or intestate, seised of real or personal property in
639 this State, leaving no heir nor person entitled to the same, the selectboard
640 members of the town where the deceased last resided, if an inhabitant of the

641 State, or of the town in which estate lies, if the absent person resided out of the
642 State, may file a petition, on behalf of the town, with the Probate Division of
643 the Superior Court for a hearing in accordance with the Rules of Probate
644 Procedure.

645 § 683. ESCHEAT, PROCEEDS FROM SALE

646 If sufficient cause is not shown to the contrary, at the time appointed for that
647 purpose, the court shall order and decree that the estate of the deceased in the
648 ~~state~~ State, after the payment of just debts and charges, shall escheat. Such
649 court shall assign the personal estate to the town where such deceased was last
650 an inhabitant in the ~~state~~ State and the real estate to the towns in which the
651 same is situated. If he or she were never an inhabitant of the ~~state~~ State, the
652 whole estate shall be assigned to the towns where the same is located. ~~Such~~
653 The estate shall be for the use of schools in the towns respectively and shall be
654 managed and disposed of like other property appropriated to the use of the
655 town school districts. Any property decreed to a town by virtue of this chapter
656 or subsequently conveyed to an incorporated school district within such town
657 for the use of its schools may be sold without restriction, provided the proceeds
658 shall be expended for the use of the schools of the town.

659 § 684. RIGHTS OF HEIR SUBSEQUENTLY APPEARING

660 If a devisee, legatee, heir, widow, or other person, entitled to ~~such~~ some
661 portion or all of an estate, appears within 17 years from the date of ~~such~~ the

662 decree and files a claim with the ~~probate division of the superior court~~ Probate
663 Division of the Superior Court which made ~~such the~~ decree, and establishes the
664 claim to ~~such the~~ estate, he or she shall have possession of the same to the
665 extent of the claim, or, if sold, the town shall be accountable to him or her for
666 the avails, after deducting reasonable charges for the care of the estate. If the
667 claim is not made within the time mentioned, it shall be barred.

668 Sec. 5. 14 V.S.A. chapter 61 is amended to read;

669 CHAPTER 61. EXECUTORS AND ADMINISTRATORS

670 Subchapter 1. General Provisions

671 § 902. WILL ALLOWED; LETTERS TO EXECUTOR

672 When a will has been allowed, the ~~probate division of the superior court~~
673 Probate Division of the Superior Court shall issue letters ~~testamentary thereon~~
674 of administration to the person named executor ~~therein~~ or administrator if the
675 person accepts ~~the trust~~ appointment and gives a ~~bond as required by law~~ any
676 required bond.

677 § 903. ADMINISTRATION; TO WHOM GRANTED

678 If an executor is not named in the will, or if a person dies intestate,
679 ~~administration shall be granted~~ appointments to administer the estate may be
680 made in the following manner:

681 (1) To the surviving ~~husband or wife, as the case may be,~~ spouse or
682 next of kin, or both, or ~~to such~~ the person as such surviving husband or wife
683 nominated by the surviving spouse or next of kin ~~request to have appointed;~~

684 (2) If ~~such~~ the surviving ~~husband or wife, as the case may be,~~
685 spouse or next of kin or the ~~persons selected~~ person nominated by them ~~are~~ is
686 unsuitable, or if the ~~widow~~ surviving spouse or the next of kin ~~neglects for 30~~
687 days does not within a reasonable period of time after the death of the person
688 ~~to~~ apply for letters of administration or ~~to request that~~ nominate another person
689 to whom letters of administration may be granted ~~to some other person,~~ it may
690 ~~be granted to,~~ the court may grant letters of administration to one or more of
691 the principal creditors, if competent and willing to serve;

692 (3) If there is not ~~such~~ a creditor who is competent and willing to
693 serve, ~~the same~~ letters of administration may be ~~committed~~ issued to ~~such other~~
694 another person as appointed by the probate division of the superior court may
695 ~~appoint;~~ Probate Division of the Superior Court in its discretion.

696 (4) ~~To such person as to the court shall seem suitable upon~~
697 ~~application of the reputed owner of land formerly owned by such deceased~~
698 ~~person, in case the title to such land is not clear~~ If the appointment is to enable
699 a quiet title action or another action to clear title to lands, the court may
700 appoint a suitable person as the administrator for that purpose upon application
701 of the reputed owner of the land formerly owned by the decedent.

702 § 904. NONRESIDENT EXECUTOR OR ADMINISTRATOR OR
703 EXECUTOR TO BE RESIDENT OF STATE; EXCEPTIONS;
704 AGENT

705 (a) In all cases where the principal administration is in this ~~state~~ State, the
706 ~~probate division of the superior court~~ Probate Division of the Superior Court
707 shall ~~not~~ appoint a ~~trustee not named in a will nor~~ an executor or administrator
708 who is not domiciled in this ~~state at the time of appointment,~~ nor an executor
709 ~~who is not domiciled in this state, except in~~ State only at ~~the~~ the discretion of
710 the court; ~~provided, however, that the court shall appoint an administrator who~~
711 ~~is not domiciled in the state when requested so to do by the surviving spouse,~~
712 ~~the surviving children of lawful age or the surviving parent or parents or a~~
713 ~~guardian, on motion in that order of sequence.~~

714 (b) ~~In case of the appointment of a nonresident executor, administrator or~~
715 ~~trustee, the person appointed~~ Any nonresident estate fiduciary shall forthwith
716 designate in writing ~~some person resident in the state from which letters~~
717 ~~testamentary, of administration or trusteeship are granted, upon whom a~~
718 resident of this State who accepts appointment as the resident agent of the
719 nonresident estate fiduciary and agrees to accept service of legal process ~~may~~
720 ~~be made as agent of the nonresident executor, administrator or trustee and~~
721 other communications on behalf of the executor or administrator. The
722 appointment and acceptance shall be filed with the court. Service of legal

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723 process against the nonresident ~~administrator, executor or trustee may be made~~
724 ~~by delivering to the agent a true and attested copy of the process with the~~
725 ~~officer's return thereon~~ executor or administrator may be accomplished by
726 serving the resident agent.

727 § 905. APPEAL TO THE CIVIL DIVISION OF THE SUPERIOR COURT

728 ~~Upon appeal from~~ If any person appeals to the Civil Division of the
729 Superior Court an order appointing an administrator, if executor or
730 administrator and the appeal is sustained, the ~~superior court~~ Civil Division of
731 the Superior Court shall ~~fill the vacancy by the immediate appointment of a~~
732 ~~suitable person, and the judgment and appointment shall be certified to the~~
733 ~~probate court. When the administrator files the bond required, the probate~~
734 ~~court shall grant letters of administration~~ appoint another suitable person as
735 executor or administrator, and certify the judgment and subsequent
736 appointment to the Probate Division of the Superior Court. The Probate
737 Division shall set bond and, after the required bond is filed by the executor or
738 administrator, grant letters of administration.

739 § 906. BOND; AMOUNT, CONDITIONS

740 ~~Before letters testamentary or of administration are issued, the person to be~~
741 ~~appointed shall give a bond in such reasonable sum as the probate division of~~
742 ~~the superior court directs, with one or more sufficient sureties, conditioned as~~
743 ~~follows~~ An executor or administrator shall give a bond to secure the executor's

744 or administrator's performance of the executor's or administrator's duties. The
745 Probate Division shall set the amount of the bond and may order that the bond
746 have sureties. The bond shall be for the security and benefit of all interested
747 persons, except where a bond is to be taken to the adverse party, and shall be
748 filed before the court issues letters of administration. The court shall set the
749 conditions of any bond, which shall include the following:

750 (1) ~~To~~ to make and return an inventory to the ~~probate division of~~
751 ~~the superior court~~ Probate Division within ~~30~~ 60 days ~~a true and perfect~~
752 ~~inventory of the goods, chattels, rights, credits and estate of the deceased,~~
753 ~~which shall come into the possession or knowledge of the person appointed, or~~
754 ~~into the possession of any other person for the person appointed as required by~~
755 law and the rules of the court;

756 (2) ~~To~~ to administer according to law, ~~if an executor, according to~~
757 ~~the will of the testator, all goods, chattels, rights, credits and estate which shall~~
758 ~~at any time come into the possession of the person appointed, or into the~~
759 ~~possession of any other person for the person appointed, and of the same, pay~~
760 ~~and discharge all debts, legacies and charges on the same, or dividends thereon~~
761 ~~as shall be decreed by the probate division of the superior court and the~~
762 decedent's will, if any, all property comprising the decedent's estate, whether
763 in the possession of the executor or administrator or others for the benefit of
764 the executor or administrator, and discharge all debts, legacies, and charges;

765 (3) ~~To to~~ render a true and just an account of administration to the
766 ~~probate division of the superior court~~ Probate Division within one year and at
767 any other time when required by the court;

768 (4) ~~To to~~ pay to the ~~state treasurer~~ State of Vermont all inheritance
769 and transfer taxes which the person appointed is required to pay by the
770 provisions of 32 V.S.A. chapters 181 and 183 ~~of Title 32~~ and to perform all
771 other duties required by those chapters; and

772 (5) ~~To to~~ perform all orders and decrees of the ~~probate division of~~
773 ~~the superior court~~ Probate Division.

774 § 907. ~~RESIDUARY LEGATEE AS EXECUTOR, BOND; BOND~~
775 ~~PROVISION IN WILL; FURTHER BOND~~

776 (a) ~~Instead of the bond required in section 906 of this title, an executor~~
777 ~~who is residuary legatee may give a bond in a sum and with those sureties as~~
778 ~~the probate division of the superior court directs, with the conditions only to~~
779 ~~pay the debts and legacies of the testator, and to return to the probate division~~
780 ~~of the superior court within 30 days a true and perfect inventory under oath~~
781 ~~according to the executor's best knowledge, information and belief of the~~
782 ~~goods, chattels, rights, credits and estate of the deceased which shall come to~~
783 ~~the executor's possession or knowledge, or to the possession of any other~~
784 ~~person for the executor.~~

785 (b) ~~If the testator by will directs that no bond, or only the individual bond~~
786 ~~of the executor be required, instead of the bond prescribed in section 906 of~~
787 ~~this title, an individual bond may be given as directed in the will. A bond shall~~
788 ~~also be given in a sum and with those sureties as the probate division of the~~
789 ~~superior court directs, with the conditions only to pay the debts of the testator~~
790 ~~and return to the probate division of the superior court a true inventory under~~
791 ~~oath, according to the executor's best knowledge, information and belief, of~~
792 ~~the real estate and all the goods, chattels, rights and credits of the deceased~~
793 ~~coming to the executor's possession or knowledge.~~

794 (c) ~~The probate division of the superior court may require of the executor a~~
795 ~~further bond in case of a subsequent change in circumstances, and for other~~
796 ~~sufficient cause with the second, third, and fourth conditions named in section~~
797 ~~906 of this title. [Repealed.]~~

798 § 908. BONDS OF JOINT ADMINISTRATORS AND EXECUTORS

799 When two or more persons are appointed as executors or administrators, the
800 ~~probate court~~ Probate Division of the Superior Court may take a separate bond
801 from each, with or without sureties, or a joint bond with or without sureties
802 from any or all.

803 § 909. EXECUTOR REFUSING TRUST, OR NOT GIVING BOND

804 A person named as an executor in a will who refuses to accept ~~the trust~~
805 appointment or neglects for 20 days to give a bond ~~for 20 days after the probate~~

806 ~~of such will shall not intermeddle or act as executor. In case of such refusal to~~
807 ~~accept or neglect to give a bond, the probate division of the superior court If~~
808 the person refuses to accept or neglects to give a bond, the Probate Division
809 may grant letters testamentary to the other executors of administration to any
810 other named executor who are is capable and willing to accept the trust the
811 appointment and gives bond. If the other executors will not give a bond,
812 administration, with the will annexed, shall be granted to the person who
813 ~~would have been entitled thereto had the testator died intestate~~ named
814 executors fail to accept the appointment or give a bond, the court shall grant
815 letters of administration with the will annexed to one or more suitable persons
816 who would have would have qualified to be appointed as administrator had the
817 testator died intestate.

818 § 910. WHEN EXECUTOR IS A MINOR

819 When a person named as executor in a will is under age at the time of
820 proving ~~such the will, issuance of letters of administration with the will~~
821 ~~annexed shall be granted during the minority of the executor as in cases of~~
822 ~~intestacy, unless there is~~ may be granted to another executor named in such the
823 will, who accepts the trust and gives a bond. ~~In such case, the executor who~~
824 ~~gives a bond shall have letters testamentary and shall administer the estate until~~
825 ~~the minor is of age, when he may be admitted, on giving a bond, as joint~~
826 executor appointment and gives the required bond, or to another suitable

827 person if he or she fails to accept appointment or to post bond. A minor who
828 attains the age of legal majority during the estate administration shall not
829 displace the incumbent executor or administrator, but if a vacancy occurs
830 during administration, the former minor may apply to the court for
831 appointment as successor executor or administrator.

832 § 911. ~~EXECUTOR OF EXECUTOR NOT TO ADMINISTER FIRST~~
833 ~~ESTATE~~

834 ~~The executor of an executor shall not, as such, administer the estate of the~~
835 ~~first testator. [Repealed.]~~

836 § 912. ~~MARRIED WOMAN~~

837 ~~A married woman may be executrix or administratrix, and the marriage of a~~
838 ~~single woman shall not affect her authority to so act under a previous~~
839 ~~appointment. [Repealed.]~~

840 § 913. ~~DEATH OR REMOVAL OF EXECUTOR OR ADMINISTRATOR~~

841 ~~When an executor or administrator dies, resigns, is removed or his or her the~~
842 ~~executor's or administrator's authority is otherwise extinguished, ~~the~~ any~~
843 ~~remaining executor or administrator may ~~execute the trust~~ complete the~~
844 ~~administration unless otherwise provided by the will. If there is no other~~
845 ~~executor or administrator then serving, the court may grant letters of~~
846 ~~administration ~~may be granted~~ to a another suitable person. The executor or~~

847 administrator of an executor or administrator shall not administer the estate of
848 the first decedent.

849 § 914. POWER OF NEW ADMINISTRATOR

850 An administrator appointed in the place of a former executor or
851 administrator shall have the same ~~power~~ authority in settling the estate ~~not~~
852 ~~administered~~ as the former executor or administrator ~~had. He or she may,~~
853 including the authority to prosecute or defend actions commenced by or against
854 the former executor or administrator, and the new administrator may revive
855 actions and have execution on ~~judgment~~ judgments recovered in the name of
856 the former executor or administrator on behalf of the estate.

857 § 915. APPOINTMENT OF ADMINISTRATOR TO ACT WITH
858 SURVIVOR

859 When an executor or administrator dies, resigns, is removed or authority is
860 otherwise extinguished, leaving a remaining executor or administrator,
861 administration may be granted to some suitable person, to serve with the
862 remaining executor or administrator, upon motion of any person interested in
863 the estate of the deceased, ~~as widow, heir, creditor, devisee, legatee or their~~
864 ~~legal representatives.~~

865 § 916. POWERS OF ADMINISTRATOR APPOINTED TO ACT
866 WITH SURVIVOR

867 An executor or administrator appointed under section 915 of this title shall
868 have the same ~~power~~ authority as the remaining executor or administrator ~~has~~
869 ~~and with such executor or administrator~~ and may prosecute or defend actions
870 commenced by or against the former ~~executors or administrators~~ executor or
871 administrator and may revive actions and have execution on judgments
872 recovered in the name of the former executor or administrator on behalf of he
873 estate.

874 § 917. POWER OF REGULATION

875 The ~~probate division of the superior court~~ Probate Division of the Superior
876 Court shall regulate the conduct of persons appearing in proceedings or
877 involved in the administration of estates or other matters within the court's
878 jurisdiction. When it appears to the court that a person has failed to comply
879 with procedures required by law or the ~~rules of probate procedure~~ Rules of
880 Probate Procedure, or that an estate is not being promptly and properly
881 administered, or that a fiduciary is incapable or unsuitable to discharge the
882 trust, the court may give notice of the complaint or omission together with a
883 notice to correct the deficiency or complaint within a specified period of time
884 or cause the party to appear and answer the matter. Notice shall be given as
885 provided by the ~~rules of probate procedure~~ Rules of Probate Procedure. The
886 court may restrain a person from performing specified acts or the exercise of
887 any powers or discharge of any duties of office, or make any other order to

888 secure proper performance of duty. It may exercise the powers of contempt,
889 tax costs including surcharge, order a party to pay to other parties the amount
890 of reasonable expenses, including reasonable attorney's fees, or losses incurred
891 because of an act or omission, and remove or suspend a fiduciary.

892 § 917a. TERMINATION OF APPOINTMENT

893 (a) Termination of appointment of ~~a fiduciary~~ an executor or administrator
894 ends the rights and powers pertaining to the office as conferred by law, the
895 ~~rules of probate procedure~~ Rules of Probate Procedure, or any will or trust.
896 Termination does not discharge ~~a fiduciary~~ an executor or administrator from
897 liability for transactions or omissions occurring before termination, or relieve
898 the ~~fiduciary~~ executor or administrator of the duty to preserve assets subject to
899 the ~~fiduciary's~~ executor's or administrator's control, ~~or to account therefor, and~~
900 ~~to for and~~ deliver assets. Termination does not affect the jurisdiction of the
901 ~~probate division of the superior court~~ Probate Division of the Superior Court
902 over the fiduciary, but terminates the estate fiduciary's authority.

903 (b) The appointment of ~~a fiduciary~~ an executor or administrator is
904 terminated:

905 (1) upon death; ~~or~~

906 (2) when the estate is closed as provided by the ~~rules of probate~~
907 ~~procedure~~ Rules of Probate Procedure; ~~or~~

908 (3) after resignation upon the appointment of a successor estate
909 fiduciary and delivery of the assets to the successor; or

910 (4) upon removal by the ~~probate division of the superior court~~
911 Probate

912 Division of the Superior Court.

913 § 918. ONE OF THE COEXECUTORS DISQUALIFIED, OTHERS MAY

914 ACT

915 ~~According to the provisions of this chapter, when executors~~ When
916 coexecutors appointed in a will cannot act as such, those who can act may
917 ~~perform the duties and discharge the trusts required by the will~~ be appointed to
918 administer the estate.

919 § 919. PERSONS UNHEARD FROM FOR FIVE YEARS; SETTLEMENT
920 OF ESTATE

921 When a person is absent and unheard from for five years or when a
922 certificate of presumed death of a person has been issued under 18 V.S.A. §
923 5219, that person's estate shall be subject to administration by the ~~probate~~
924 ~~division of the superior court~~ Probate Division of the Superior Court. If a will
925 exists, the will shall be presented to the court and may be allowed and the
926 estate closed thereunder. If no will is found, the court having jurisdiction of
927 the estate may grant letters of administration thereof and proceed with the
928 estate as in the settlement of intestate estates, ~~but distribution.~~ Distribution of
929 the estate shall not be made until five years after the granting of

930 administration or letters testamentary. Before granting an order for
931 distribution or for payment of legacies named in any will which may have
932 been allowed, the court shall require from the legatees or distributees a bond
933 or bonds with sufficient surety to the court, which may take into account the
934 likelihood of the reappearance of the person presumed deceased, conditioned
935 to return the amount distributed or paid with lawful interest thereon to the
936 person so absent and unheard from upon reappearance and demand for the
937 same. If the distributee or legatee is unable to give the security ~~aforsaid~~
938 required by this section, the same shall be placed at interest upon security
939 approved by the court or by the executor or administrator, as the case may be,
940 and the interest shall be paid annually to the distributee or legatee and the
941 estate shall remain at interest until the ~~probate division of the superior court~~
942 Probate Division of the Superior Court by which the letters of administration
943 or letters testamentary were granted shall order it paid to the legatees or
944 distributees. Upon motion, an order shall not be made permitting payment or
945 distribution without the security ~~hereinbefore provided for~~ required by this
946 section until at least seven years have elapsed since the granting of letters
947 testamentary or of administration on the estate of the supposed decedent.

948 § 920. LIABILITY OF EXECUTOR; RIGHTS ON RETURN

949 After such administration and distribution, the executor or administrator
950 shall not be liable to the person so absent and unheard from in any action for

951 the recovery of ~~such~~ the estate. If ~~such~~ the absent person proves to be alive, he
952 or she shall be entitled to his or her estate notwithstanding ~~the~~ a settlement and
953 distribution ~~aforsaid~~ made pursuant to section 919 of this title, and may bring
954 an action to recover in an action on this statute any portion ~~thereof~~ of the estate
955 which anyone received ~~in such~~ as a result of the settlement and distribution.

956 § 921. PROPERTY OF PERSONS SERVING IN ARMED FORCE –
957 ABSENT PERSONS, CONSERVATOR

958 When a person, hereinafter referred to as an absentee, who is serving in or
959 with the ~~armed forces of the United States~~ U.S. Armed Forces, its allies, or as a
960 crew member of a merchant vessel, has been reported or listed as missing,
961 missing in action, interned, or beleaguered, besieged, or captured by an enemy,
962 and has an interest in any property in this ~~state~~ State and has not provided an
963 adequate power of attorney authorizing another to act on the absentee's behalf
964 in regard to the absentee's property, the ~~probate division of the superior court~~
965 Probate Division of the Superior Court may appoint a conservator to take
966 charge of the absentee's estate under the supervision and subject to the further
967 orders of the court. The appointment may be made upon a petition alleging the
968 foregoing facts, showing the necessity of providing for the care of property,
969 and may be brought by any person who would have an interest in the property
970 if the absentee were deceased, or on the court's own motion. The court shall

971 schedule a hearing and notice shall be given as provided by the rules of probate
972 procedure.

973 § 922. POWERS OF CONSERVATOR; BOND

974 The ~~probate division of the superior court~~ Probate Division of the Superior
975 Court shall have full discretionary authority to appoint any suitable person as
976 conservator and may require the conservator to post an adequate surety bond
977 and to make reports the court may deem necessary. The conservator shall have
978 the same powers and authority as the guardian of the property of a minor or
979 incapacitated person.

980 § 923. TERMINATION OF CONSERVATORSHIP

981 At any time upon motion signed by the absentee, or of an attorney-in-fact
982 acting under an adequate power of attorney granted by the absentee, the
983 ~~probate division of the superior court~~ Probate Division of the Superior Court
984 shall direct the termination of the conservatorship and the transfer of all
985 property held thereunder to the absentee or to the designated attorney-in-fact.
986 Likewise, if at any time subsequent to the appointment of a conservator it shall
987 appear that the absentee has died and an executor or administrator has been
988 appointed for the absentee's estate, the court shall direct the termination of the
989 conservatorship, an accounting therein and the transfer of all property of the
990 deceased absentee held thereunder to the executor or administrator.

991 § 924. REVOCATION OF LETTERS OF ADMINISTRATION-WHEN

992 WILL DISCOVERED

993 When, after granting letters of administration of the estate of a person as if
994 dying intestate, a will of the deceased person is allowed, the letters of
995 administration shall be revoked and the powers of the administrator cease, the
996 letters of administration shall be surrendered and an accounting shall be filed
997 as the ~~probate division of the superior court~~ Probate Division of the Superior
998 Court directs.

999 § 925. POWERS OF EXECUTOR OF DISCOVERED WILL

1000 In such case, the executor of the will may demand, sue for and collect the
1001 goods, chattels, rights and credits of the deceased remaining unadministered,
1002 and may prosecute to final judgment actions commenced by the administrator
1003 before the revocation of his letters of administration.

1004 § 926. REVOCATION OF LETTERS NOT TO AVOID ACTS UNDER

1005 THEM

1006 Before the revocation of his letters testamentary or of administration, the
1007 acts of an executor or administrator shall be valid the same as if revocation had
1008 not been made.

1009 § 927. EXECUTOR OR ADMINISTRATOR OF DECEASED

1010 PARTNER-ACCESS TO BOOKS

1011 The executor or administrator of a deceased partner at all times shall have
1012 access to and make examination and take copies of the books and papers

1013 relating to the partnership business, and at all times shall have the right to
1014 examine and make invoices of the property belonging to such partnership. The
1015 surviving partner or partners, on request, shall exhibit to him or her all such
1016 books, papers and property in their hands or control.

1017 § 928. PROBATE DIVISION OF THE SUPERIOR COURT MAY COMPEL
1018 COMPLIANCE

1019 The ~~probate division of the superior court~~ Probate Division of the Superior
1020 Court in which is pending a proceeding for the settlement of the estate of a
1021 deceased partner, on motion of the executor or administrator, may cite a
1022 surviving partner or partners before it, and, by a proper order or decree, compel
1023 the granting of the rights given in section 927 of this title and may enforce an
1024 order or decree by issuing its warrant to commit the partner or partners to the
1025 custody of the ~~commissioner of corrections~~ Commissioner of Corrections until
1026 compliance is given.

1027 § 929. BUILDINGS TO BE KEPT IN REPAIR

1028 An executor or administrator shall maintain in tenable repair the houses,
1029 buildings, and fences belonging to the estate and deliver the same in such
1030 repair to the heirs or devisees when directed by the ~~probate division of the~~
1031 ~~superior court~~ Probate Division of the Superior Court.

1032 § 930. ESTATE NOT WILLED

1033 An executor shall administer the estate of the testator not disposed of by
1034 will.

1035 § 931. LIMITATION ON CLAIMS OF CREDITORS

1036 ~~When a petition to open a decedent's estate is not filed in probate division~~
1037 ~~of the superior court within 30 days of death, all~~ All claims against the
1038 decedent's estate which arose before the death of the decedent, including
1039 claims of the ~~state~~ State and any subdivision thereof, absolute or contingent,
1040 liquidated or unliquidated, founded on contract, tort, or other legal basis, if not
1041 barred earlier by other statute of limitations, are barred against the estate, the
1042 legal representative of the estate, and the heirs and devisees of the decedent,
1043 unless presented within ~~three years~~ one year after the decedent's death.
1044 Nothing in this section affects or prevents any proceeding to enforce any
1045 mortgage, pledge, or other lien upon the property of the estate.

1046 Subchapter 2. Special Administrators

1047 § 961. SPECIAL ADMINISTRATOR; APPOINTMENT WHEN ESTATE
1048 JEOPARDIZED; CONDUCT OF BUSINESS

1049 When the interests of the estate of a deceased person will be jeopardized by
1050 the delay intervening between death and the appointment of an administrator or
1051 executor, the ~~probate division of the superior court~~ Probate Division of the
1052 Superior Court may, upon motion of an heir or next of kin, appoint a special
1053 administrator to act until an administrator or executor is appointed and

1054 qualified. The special administrator may continue operation of the business
1055 conducted by the deceased, including application for and operating under the
1056 transfer of any license held by the deceased for the dispensing of alcoholic
1057 beverages.

1058 § 962. APPOINTMENT IN CASE OF DELAY

1059 When there is delay in granting letters testamentary or of administration,
1060 occasioned by an appeal from the allowance or disallowance of a will, or from
1061 other cause, the ~~probate division of the superior court~~ Probate Division of the
1062 Superior Court may appoint a special administrator to act in collecting and
1063 taking charge of the estate of the deceased until the questions causing the delay
1064 are decided and an executor or administrator is appointed. An appeal shall not
1065 be allowed from the appointment of a special administrator.

1066 § 963. POWERS

1067 A special administrator shall collect the goods, chattels, and credits of the
1068 deceased and preserve the same for the executor or administrator afterwards
1069 appointed and for that purpose may commence and maintain actions as an
1070 administrator and may sell perishable and other personal estate as the ~~probate~~
1071 ~~division of the superior court~~ Probate Division of the Superior Court orders
1072 sold and may allow or deny claims against the estate as otherwise provided by
1073 law.

1074 § 964. LIABILITY FOR DEBTS

1075 Such special administrator shall not be liable to an action by a creditor or to
1076 pay any debts of the deceased. With the consent of the ~~probate division of the~~
1077 ~~superior court~~ Probate Division of the Superior Court, he or she may pay the
1078 expenses of the last sickness and the funeral expenses of the deceased and any
1079 bills against the estate of the deceased of his or her own contracting.

1080 § 965. BOND

1081 Before entering upon the duties of his or her trust, such special
1082 administrator shall give a bond as the court directs, conditioned that he or she
1083 will make and return a true inventory of the goods, chattels, rights, credits and
1084 effects of the deceased which come to his or her possession or knowledge, and
1085 that he or she will truly account for such as are received by him or her, when
1086 required by the ~~probate division of the superior court~~ Probate Division of the
1087 Superior Court, and will deliver the same to the person afterwards appointed
1088 executor or administrator or to a person authorized to receive the same.

1089 § 966. POWERS TO CEASE, WHEN

1090 Upon granting letters testamentary or of administration on the estate of the
1091 deceased, the powers of such special administrator shall cease. He or she shall
1092 forthwith deliver to the executor or administrator the goods, chattels, ~~moneys~~
1093 monies, and effects of the deceased in his or her hands, and the executor or
1094 administrator may prosecute to final judgment actions commenced by such
1095 special administrator.

1096 Sec. 6. 14 V.S.A. chapter 63 is amended to read:

1097 CHAPTER 63. INVENTORY, APPRAISAL, AND ACCOUNTS §

1098 1051. INVENTORY

1099 Within ~~30~~ 60 days after appointment, an executor or administrator, who is
1100 not a special administrator or a successor to another representative who has
1101 previously discharged this duty, shall prepare an inventory of property owned
1102 by the decedent at the time of death, listing it with reasonable detail, and
1103 indicating as to each listed item, its fair market value as of the date of the
1104 decedent's death, and the type and amount of any lien or encumbrance that
1105 may exist with reference to any item. The executor or administrator shall file
1106 the original of the inventory with the ~~probate division of the superior court~~
1107 Probate Division of the Superior Court, and shall serve copies as provided by
1108 the ~~rules of probate procedure~~ Rules of Probate Procedure. The time for filing
1109 the inventory may be extended by the court for a ~~period not to exceed a total of~~
1110 ~~90 days~~ good cause.

1111 § 1052. APPRAISERS

1112 (a) The executor or administrator may employ a one or more qualified and
1113 disinterested ~~appraiser~~ appraisers to assist in ascertaining the fair market value
1114 as of the date of the decedent's death of any assets the value of which may be
1115 subject to reasonable doubt. ~~Different persons may be employed to appraise~~
1116 ~~different kinds of assets included in the estate.~~ The names and addresses of

1117 any ~~appraiser~~ appraisers shall be indicated on the inventory with the item or
1118 items appraised.

1119 ~~(b) If any property not included in the original inventory comes to the~~
1120 ~~knowledge of an executor or administrator or if an executor or administrator~~
1121 ~~learns that the value or description indicated in the original inventory for any~~
1122 ~~item is erroneous or misleading, a supplementary inventory or appraisal shall~~
1123 ~~be made showing the market value as of the date of the decedent's death of the~~
1124 ~~new item or the revised market value or descriptions, and the appraisals or~~
1125 ~~other data relied upon, if any, and file it with the court and serve copies of it as~~
1126 ~~provided by the rules of probate procedure.~~

1127 ~~(c) Upon motion filed within 30 days of the filing of an inventory under~~
1128 ~~section 1051 of this title or under subsection (b) of this section, by any creditor~~
1129 ~~having a claim of more than \$500.00, or by any heir, devisee or legatee entitled~~
1130 ~~to property or cash of value of more than \$500.00, on distribution of the estate,~~
1131 ~~the court, after hearing, may appoint one or more special appraisers to~~
1132 ~~reappraise any item of property reported in the inventory or supplementary~~
1133 ~~inventory, or to appraise any property omitted from any inventory.~~

1134 § 1053. SUPPLEMENTAL INVENTORY

1135 (a) If the executor or administrator learns of the existence of any property
1136 not included in the original inventory or learns that the value or description

1137 indicated in the original inventory for any item is erroneous or misleading, the
1138 executor or administrator shall:

1139 (1) make a supplementary inventory or appraisal showing
1140 the market value as of the date of the decedent's death of the new item
1141 or the revised market value or descriptions, and the appraisals or other
1142 data relied upon, if any; and

1143 (2) file the supplementary inventory or appraisal with the
1144 court and serve copies of it as provided by the Rules of Probate
1145 Procedure.

1146 (b) Upon motion filed within 30 days after the filing of an original or
1147 supplemental inventory by any creditor having a claim of more than \$1,000.00,
1148 or by any heir, devisee, or legatee entitled to property or cash of value of more
1149 than \$500.00 on distribution of the estate, the court shall hold a hearing and
1150 may appoint one or more special appraisers to reappraise any item of property
1151 reported in the inventory or to appraise any property omitted from the
1152 inventory.

1153 § 1054. ~~ARTICLES~~ ASSETS NOT INVENTORIED

1154 ~~Under the direction of the probate division of the superior court, the~~
1155 ~~following items shall not be considered as assets of the estate, nor be~~
1156 ~~administered as such, nor shall they be included in the inventory:~~

1157 (1) ~~— The wearing apparel of the deceased;~~

1158 (2) ~~— The wearing apparel of the widow according to the estate and~~
1159 ~~degree of her husband, if the deceased leaves a widow;~~

1160 (3) ~~— The wearing apparel of the minor children if the deceased~~
1161 ~~leaves minor children;~~

1162 (4) ~~— Such provisions and other articles as will necessarily to be~~
1163 ~~consumed or used in the subsistence of the family of the deceased. Wearing~~
1164 ~~apparel of the deceased or any other member of the household, and provisions~~
1165 ~~and other articles to be consumed or used in the subsistence of the household,~~
1166 ~~shall not be considered as assets of the estate unless, after hearing upon~~
1167 ~~motion, the court finds that an item has intrinsic value in addition to its value~~
1168 ~~for wear or subsistence, or that its inclusion in inventory would otherwise~~
1169 ~~benefit the estate.~~

1170 § 1055. ACCOUNTS OF EXECUTORS AND ADMINISTRATORS; TIME
1171 OF RENDERING; EXAMINATION

1172 An executor or administrator shall render an account of his or her
1173 administration within one year from the time of receiving letters testamentary
1174 or of administration, and annually thereafter, ~~and at such other times as the~~
1175 ~~court may require,~~ or otherwise as ordered by the Probate Division of Superior
1176 Court until the estate is wholly settled, and he or she. The fiduciary may be
1177 examined on oath upon any matter relating to ~~his~~ the account.

1178 § 1056. LIABILITY ON BOND FOR NEGLECT

1179 When an executor or administrator, being duly cited by the ~~probate division~~
1180 ~~of the superior court~~ Probate Division of the Superior Court, neglects to render
1181 ~~his or her~~ a required account, ~~he or she~~ the fiduciary shall be liable on ~~his or~~
1182 ~~her~~ the fiduciary's bond for the damages which accrue.

1183 § 1057. FOR WHAT TO ACCOUNT

1184 ~~An executor or administrator shall be chargeable in his or her account with~~
1185 ~~the goods, chattels, rights and credits of the deceased which come to his or her~~
1186 ~~possession, also with the proceeds of the real estate sold for the payment of~~
1187 ~~debts and legacies and with the interest, profit and income which come to his~~
1188 ~~or her hands from the estate of the deceased. The executor or administrator~~
1189 ~~shall account for the personal estate of the deceased at its appraisal, except as~~
1190 ~~hereinafter provided.~~

1191 The accounting of the executor or administrator shall:

1192 (1) be done on a cash basis;

1193 (2) include the balance at the beginning of the period covered by

1194 the accounting, all receipts, all payments, and the balance at the end of the

1195 period covered by the accounting; and

1196 (3) be prepared on forms provided by the court, or on any

1197 spreadsheet or generally accepted software format accepted by the court that

1198 provides the required information.

1199 § 1058. NOT TO GAIN OR LOSE BY INCREASE OR DECREASE IN

1200 VALUE

1201 An executor or administrator shall not profit by the increase, nor suffer loss
1202 by the decrease or destruction, without ~~his~~ the fiduciary's fault, of any part of
1203 the ~~personal~~ estate. ~~He~~ The executor or administrator shall account for ~~the~~
1204 ~~excess when he sells any of the personal estate~~ any gain or loss incurred when
1205 any property is sold for more or less than the ~~appraisal~~ inventory value. ~~If he~~
1206 ~~sells any for less than the appraisal, he shall not be responsible for the loss, if it~~
1207 ~~appears to be beneficial to the estate to sell it.~~

1208 § 1059. ~~TO ACCOUNT FOR SELLING PRICE, IF SOLD BY ORDER OF~~
1209 ~~COURT~~

1210 ~~When an executor or administrator sells personal estate under an order of~~
1211 ~~the probate division of the superior court, he or she shall account for the same~~
1212 ~~at the price for which it is sold. [Repealed.]~~

1213 § 1060. ~~ACCOUNTABLE FOR PROCEEDS OF REALTY~~

1214 ~~The proceeds of real estate, sold for the payment of the debts and charges of~~
1215 ~~administration, shall be assets in the hands of the administrator as if the same~~
1216 ~~had been part of the goods and chattels of the deceased; and the executor or~~
1217 ~~administrator and the sureties on his administration bond shall be accountable~~
1218 ~~therefor. [Repealed.]~~

1219 § 1061. ~~WHEN NOT ACCOUNTABLE FOR DEBTS DUE~~

1220 An executor or administrator shall not be accountable for debts due the
1221 deceased if it appears that they remain uncollected without his or her fault.

1222 § 1062. ~~ACCOUNTABLE FOR INCOME FROM REALTY USE BY~~
1223 EXECUTOR OR ADMINISTRATOR

1224 ~~An executor or administrator shall account for the income of the real estate~~
1225 ~~while it remains in his or her possession and if the executor or administrator~~
1226 ~~uses or occupies any part of it, he or she shall account for it as may be agreed~~
1227 ~~upon among the parties interested, or adjudged by the court with their consent.~~
1228 ~~If the parties do not agree upon the sum to be allowed, the same may be~~
1229 ~~ascertained by a master appointed under the rules of probate procedure. If an~~
1230 ~~executor or administrator uses or occupies any asset of the estate, the executor~~
1231 ~~or administrator shall account for the use or occupancy upon agreement of the~~
1232 ~~interested parties. If the parties do not agree upon the amount to be allowed,~~
1233 ~~the court shall determine the proper amount, with the assistance of a master at~~
1234 ~~the court's discretion.~~

1235 § 1063. ACCOUNTABLE FOR LOSSES BY NEGLIGENCE

1236 When an executor or administrator neglects or unreasonably delays to raise
1237 money by collecting the debts or selling the real or personal estate of the
1238 deceased, or neglects to pay over the money ~~he or she~~ the fiduciary has in his
1239 or her hands, and the value of the estate is thereby lessened, or unnecessary
1240 cost or interest accrues, or the persons interested suffer loss, the same shall be
1241 deemed waste, and the damages sustained may be charged and allowed against
1242 ~~him or her in his or her~~ the fiduciary in the fiduciary's account or ~~he or she~~ the

1243 fiduciary shall be liable therefor for the damages on his or her the fiduciary's
1244 bond.

1245 § 1064. COSTS TO BE ALLOWED

1246 The amount paid by an executor or administrator for costs awarded against
1247 ~~him or her~~ him or her shall be allowed in ~~his or her administration~~ the fiduciary
1248 account, unless it appears that the action or proceeding in which the costs are
1249 taxed was prosecuted or resisted without just cause.

1250 § 1065. FEES AND EXPENSES

1251 An executor or administrator shall be allowed necessary expenses in the
1252 care, management, and settlement of the estate and, ~~for his or her services,~~
1253 ~~such fees as the law provides, with extra expenses~~ reasonable fees for services.

1254 When, by will, the deceased makes some other provisions for compensation to
1255 ~~his or her~~ the executor, that shall be a full satisfaction for his or her services,
1256 unless, by a written instrument filed in the ~~probate division of the superior~~
1257 ~~court, he or she~~ Probate Division of the Superior Court, the executor renounces
1258 all claim to the compensation provided by the will, or unless otherwise ordered
1259 by the court.

1260 § 1066. VERIFICATION; RIGHT OF HEIR TO BE EXAMINED

1261 ~~The probate division of the superior court shall examine every executor and~~
1262 ~~administrator on oath as to the correctness of his or her account before the~~
1263 ~~same is allowed, except when objection is not made to the allowance of the~~

1264 ~~account and its correctness is satisfactorily established by competent~~
1265 ~~testimony. The heirs, legatees and distributees of an estate shall have the same~~
1266 ~~privilege of being examined on oath upon any matter relating to an~~
1267 ~~administration account that the executor or administrator has. An accounting~~
1268 ~~that is consented to by all interested parties shall be allowed without hearing~~
1269 ~~unless the Probate Division of the Superior Court sets a hearing upon the~~
1270 ~~accounting. At the hearing, the executor or administrator may be examined~~
1271 ~~under oath by the court or interested parties. Interested parties may be~~
1272 ~~examined under oath. An account shall not be rejected for de minimis~~
1273 ~~discrepancies unless the court finds good cause to reject the account on that~~
1274 ~~basis.~~

1275 § 1067. NOTICE OF ACCOUNTING

1276 Before an administration account of an executor or administrator is allowed,
1277 notice shall be given as provided by the Rules of Probate Procedure.

1278 § 1068. SURETY MAY INTERVENE AND APPEAL

1279 Upon the settlement of the account of an executor, administrator or other
1280 person, a person liable as surety in respect to the account, upon motion, may
1281 intervene as a party and may appeal as provided in other cases of appeals from
1282 the decision of the ~~probate division of the superior court~~ Probate Division of
1283 the Superior Court. The surety in such case, before the appeal is allowed, shall

1284 give a bond to secure the principal from damages and costs and to secure the
1285 intervening damages and costs to the adverse party.

1286 § 1069. WAIVER OF FINAL ACCOUNTING

1287 If an estate has been open for at least six months and the remaining assets
1288 include no real estate, a final accounting may be waived if the the executor or
1289 administrator files with the court:

1290 (1)the fiduciary's verified representation that all claims and all
1291 other obligations of the estate have been satisfied;

1292 (2)a schedule of remaining assets to be distributed;

1293 (3)a schedule of proposed distribution;

1294 (4)a waiver of a final accounting and consent to the proposed
1295 distribution by all interested parties; and

1296 (5)a tax clearance from the Vermont Department of Taxes.

1297 Sec. 7. 14 V.S.A. chapter 71 is amended to read:

1298 CHAPTER 71. ACTIONS BY AND AGAINST EXECUTORS AND
1299 ADMINISTRATORS

1300 Subchapter 1. General Provisions

1301 § 1401. EXECUTOR OR ADMINISTRATOR MAY SUE AND DEFEND

1302 An executor or administrator may commence, prosecute, or defend, in the
1303 right of the deceased, actions which survive to such executor or administrator
1304 and are necessary for the recovery and protection of the property or rights of

1305 the deceased and may prosecute or defend such actions commenced in the
1306 lifetime of the deceased.

1307 § 1402. SUM RECOVERED PAID TO PERSON ENTITLED THERETO

1308 When an executor or administrator commences or prosecutes an action
1309 founded on a debt, demand, or claim for damages, and is only a trustee of such
1310 claim for the use of another person, and where the claim, although prosecuted
1311 in the name of the executor or administrator, belongs to another person, the
1312 sum or property recovered shall not be assets in the hands of such executor or
1313 administrator, but shall be paid over to the person entitled thereto, after
1314 deducting or being paid the costs and expenses of the prosecution.

1315 § 1410. REPRESENTATIVE MAY ~~COMPOUND~~ COMPROMISE CLAIMS
1316 OF THE ESTATE

1317 With the approval of the ~~probate division of the superior court~~ Probate
1318 Division of the Superior Court, an executor or administrator may ~~compound~~
1319 compromise with a debtor of the deceased for a debt due and may give a
1320 discharge of ~~such the~~ debt on receiving a ~~just dividend~~ payment of the estate of
1321 ~~such debtor~~ compromised amount.

1322 § 1411. DISPUTED CLAIM MAY BE REFERRED

1323 When there is a disputed claim between an executor or administrator on
1324 behalf of the estate and another person, ~~with the consent of the parties in~~
1325 ~~writing~~, it may be referred to a master as provided by the rules of probate

1326 procedure, ~~whether an appeal has been granted or not, if an appeal has not been~~
1327 ~~entered in superior court.~~ The award, made in writing and returned to and
1328 accepted by the court, shall be final between the parties.

1329 § 1412. CLAIM BETWEEN EXECUTOR AND ESTATE

1330 When a claim exists between an executor or administrator and the estate, a
1331 special administrator may be appointed solely for the purpose of acting upon
1332 that claim.

1333 § 1413. DEBT AS PERSONALTY; REPRESENTATIVE MAY

1334 FORECLOSE MORTGAGE

1335 A debt secured by mortgage belonging to the estate of a deceased person as
1336 mortgagee or assignee of the right of a mortgagee, when such mortgage was
1337 not foreclosed in the lifetime of the deceased, shall be personal assets in the
1338 hands of the executor or administrator and administered and accounted for as
1339 such. The executor or administrator may foreclose the mortgage and take
1340 possession of the mortgaged premises as the ~~mortgagee or assignee~~ decedent
1341 might have done in ~~his~~ the decedent's lifetime.

1342 § 1414. ~~EQUITY OF REDEMPTION TO BE HELD IN TRUST;~~

1343 REDEMPTION

1344 ~~The executor or administrator shall hold the equity of redemption in~~
1345 ~~mortgaged premises in trust for the creditors or other persons entitled to the~~

1346 ~~same and on the redemption of such mortgaged premises and receipt of the~~
1347 ~~money paid therefor, he shall release and discharge the same. [Repealed.]~~

1348 § 1415. ~~DISPOSAL OF LANDS HELD UNDER MORTGAGE OR TAKEN~~
1349 ~~ON EXECUTION~~

1350 ~~Real estate held under a mortgage by an executor or administrator may be~~
1351 ~~sold for the payment of debts or legacies or the charges of administration, as~~
1352 ~~any real estate of which the deceased person died seised, or may be assigned~~
1353 ~~and set out to the person entitled to it as the other estate of the deceased. If~~
1354 ~~more than one person is entitled to it, partition may be made between them, as~~
1355 ~~in other cases. [Repealed.]~~

1356 § 1416. ESTATE NOT SUED WHEN MASTERS APPOINTED;
1357 EXCEPTIONS

1358 Nothing in this chapter shall authorize a claimant to commence or prosecute
1359 an action against an executor or administrator where a master is appointed in
1360 the proceeding, nor where a time is allowed by an order of the ~~probate division~~
1361 ~~of the superior court~~ Probate Division of the Superior Court for the executor or
1362 administrator to pay the debts against the deceased. Such an action shall not be
1363 commenced or prosecuted except as provided by law for that purpose.

1364 § 1417. PROSECUTION OF ACTION

1365 A person having a contingent or other claim against a deceased person may
1366 prosecute the ~~same~~ claim against the executor, administrator, heirs, devisees, or

1367 legatees. ~~In such case, an~~ An action commenced against the deceased before
1368 death may be prosecuted to final judgment. A claimant having a lien on the
1369 real or personal estate of the deceased, by attachment previous to death, on
1370 obtaining judgment, may have execution against such real or personal estate.

1371 § 1418. ~~COSTS NOT TO BE TAXED AGAINST ESTATE~~

1372 ~~When costs are allowed against an executor or administrator, execution shall~~
1373 ~~not issue against the estate of the deceased in his hands, but shall be awarded~~
1374 ~~against him as for his own debt. [Repealed.]~~

1375 Subchapter 2. Survival of Causes

1376 § 1451. WHAT ACTIONS SURVIVE

1377 Actions of ejectment or other proper actions to recover the seisin or
1378 possession of lands, tenements or hereditaments, actions of replevin, actions ~~of~~
1379 on tort on account of the wrongful conversion of personal estate, and actions ~~of~~
1380 on tort on account of a trespass or for damages done to real or personal estate
1381 shall survive, in addition to the actions which survive by common law, and
1382 may be commenced and prosecuted by the executor or administrator.

1383 § 1452. WHEN ACTIONS FOR PERSONAL INJURY SURVIVE

1384 In an action for the recovery of damages for a bodily hurt or injury,
1385 occasioned to the plaintiff by the act or default of the defendant or defendants,
1386 if either party dies during the pendency of such action, the action shall survive
1387 and may be prosecuted to final judgment by or against the executors or

1388 administrators of such deceased party. When there are several defendants in
1389 such action, and one or more, but not all, die, it shall be prosecuted against the
1390 surviving defendant or defendants, and against the estate of the deceased
1391 defendant or defendants.

1392 § 1453. SURVIVAL OF CAUSES OF ACTION

1393 The causes of action mentioned in sections 1451 and 1452 of this title shall
1394 survive. Actions based thereon may be commenced and prosecuted by or
1395 against the executor or administrator. When such actions are commenced in
1396 the lifetime of the deceased, after death the same may be prosecuted by or
1397 against the executor or administrator where by law that mode of prosecution is
1398 authorized.

1399 § 1454. TRESPASS; DAMAGES

1400 In an action ~~of~~ on tort on account of a trespass commenced or prosecuted
1401 against an executor or administrator, the plaintiff or claimant shall recover for
1402 the value of the goods taken, or the actual damage, and not vindictive or
1403 exemplary damages.

1404 § 1455. HEIR MAY NOT SUE UNTIL SHARE ASSIGNED

1405 When an executor or administrator is appointed and assumes the trust, an
1406 action of ejectment or other action to recover the seisin or possession of lands,
1407 or for damage done to such lands, shall not be maintained by an heir or devisee
1408 until there is a decree of the ~~probate division of the superior court~~ Probate

1409 Division of the Superior Court assigning such lands to such heir or devisee, or
1410 the time allowed for paying debts has expired, unless the executor or
1411 administrator surrenders the possession to such heir or devisee.

1412 Subchapter 3. Wrongful Death

1413 § 1491. RIGHT OF ACTION WHERE DEATH RESULTS FROM
1414 WRONGFUL ACT

1415 When the death of a person is caused by the wrongful act, neglect, or
1416 default of a person or corporation, and the act, neglect, or default is such as
1417 would have entitled the party injured to maintain an action and recover
1418 damages in respect thereof, if death had not ensued, the person or corporation
1419 liable to such action shall be liable to an action for damages, notwithstanding
1420 the death of the person injured and although the death is caused under such
1421 circumstances as amount in law to a felony.

1422 § 1492. ACTION FOR DEATH FROM WRONGFUL ACT; PROCEDURE;
1423 DAMAGES

1424 (a) Such action shall be brought in the name of the personal representative
1425 of such deceased person and commenced within two years from the discovery
1426 of the death of the person, but if the person against whom such action accrues
1427 is out of the ~~state~~ State, the action may be commenced within two years after
1428 such person comes into the ~~state~~ State. After such cause of action accrues and
1429 before such two years have run, if the person against whom it accrues is absent

1430 from and resides out of the ~~state~~ State and has no known property within the
1431 ~~state~~ State which can by common process of law be attached, the time of his or
1432 her absence shall not be taken as part of the time limited for the
1433 commencement of the action. If the death of the decedent occurred under
1434 circumstances such that probable cause is found to charge a person with
1435 homicide, the action shall be commenced within seven years after the
1436 discovery of the death of the decedent or not more than two years after the
1437 judgment in that criminal action has become final, whichever occurs later.

1438 (b) The court or jury before whom the issue is tried may give such
1439 damages as are just, with reference to the pecuniary injuries resulting from
1440 such death, to the ~~wife and next of kin or husband~~ spouse and next of kin, as
1441 the case may be. In the case where the decedent is a minor child, the term
1442 pecuniary injuries shall also include the loss of love and companionship of the
1443 child and for destruction of the parent-child relationship in such amount as
1444 under all the circumstances of the case, may be just.

1445 (c) The amount recovered shall be for the benefit of such ~~wife and next of~~
1446 ~~kin or husband~~ spouse and next of kin, as the case may be and shall be
1447 distributed by such personal representative as hereinafter provided. Such
1448 distribution, whether of the proceeds of a settlement or of an action, shall be in
1449 proportion to the pecuniary injuries suffered, the proportions to be determined
1450 upon notice to all interested persons in such manner as the ~~superior court~~

1451 Superior Court, or in the event such court is not in session a ~~superior~~ Superior
1452 judge, shall deem proper and after a hearing at such time as such court or judge
1453 may direct, upon application made by such personal representative or by the
1454 ~~wife, husband~~ spouse or any next of kin. The distribution of the proceeds of a
1455 settlement or action shall be subject to the following provisions, ~~viz:~~

1456 (1) In case the decedent shall have left a spouse surviving,
1457 but no children, the damages recovered shall be for the sole benefit of
1458 such spouse;

1459 (2) In case the decedent leaves neither spouse nor children,
1460 but leaves a mother and leaves a father who has abandoned the
1461 decedent or has left the maintenance and support of the decedent to the
1462 mother, the damages or recovery shall be for the sole benefit of such
1463 mother;

1464 (3) In case the decedent leaves neither spouse nor children,
1465 but leaves a father and leaves a mother who has abandoned the
1466 decedent, or has left the maintenance and support of the decedent to the
1467 father, the damages or recovery shall be for the sole benefit of such
1468 father;

1469 (4) No share of such damages or recovery shall be allowed
1470 in the estate of a child to a parent who has neglected or refused to
1471 provide for such child during infancy or who has abandoned said child

1472 whether or not such child dies during infancy, unless the parental duties
1473 have been subsequently and continuously resumed until the death of the
1474 child;

1475 (5) No share of such damages or recovery shall be allowed
1476 in the estate of a deceased spouse to his or her surviving spouse who
1477 has abandoned the decedent or in the estate of a wife to a husband who
1478 has persistently neglected to support his wife the decedent prior to her
1479 the decedent's death;

1480 (6) ~~The superior court or superior judge, as the case may be,~~
1481 Superior Court shall have jurisdiction to determine the questions of
1482 abandonment and failure to support under subdivisions (2), (3), (4), and
1483 (5) of this subsection and the ~~probate division of the superior court~~
1484 Probate Division of the Superior
1485 Court having jurisdiction of the decedent's estate shall decree the net amount
1486 recovered pursuant to the final judgment order of the ~~superior court or superior~~
1487 ~~judge~~ Superior Court.

1488 (d) A party may appeal from the findings and decision rendered pursuant
1489 to subsection (c) of this section as in causes tried by a court.

1490 (e) Notwithstanding subsection (a) of this section, if the death of the
1491 decedent was caused by an intentional act constituting murder, the action may

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1492 be commenced within seven years after the discovery of the death of the
1493 decedent.

1494 Sec. 8. 14 V.S.A. chapter 73 is amended to read:

1495 CHAPTER 73. PROCEEDINGS FOR RECOVERY OF
1496 PROPERTY EMBEZZLED AND FRAUDULENTLY CONVEYED
1497 § 1551. PERSON SUSPECTED OF EMBEZZLEMENT, CONCEALING
1498 PAPERS OR CONVEYING DECEDENT'S PROPERTY

1499 ~~If an executor or administrator, heir, legatee, creditor, or other person~~
1500 ~~interested in the estate of a deceased person files a motion in the probate~~
1501 ~~division of the superior court alleging that a person is suspected of having~~
1502 ~~concealed, embezzled, or conveyed away any of the money, goods, or chattels~~
1503 ~~of the deceased, or has possession or knowledge of any deed, conveyance,~~
1504 ~~bond, contract, or other writing which contains evidence of, or tends to~~
1505 ~~disclose, the right, title, interest, or claim of the deceased to real or personal~~
1506 ~~estate, or the last will and testament of the deceased, the probate division of the~~
1507 ~~superior court may subpoena or otherwise order that person to appear before it~~
1508 ~~to be examined on oath upon the matter. If the person so cited refuses to~~
1509 ~~appear and submit to examination or to answer interrogatories, the court may~~
1510 ~~issue a warrant committing the person to the custody of the commissioner of~~
1511 ~~corrections until compliance is given. Such interrogatories and answers shall~~
1512 ~~be in writing, signed by the party examined and filed in the court.~~

1513 (a) An executor or administrator, heir, legatee, creditor, or other person
1514 interested in the estate of a deceased person may file a motion for discovery in
1515 the Probate Division of the Superior Court alleging that a person is suspected
1516 of having concealed, embezzled, or conveyed any of the deceased's property,
1517 or has possession or knowledge of any deed, conveyance, bond contract, or
1518 other writing which contains evidence of, or tends to disclose, the right, title,
1519 interest, or claim of the deceased to real or personal estate, or the last will and
1520 testament of the deceased.

1521 (b) The court may subpoena or otherwise order a person to appear before it
1522 to be examined under oath upon the matter or to answer interrogatories or
1523 requests to produce to be filed with the court. If the person so ordered refuses
1524 to appear and submit to examination or to answer interrogatories, the person
1525 may be subject to proceedings for civil contempt under 12 V.S.A. § 122.
1526 Interrogatories and answers to interrogatories shall be in writing, signed under
1527 oath by the party examined, and filed with the court.

1528 § 1552. PERSON ENTRUSTED WITH ESTATE MAY BE COMPELLED
1529 TO RENDER ACCOUNT

1530 ~~On motion of an executor or administrator, the court may cite a person who~~
1531 ~~is entrusted by an executor or administrator with any part of the estate of the~~
1532 ~~deceased person to appear before it, and may require the person to render a full~~
1533 ~~account, on oath, of the money, goods, chattels, bonds, accounts or other~~

1534 ~~papers belonging to the estate which have come into the person's possession, in~~
1535 ~~trust for the executor or administrator, and of any proceedings thereon. If the~~
1536 ~~person so cited refuses to appear and render an account, the court may proceed~~
1537 ~~as provided in section 1551 of this title. On motion of an executor or~~
1538 ~~administrator, the court may order a person who is entrusted by an executor or~~
1539 ~~administrator with any part of the estate of the deceased person to appear under~~
1540 ~~oath and render a full accounting of the property. If the person so ordered~~
1541 ~~refuses to appear and render an account, the person may be subject to~~
1542 ~~proceedings for civil contempt under 12 V.S.A. § 122.~~

1543 § 1553. FORFEITURE BY PERSON EMBEZZLING BEFORE LETTERS
1544 ISSUED

1545 ~~If a person embezzles or alienates any of the moneys, goods, chattels or~~
1546 ~~effects of a decedent before the granting of letters testamentary or of~~
1547 ~~administration on his estate, such person shall be liable to an action in favor of~~
1548 ~~the executor or administrator of such estate for double the value of the property~~
1549 ~~so embezzled or alienated, to be recovered for the benefit of such estate. If a~~
1550 ~~person embezzles or converts any of the property of a decedent before the~~
1551 ~~appointment of the executor or administrator, the person shall be liable to the~~
1552 ~~executor or administrator of the estate for double the value of the property~~
1553 ~~embezzled or converted, to be recovered for the benefit of the estate.~~

1554 § 1554. RECOVERY OF ESTATE FRAUDULENTLY CONVEYED BY

1555 DECEASED

1556 ~~If it appears to the probate division of the superior court on the settlement of~~
1557 ~~the estate of a deceased person that the avails of the real and personal estate,~~
1558 ~~chargeable with the payment of the debts of the deceased, have been expended~~
1559 ~~and are insufficient to pay such debts, and it is shown to the court that the~~
1560 ~~deceased, in his or her lifetime, conveyed real estate or a right or interest~~
1561 ~~therein with intent to defraud his or her creditors, or to avoid a right, debt or~~
1562 ~~duty of a person, or had so conveyed such estate that by law the conveyance is~~
1563 ~~void as against his or her creditors, and the estate attempted to be conveyed~~
1564 ~~would be liable to attachment or execution by a creditor of the deceased in his~~
1565 ~~or her lifetime, the probate division of the superior court may license the~~
1566 ~~executor or administrator to sell so much of the real estate so fraudulently~~
1567 ~~conveyed as is necessary to make up the deficiency of assets in his or her hands~~
1568 ~~to pay the debts of the deceased.~~

1569 (a) If the executor or administrator determines there is a deficiency of
1570 assets in the estate, the fiduciary may bring an action in the Probate Division
1571 of the Superior Court for the benefit of the creditors to recover any property
1572 fraudulently conveyed by the deceased in his or her lifetime.

1573 (b) The court may license the executor or administrator to sell so much of
1574 the property fraudulently conveyed as is necessary to make up the deficiency

1575 of assets in the estate to pay the debts of the decedent if it appears to the court

1576 that:

1577 (1) there are insufficient assets to pay the debts of the deceased;

1578 (2) the deceased conveyed property or a right or interest therein:

1579 (A) with the intent to defraud creditors;

1580 (B) to avoid a debt or duty; or

1581 (C) with respect to real estate, in a manner that by law

1582 renders the conveyance void as against his or her creditor; and

1583 (3) the estate attempted to be conveyed would be subject to

1584 attachment or execution by a creditor of the deceased in his or her lifetime.

1585 § 1555. SALE, HOW CONDUCTED

1586 The license to sell such real estate shall be granted and the sale conducted as
1587 provided for the sale of real estate for the payment of the debts of a deceased
1588 person. The sale and conveyance so made by the executor or administrator
1589 shall be valid and effectual to convey such real estate.

1590 § 1556. ~~REPRESENTATIVE MAY SUE FOR ESTATE SO CONVEYED~~

1591 ~~When there is a deficiency of assets in the hands of an executor or~~
1592 ~~administrator, and when the deceased person made such fraudulent conveyance~~
1593 ~~of real estate in his lifetime, the executor or administrator may commence and~~
1594 ~~prosecute to final judgment an action for the recovery of, and may recover for~~
1595 ~~the benefit of the creditors, such real estate; and also, for the benefit of the~~

1596 ~~creditors, may sue and recover for goods, chattels, rights, or credits~~
1597 ~~fraudulently conveyed by the deceased in his lifetime. [Repealed.]~~

1598 § 1557. SALE OF FRAUDULENTLY CONVEYED ESTATE; MOTION OF
1599 CREDITORS

1600 (a) An executor or administrator shall not be bound to make sale of estate,
1601 so fraudulently conveyed, under a license from the ~~probate division of the~~
1602 ~~superior court~~ Probate Division of the Superior Court, nor sue for the estate for
1603 the benefit of the creditors unless on motion of creditors of the deceased, nor
1604 unless the creditors filing the motion pay that part of the costs and expenses, or
1605 give security to the executor or administrator as the court judges equitable.

1606 (b) An executor or administrator shall not be required to sell fraudulently
1607 conveyed property under a license from the Probate Division of the Superior
1608 Court, or sue for the fraudulently conveyed property for the benefit of the
1609 creditors unless the creditors of the deceased file a motion to do so and comply
1610 with any court requirements to pay associated costs and expenses or give
1611 security to the executor or administrator.

1612 § 1558. CREDITOR MAY ACT

1613 ~~When there is a deficiency of assets in the hands of an executor or~~
1614 ~~administrator, and when the deceased person made, in his or her lifetime, such~~
1615 ~~fraudulent conveyance of his or her real estate or of a right or interest therein,~~
1616 ~~by license of the probate division of the superior court, any creditor of the~~

1617 ~~estate may commence and prosecute to final judgment an action, for the~~
1618 ~~recovery of the same in the name of the executor or administrator. Such~~
1619 ~~creditor may recover for the benefit of the creditors such real estate or interest~~
1620 ~~therein, so conveyed, and for the benefit of the creditors, by license of the~~
1621 ~~probate division of the superior court, may sue and recover, in the name of the~~
1622 ~~executor or administrator, for all goods, chattels, rights or credits conveyed by~~
1623 ~~the deceased in his or her lifetime by a fraudulent or void conveyance. Such~~
1624 ~~action shall not be commenced until the creditor files in the probate division of~~
1625 ~~the superior court a bond with sufficient sureties conditioned to indemnify the~~
1626 ~~executor or administrator against the costs of such action.~~

1627 (a) If there is a deficiency of assets in the estate, any creditor of the estate
1628 who obtains a license to do so from the Probate Division of the Superior Court
1629 may bring an action in the name of the executor or administrator in the Probate
1630 Division to recover any property fraudulently conveyed by the deceased in his
1631 or her lifetime. The action shall be for the benefit of the creditors and shall be
1632 brought in the same manner as an action by the executor or administrator under
1633 section 1554 of this title. A creditor licensed by the court to bring an action
1634 under this section may recover any property conveyed by the deceased in his or
1635 her lifetime by a fraudulent or void conveyance.

1636 (b) An action under this section shall not be commenced until the creditor
1637 files with the court a bond with sufficient sureties conditioned to indemnify the
1638 executor or administrator against the costs of the action.

1639 (c) A creditor who brings an action under this section shall have a lien
1640 upon the judgment recovered by him or her for the costs incurred and any other
1641 expenses the court deems equitable.

1642 § 1559. CREDITOR'S LIEN

1643 ~~Such creditor shall have a lien upon the judgment so recovered by him or~~
1644 ~~her for the costs incurred and such other expenses as the probate division of the~~
1645 ~~superior court deems equitable. [Repealed.]~~

1646 Sec. 9. 14 V.S.A. chapter 75 is amended to read:

1647 CHAPTER 75: LICENSE TO SELL AND CONVEY REAL AND

1648 PERSONAL PROPERTY

1649 Subchapter 1. General Provisions

1650 § 1611. COURT MAY ORDER ~~PERSONALTY~~ PERSONAL AND REAL

1651 ESTATE SOLD

1652 ~~On the motion of the executor or administrator, the probate division of the~~
1653 ~~superior court~~ The Probate Division of the Superior Court may order the
1654 ~~personal estate; sale of all or part of it, to be sold~~ the personal or real estate of
1655 the estate when it appears necessary or beneficial for the ~~purpose of paying~~

1656 ~~debts, legacies or expenses of administration or for the preservation of the~~
1657 ~~property estate.~~

1658 § 1612. ~~REALTY MAY BE SOLD, THOUGH PERSONALTY NOT~~
1659 ~~EXHAUSTED~~

1660 ~~When the personal estate of the deceased is not sufficient to pay the debts~~
1661 ~~and charges of administration without injuring the business of those interested~~
1662 ~~in the estate, or otherwise prejudicing their interests, and where a testator has~~
1663 ~~not otherwise made sufficient provision for the payment of debts and charges,~~
1664 ~~the probate division of the superior court, on motion of the executor or~~
1665 ~~administrator, with the written consent of the heirs, devisees, and legatees, may~~
1666 ~~grant license for that purpose to the executor or administrator to sell real in lieu~~
1667 ~~of personal estate, if it clearly appears that a sale of real estate would be~~
1668 ~~beneficial to the persons interested and will not defeat any devise of lands; in~~
1669 ~~which case, the consent of the devisee shall be required. [Repealed.]~~

1670 § 1613. ~~WHEN WHOLE OF REAL ESTATE MAY BE SOLD~~

1671 ~~When an executor or administrator makes application to the probate~~
1672 ~~division of the superior court for license to sell real estate for payment of debts~~
1673 ~~or charges of administration, and it appears that a part of such estate is~~
1674 ~~sufficient for that purpose, and that such part cannot be sold without injury to~~
1675 ~~those interested in the remainder, the court may grant license to sell the whole~~

1676 ~~of such estate or such part as is necessary or beneficial to those concerned~~
1677 ~~therein.~~ [Repealed.]

1678 § 1614. ~~PERSONS INTERESTED~~ PERSONS MAY PREVENT SALE;
1679 BOND

1680 ~~Such~~ A license to sell real estate shall not be granted if any ~~of the persons~~
1681 interested person ~~in the estate~~ gives a bond in such sum and with such sureties
1682 as the ~~probate division of the superior court~~ Probate Division of the Superior
1683 Court directs, conditioned to pay the debts and expenses of administration
1684 within such time as the court directs. Such bond shall be for the security and
1685 may be prosecuted for the benefit of the creditors as well as of the executor or
1686 administrator.

1687 § 1615. ~~CLAIMS MAY BE SOLD OR ASSIGNED~~

1688 ~~Claims belonging to an estate remaining in the hands of an executor or~~
1689 ~~administrator before final settlement of such estate, which, in the opinion of the~~
1690 ~~probate division of the superior court, cannot be collected by the executor or~~
1691 ~~administrator without unreasonable or inconvenient delay, may be sold or~~
1692 ~~assigned by the executor or administrator, under the direction of the probate~~
1693 ~~division of the superior court.~~ [Repealed.]

1694 § 1616. ~~PURCHASER OF CLAIMS MAY SUE~~

1695 ~~Actions upon claims sold by an executor or administrator as provided in~~
1696 ~~section 1615 of this title shall be brought in the name of the purchaser. The~~

1697 ~~fact of the sale and purchase by the plaintiff shall be set forth in the complaint,~~
1698 ~~and the defendant may avail himself of any defense of which he could have~~
1699 ~~availed himself in an action upon such claim by the deceased. [Repealed.]~~

1700 Subchapter 2. Licenses To Sell—Procedure

1701 § 1651. LICENSE TO SELL ESTATE; PROCEDURE

1702 When an executor or administrator considers it necessary or beneficial to
1703 sell real or personal estate, the ~~probate division of the superior court~~ Probate
1704 Division of the Superior Court may grant license, when it appears necessary or
1705 beneficial, under the following regulations:

1706 (1) The executor or administrator shall ~~present to the court~~ file a
1707 motion setting forth the ~~amount of debts due from the deceased, the charges of~~
1708 ~~administration, the value of personal estate and the situation of the estate to be~~
1709 ~~sold, or those other~~ facts as that show ~~that~~ the sale is necessary or beneficial;.

1710 (2) In cases where the consent of ~~the heirs, devisees and legatees~~
1711 interested persons is required, the executor or administrator shall ~~produce to~~
1712 ~~the court~~ file their ~~consent in writing;~~ written consents with the court.

1713 ~~The probate division of the superior court~~ In the event that the
1714 consent of interested persons is required but cannot be obtained, the court shall
1715 schedule a hearing and notice shall be given as provided in the rules of probate
1716 procedure;.

1717 (4) ~~If the probate division of the superior court requires it, before~~
1718 Before license is granted, the court may require the executor or administrator
1719 ~~shall to~~ give a new bond in an amount and with sureties as the court directs,
1720 conditioned that the executor or administrator shall account for the proceeds of
1721 the sale;.

1722 (5) The executor or administrator shall be sworn before the ~~probate~~
1723 ~~division of the superior court, court~~ or before some other person authorized to
1724 administer oaths; and a certificate thereof shall be returned to the court before
1725 sale under the order granting license;.

1726 (6) If the ~~proof produced evidence~~ satisfies the court, ~~and if the~~
1727 ~~regulations in the first four subdivisions of this section are complied with, the~~
1728 ~~court, by decree,~~ may authorize the executor or administrator to sell that part of
1729 the estate deemed necessary or beneficial, either at public or private sale, ~~as~~
1730 ~~will be most beneficial to all parties concerned,~~ and furnish the executor or
1731 administrator a ~~certificate or~~ copy of the license to sell or order of sale;.

1732 (7) If the order is to sell the estate at auction, the court shall
1733 designate the ~~mode~~ manner of ~~giving~~ notice of the time and place of sale,
1734 which shall be stated in the copy ~~or certificate~~ of the license to sell or order of
1735 sale furnished to the executor or administrator;.

1736 (8) The ~~record~~ copy of the license to sell or ~~the~~ order of sale ~~in the~~
1737 ~~probate division of the superior court and the copy of certificate of the order~~

1738 furnished to the executor or administrator shall ~~state the regulations prescribed~~
1739 ~~in the first four subdivisions~~ include findings addressing the requirements of
1740 subdivisions (1) through (4) of this section with which the sale must comply.
1741 ~~The certificate of.~~ A certified copy of the license to sell real estate or order of
1742 sale shall be recorded in the office where a deed of the ~~lands~~ real property to be
1743 sold is required to be recorded;

1744 (9) ~~The~~ If ordered by the court, the executor or administrator shall
1745 submit to the probate division of the superior court reports file a report with the
1746 Probate Division on the action authorized by ~~the~~ each license granted under
1747 this section within 60 days from the date of the sale of any real or personal
1748 property.

1749 (10) If the power to sell all or part of the testator's real or personal
1750 estate is expressly conferred by the will, the court shall issue a license to sell to
1751 the executor or administrator without requiring notice or hearing with respect
1752 to any property subject to the testamentary power, except a dwelling house in
1753 which the surviving spouse or an heir, devisee, or legatee is lawfully residing.

1754 (11) Notwithstanding any provision of this section, no beneficial
1755 license to sell that is inconsistent with the provisions or intent of a will shall be
1756 issued.

1757 § 1652. DEED OF EXECUTOR OR ADMINISTRATOR

1758 The deed of an executor or administrator, who has ~~such certificate or~~
1759 obtained a certified copy of an order of sale or license to sell real estate from
1760 the ~~probate division of the superior court~~ Probate Division of the Superior
1761 Court, shall be as valid to convey the real estate of a deceased person, thereby
1762 authorized to be sold, ~~as if the deed had been executed by the deceased in his~~
1763 ~~or her lifetime.~~

1764 § 1653. ~~LICENSE TO SELL; WHEN BENEFICIAL~~

1765 (a) ~~When it appears to the probate division of the superior court that it will~~
1766 ~~be beneficial to interested persons, that a part or the whole of the estate, except~~
1767 ~~the part thereof which passes to the surviving spouse, should be sold, on~~
1768 ~~motion of the executor or administrator, the court may grant license to sell a~~
1769 ~~part or the whole of the estate although not necessary to pay debts, legacies or~~
1770 ~~charges of administration. The court shall schedule a hearing and notice shall~~
1771 ~~be given as provided by the rules of probate procedure. With the consent in~~
1772 ~~writing of the surviving spouse of the deceased or the legal representative of~~
1773 ~~the surviving spouse, the license may include authority to sell the interest of~~
1774 ~~the surviving spouse, as the case may be, in such real estate.~~

1775 (b) ~~If the power to sell all or part of the testator's real or personal estate is~~
1776 ~~expressly conferred by the will, the court shall issue a license to the executor or~~
1777 ~~administrator c.t.a., without notice or hearing, as to any property subject to the~~

1778 ~~testamentary power except a dwelling house in which the surviving spouse or~~
1779 ~~an heir, devisee or legatee is residing.~~

1780 ~~(e) Notwithstanding any provision of this section no beneficial license to~~
1781 ~~sell inconsistent with the provisions or intent of a will shall be issued.~~

1782 [Repealed.]

1783 § 1654. DISPOSAL OF PROCEEDS OF BENEFICIAL SALE

1784 In case of such the sale of property for the benefit of interested persons, the
1785 proceeds shall be decreed ~~and assigned to the~~ those persons otherwise entitled
1786 to the estate and in the same proportions the property.

1787 § 1655. REALTY TAKEN ON EXECUTION MAY BE SOLD

1788 ~~(a) When it appears that such sale will be beneficial to all persons~~
1789 ~~interested in such real estate, the probate division of the superior court may~~
1790 ~~grant license to an executor or administrator to sell real estate taken by the~~
1791 ~~executor or administrator on execution or held by him or her under a mortgage,~~
1792 ~~although not necessary for the payment of debts, legacies or charges of~~
1793 ~~administration.~~

1794 ~~(b) Such license shall be granted under the same regulations as provided in~~
1795 ~~this chapter for the sale of other real estate. [Repealed.]~~

1796 § 1656. ESTATE SOLD TO PAY DEBTS AND LEGACIES IN OTHER
1797 STATES

1798 When the sale of real or personal estate is not necessary to pay the debts
1799 ~~against of~~ the deceased person in this ~~state~~ State, and it appears to the ~~probate~~
1800 ~~division of the superior court,~~ Probate Division of the Superior Court by the
1801 records and proceedings of a probate court in another state that the estate of the
1802 deceased in ~~such the~~ other state is not sufficient to pay the debts and legacies in
1803 that state, the ~~probate division of the superior court~~ Probate Division of the
1804 Superior Court in this ~~state~~ State may license the executor or administrator to
1805 sell the real or personal estate for the payment of debts and legacies in the other
1806 state, in the same manner as provided for the payment of debts and legacies in
1807 this ~~state~~ State.

1808 § 1657. ~~REALTY~~ REAL ESTATE SOLD TO PAY LEGACY

1809 When the personal property of the estate is insufficient to satisfy a legacy is
1810 given by will ~~which, for want of sufficient personal estate or otherwise, is~~
1811 ~~chargeable upon the real estate of the deceased,~~ the executor may be licensed
1812 by the ~~probate division of the superior court~~ Probate Division of the Superior
1813 Court to sell ~~such~~ real estate of the estate for the purpose of paying ~~such the~~
1814 legacy ~~as provided in the sale of real estate for the payment of debts.~~

1815 § 1658. ~~ADMINISTRATOR DYING~~ DEATH, RESIGNATION, OR
1816 REMOVAL OF FIDUCIARY; NEW LICENSE

1817 In case of the death, resignation, or removal of an executor or administrator
1818 before the completion of a sale of real estate under a license granted by the

1819 ~~probate division of the superior court~~ Probate Division of the Superior Court,
1820 on motion at any time within two years after issuing a prior license, the court
1821 may issue a new license to the successor fiduciary without further notice or
1822 hearing.

1823 § 1659. LICENSE WHEN DECEASED UNDER CONTRACT TO
1824 CONVEY; COURT MAY GRANT; EFFECT OF DEED

1825 (a) ~~When a deceased person in his or her lifetime was under~~ decendent had
1826 contracted to convey real estate and the party contracted with has performed or
1827 is ready to perform the conditions of the contract, binding at law or in equity,
1828 ~~to deed lands, on application~~ motion for that purpose, the ~~probate division of~~
1829 ~~the superior court~~ Probate Division of the Superior Court may grant license to
1830 the executor or administrator of the ~~deceased person~~ estate to convey such
1831 lands according to ~~such~~ the contract, ~~or with such~~ including any modifications
1832 ~~as are agreed upon by to it. If the parties and approved by~~ executor or
1833 administrator is the court; and, if transferee under the contract is to convey
1834 ~~lands to the executor or administrator,~~ the judge of the court shall execute the
1835 deed. The deed, executed by the executor, administrator, ~~or~~ judge, or special
1836 administrator or master appointed by the court shall be ~~as effectual~~ valid to
1837 convey ~~such lands as if executed by the deceased person in his or her lifetime~~
1838 the real estate authorized to be conveyed under the contract.

1839 **(b) The Probate Division of the Superior Court shall not grant a license to**
1840 **convey the real estate of a deceased person under contract if it appears to the**
1841 **court after hearing that the assets in the hands of the executor or administrator**
1842 **will be reduced by the conveyance in an amount that prevents a creditor from**
1843 **receiving the whole debt and the value of the real estate to be sold is materially**
1844 **greater than the contract price.**

1845 § 1660. ~~LICENSE GRANTED BY COURT, WHEN; NOTICE; HEARING~~

1846 ~~A probate division of the superior court shall not grant such license to deed~~
1847 ~~the lands of a deceased person until notice has been given if it appears to the~~
1848 ~~court upon a hearing that the assets in the hands of the executor or~~
1849 ~~administrator will thereby be so reduced as to prevent a creditor from receiving~~
1850 ~~his or her whole debt, or diminish his or her dividend. [Repealed.]~~

1851 § 1661. REAL ESTATE HELD IN TRUST LANDS; LICENSE TO
1852 CONVEY TO BENEFICIARY

1853 When a person dies seized of ~~lands~~ real estate held in trust for another
1854 person or seized of ~~lands~~ real estate by virtue of a decree of foreclosure or sale
1855 on execution to the deceased or to an executor or administrator on a debt
1856 nominally owed to the deceased but actually owed to another person, after
1857 notice, the ~~probate division of the superior court~~ Probate Division of the
1858 Superior Court may grant license to the executor or administrator to ~~deed those~~
1859 ~~lands~~ convey the real estate to the person, or to an executor or administrator,

1860 for whose use and benefit they are ~~held~~ held, and the court may decree the
1861 execution of the trust, whether created by deed or by law.

1862 § 1662. SALE OF ENCUMBERED PROPERTY OF DECEASED;

1863 DISPOSITION OF SURPLUS

1864 ~~The~~ When the executor or administrator is licensed to sell real or personal
1865 estate of a deceased person, which the decedent that is mortgaged or pledged or
1866 ~~has a lien thereon for the security of a debt, on motion of the executor,~~
1867 ~~administrator or creditor, may be sold under the order of the probate division of~~
1868 ~~the superior court. The net~~ subject to any mortgage or other lien, the net sale
1869 proceeds shall be first applied towards to the payment of the secured debt
1870 ~~which shall be reduced by the amount of the net proceeds of such sale. An~~
1871 ~~executor or administrator may be licensed or ordered to sell any such real or~~
1872 ~~personal estate under the same regulations as are provided in this chapter for~~
1873 ~~the sale of real estate for the payment of debts. If the property sold is subject~~
1874 to a devise under the will of the decedent, any surplus sale proceeds shall be
1875 distributed to the devisee of the property. If the property sold is not subject to
1876 a devise under the will of the decedent, any surplus sale proceeds shall be
1877 administered by the executor or administrator as property of the estate.

1878 § 1663. ~~MANNER OF SALE OF ENCUMBERED PROPERTY; DEED~~

1879 ~~Such sale shall be made in such manner as the court directs. The sale of~~
1880 ~~such real estate shall be at public auction unless it can otherwise be sold for a~~

1881 ~~sum sufficient to satisfy the mortgage secured thereon. The executor or~~
1882 ~~administrator and creditor shall execute the necessary deeds and papers for~~
1883 ~~effecting the conveyance. [Repealed.]~~

1884 § 1664. ~~ENCUMBERED PROPERTY; DISPOSITION OF SURPLUS~~

1885 ~~After payment of the debts secured, the surplus of such sale shall be~~
1886 ~~administered by the executor or administrator as such property would be if it~~
1887 ~~were not held as security. A certificate of such sale, filed by the executor or~~
1888 ~~administrator in the office of the clerk where by law a deed of such property is~~
1889 ~~required to be recorded, shall operate as a discharge of such mortgage or lien.~~
1890 ~~[Repealed.]~~

1891 § 1665. EXCEPTION; APPLICATION OF LAW

1892 ~~Sections 1662–1664~~ Section 1662 of this title shall not affect the rights of a
1893 ~~widow surviving spouse~~, but shall apply to the application of the net proceeds
1894 of a sale of mortgaged real estate sold pursuant to a license granted by the
1895 ~~probate division of the superior court~~ Probate Division of the Superior Court
1896 after February 1, 1901, ~~under other provisions of this chapter, and to the~~
1897 ~~certificate of such sale filed by the executor or administrator in the office~~
1898 ~~where by law a deed of such real estate is required to be recorded.~~

1899 Sec. 10. 14 V.S.A. chapter 77 is amended to read:

1900 CHAPTER 77. DECREES OF DISTRIBUTION OR PARTITION OF
1901 ESTATES

1902 § 1721. DISTRIBUTION; COURT TO ORDER; PERSONS ENTITLED TO
1903 SHARES MAY RECOVER

1904 (a) After payment of or provision for the debts, funeral charges, and
1905 expenses of administration ~~and after the allowance,~~ allowances made for the
1906 maintenance of the family ~~of the deceased~~ and for the support of ~~his or her~~ the
1907 minor children, ~~under seven years of age~~ and after the assignment of ~~to~~ to the
1908 surviving spouse of ~~his her~~ interest in the real estate and of ~~his or her~~ the
1909 elective or intestate share ~~in the personal estate, or when sufficient effects are~~
1910 ~~reserved in the hands of the~~ of decedent's estate:

1911 (1) the executor or administrator for the above purposes
1912 may distribute without court order personal estate in partial or full
1913 satisfaction of legacies, bequests, and residuary interests in an
1914 aggregate amount not to exceed one-half of the remaining estate;

1915 (2) the court, upon motion of the executor or administrator,
1916 may order partial distribution of devises, legacies, bequests, and
1917 residual shares, or order other payments, before a final accounting and
1918 distribution; and

1919 (3) after the Probate Division of the Superior Court
1920 approves a final accounting and the Department of Taxes provides a
1921 notice of clearance, ~~the probate division of the superior court shall~~

1922 ~~assign~~ order the residue distribution of the remaining estate to the
1923 ~~persons entitled to the same.~~

1924 (b) In its ~~order~~ orders of distribution, the court shall name the persons and
1925 proportions or parts to which each is entitled, and such persons may demand
1926 and recover their respective shares from the executor or administrator or any
1927 other person having ~~the same in his possession.~~ The court may decline to
1928 ~~make such distribution until suitable gravestones are erected at the grave of the~~
1929 ~~deceased, if buried in this state, or the court may appropriate sufficient funds to~~
1930 ~~supply such gravestones. The court may provide for the care of the burial lot~~
1931 ~~of the deceased as hereinafter provided, before making such distribution~~
1932 possession of them. In the event that the assets remaining in the hands of the
1933 executor or administrator after one or more partial distributions are insufficient
1934 to satisfy the ultimate expenses and charges against the estate, those persons
1935 having received the distributions shall be liable to repay the executor or
1936 administrator on a pro rata basis. If the executor or administrator cannot
1937 collect against one or more of the persons to whom the distributions were
1938 made, the amount not recoverable shall be equitably apportioned by the court
1939 among the other persons subject to apportionment. The court may assign the
1940 claim for recovery of previously distributed assets to persons directed by the
1941 court to repay a disproportionate amount of the total.

1942 (c) ~~On final settlement of a solvent estate, the probate division of the~~
1943 ~~superior court may set aside funds of such estate not to exceed \$500.00 for the~~
1944 ~~perpetual care of the burial lot of the deceased, and may order that the funds~~
1945 ~~shall be kept in trust for the purpose of this subsection. If the burial lot of the~~
1946 ~~deceased is in the cemetery of an incorporated cemetery association, the funds~~
1947 ~~shall be deposited with such association. The executor or administrator shall~~
1948 ~~include in its application for distribution of the residue that the decedent has~~
1949 ~~been cremated and decedent's remains properly disposed of, or that a suitable~~
1950 ~~gravestone has been erected or provided for at the grave of the deceased if~~
1951 ~~buried in this State, and that perpetual care has been provided for the burial lot,~~
1952 ~~if any.~~

1953 § 1722. PARTIES INTERESTED MAY HAVE ORDER ON GIVING BOND

1954 An order for distribution may be made on motion of the executor or
1955 administrator or of ~~a person~~ one or more persons interested in the estate. The
1956 heirs, devisees, or legatees shall not be entitled to an order for distribution of
1957 ~~their shares until the payment of the debts and allowances mentioned~~
1958 ~~conditions for distribution described in section 1721 of this title and the several~~
1959 ~~expenses there mentioned have been made or provided for~~ satisfied, unless
1960 they give a bond, with a such surety ~~or sureties~~ as the court directs, to secure
1961 the payment of ~~such debts and expenses, or~~ the amounts necessary to satisfy

1962 ~~such part thereof as remains unprovided for the conditions~~ and to indemnify
1963 the executor or administrator against the same.

1964 § 1723. ADVANCEMENT; HOW ASSERTED; WHAT CONSTITUTES

1965 An interested party may assert a claim that the decedent made a transfer
1966 during life that was an advancement. The party making the a claim shall have
1967 the burden of proving it. Real or personal estate given by a decedent during
1968 the intestate in his decedent's lifetime to his or her child or other lineal
1969 descendant shall be reckoned toward the share of such heir the decedent's
1970 estate otherwise allocable to the person to whom the lifetime gift was made as
1971 an advancement, and for that purpose shall be considered a part of the estate, if
1972 any of the intestate. Such estate following shall be deemed to be given apply:

1973 (1) The decedent declares in a writing, signed in advancement only
1974 ~~when,~~ in the presence of and subscribed by two disinterested persons, that a
1975 gift or grant, it is expressed to be in was made as an advancement or is for the
1976 consideration of love and affection, or when such estate is charged as such by
1977 the deceased in writing, or when such estate is acknowledged as such by the
1978 heir in writing, or when personal estate is delivered, expressly as advancement,
1979 before two witnesses requested to take notice of it.

1980 (2) The gift or grant is acknowledged in a signed writing as an
1981 advancement by the recipient of the gift or grant.

1982 § 1724. ADVANCEMENT RECKONED TOWARD HEIR'S SHARE

1983 If the amount ~~so~~ advanced exceeds the share of the heir, ~~he or she~~ other
1984 estate beneficiary, he or she shall be excluded from any further share in the
1985 estate ~~and he or she~~ but shall not be liable to refund any part of the amount ~~so~~
1986 advanced. If the advancement is less than the share of ~~such the~~ the heir, ~~he or she~~
1987 other estate beneficiary, he or she shall receive ~~such a~~ further sum that, with
1988 ~~such the~~ advancement as, ~~will be equal to~~ equals his or her legal share in the
1989 estate.

1990 § 1725. APPLICATION OF ADVANCEMENT

1991 (a) If ~~the amount so advanced~~ an advancement is in real estate property,
1992 the same shall be set off, first, ~~toward~~ against the heir's heir's or other
1993 beneficiary's share of real estate, and property in the estate, including the real
1994 property so advanced, and the excess value, if it is more than his or her share
1995 ~~of real estate, the balance~~ any, shall be set off ~~toward his~~ against the heir's or
1996 her other beneficiary's share of the decedent's personal estate.

1997 (b) If ~~the an~~ an advancement is in personal estate, the same shall be set off,
1998 first, ~~toward~~ against the heir's heir or other beneficiary's share in the personal
1999 estate, and ~~then toward his or her~~ the excess value, if any, shall be offset
2000 against the heir or other beneficiary's share in the real property of the estate.

2001 (c) If the heirs or beneficiaries consent, a different application of the
2002 advancement may be made.

2003 § 1726. ADVANCEMENT RECKONED TOWARD SHARE OF
2004 REPRESENTATIVE OF DECEASED HEIR

2005 If the ~~child or other lineal descendant, to whom such~~ recipient of an
2006 ~~advancement is made,~~ dies before the ~~intestate~~ decedent, the advancement shall
2007 be reckoned ~~toward~~ against the share of those interested in the representative
2008 estate by right of representation of the recipient, as it would be reckoned
2009 toward the share of the ~~heir~~ recipient, if living.

2010 § 1727. VALUATION OF ADVANCEMENT

2011 Where the value of an advancement is expressed in the conveyance or in the
2012 charge ~~thereof~~ made by the ~~intestate, or in the acknowledgment of the person~~
2013 ~~receiving it~~ decedent, or by the ~~intestate~~ decedent at the time of ~~delivering it~~
2014 declaration before two witnesses, ~~such~~ the advancement shall be taken to be of
2015 the value so expressed or declared; otherwise it shall be estimated according to
2016 the value at the time ~~of making it~~ was made.

2017 § 1728. COURT TO DETERMINE QUESTIONS OF ADVANCEMENT

2018 Questions as to an advancement made or alleged to have been made by the
2019 ~~deceased to an heir~~ may be heard and determined by the ~~probate division of the~~
2020 ~~superior court~~ Probate Division of the Superior Court and shall be specified in
2021 the decree assigning the estate, regardless of whether the subject of a prior
2022 court order. The final decree of the ~~probate division~~ Probate Division, or of

2023 the ~~supreme court~~ Superior Court or Supreme Court on appeal, shall be binding
2024 on ~~the~~ all persons interested in the estate.

2025 § 1729. PARTITION

2026 When the real or personal estate assigned to two or more heirs, devisees, or
2027 legatees is in common and undivided, and their respective shares are not
2028 separated and distinguished, partition and distribution of the same shall be
2029 made pursuant to 12 V.S.A. Chapter 179, or with the consent of the court, by
2030 the ~~probate division of the superior court~~ Probate Division of the Superior

2031 Court upon application by any interested heir, ~~devisee~~, or legatee, and shall be
2032 ~~conclusive on the heirs and devisees and persons claiming under them and~~
2033 ~~upon~~ all persons interested.

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2034 § 1730. PARTITION OF REAL ESTATE IN DIFFERENT COUNTIES

2035 If the real estate lies in different counties, the ~~probate division of the~~
2036 ~~superior court~~ when partition shall be effected pursuant to 12 V.S.A. Chapter
2037 179, Probate Division of the Superior Court may appoint different
2038 commissioners for each county. ~~In such case, the~~ The estate in each county
2039 shall be divided separately as though there were no other estate to be divided.

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2040 § 1731. PARTITION UNNECESSARY WHEN PARTIES AGREE

2041 When the ~~probate division of the superior court~~ Probate Division of the
2042 Superior Court distributes ~~the residue~~ assets of an estate to one or more persons
2043 entitled to the same, it shall not be necessary to make partition of the ~~estate~~,

- 2044 assets distributed if the parties to whom the assignment is made agree to
- 2045 ~~dispense with~~ an allocation of assets without partition.

2046 § 1734. PARTITION WHEN OWNERSHIP HAS CHANGED

2047 Partition of ~~the~~ real estate may be made although some of the original heirs
2048 or devisees have conveyed their shares to other persons. ~~Such~~ The shares shall
2049 be set out to the persons holding the same, as they would have been to the heirs
2050 or devisees.

2051 § 1735. SHARES, HOW SET OUT IN PARTITION

2052 The shares in the real and personal estate shall be set out to each individual,
2053 in proportion to his or her right, by ~~such~~ metes and bounds or other description
2054 that ~~the same can~~ permits the shares to be easily distinguished, ~~unless except to~~
2055 the extent that two or more of the parties interested consent to have their shares
2056 set out so as to be held by them in common and undivided.

2057 § 1736. SEVERANCE FROM ESTATE OF THIRD PERSONS

2058 When partition of real estate among heirs or devisees is required and the
2059 real estate lies in common and undivided with the real estate of another person,
2060 the court shall ~~first~~ have jurisdiction to and shall divide and sever the estate of
2061 the deceased from the estate ~~with which it lies in common~~ of the other person.
2062 A division made pursuant to this section by the ~~probate division of the superior~~
2063 ~~court~~ Probate Division of the Superior Court shall be binding on persons
2064 interested.

2065 § 1737. WHEN ESTATE CANNOT BE DIVIDED WITHOUT INJURY; TO

2066 BE SOLD; PROCEDURE

2067 When the real estate of a decedent, or any part ~~thereof~~ of it greater than the
2068 share ~~therein~~ in it of any one of the heirs, cannot be divided without prejudice
2069 or inconvenience to the owners, proceedings may be had for the assignment or
2070 sale of the real estate in the ~~probate division of the superior court~~ Probate
2071 Division of the Superior Court ~~for the assignment or sale thereof.~~

2072 § 1739. FINAL DECREE OF DISTRIBUTION OR PARTITION; BOND

2073 The ~~probate division of the superior court~~ Probate Division of the Superior
2074 Court shall not make a final decree of distribution or partition in an estate
2075 against which a person engaged in the military service of the United States and
2076 ~~without~~ outside this state State has a claim, until a bond is filed in ~~such~~ the
2077 court by the creditors, heirs, legatees, or devisees or some one or more of them,
2078 in ~~such~~ a sum and with ~~such~~ sureties as the court directs, conditioned to pay
2079 ~~such~~ the claimant ~~such~~ the sum of money ~~as~~ that is finally allowed him or her
2080 against ~~such~~ the estate.

2081 § 1740. PAYMENT OF EXPENSES; FROM ESTATE, IF SUFFICIENT

2082 At the time of partition or distribution of an estate, if the executor or
2083 administrator has retained sufficient ~~effects in his hands which~~ assets that may
2084 lawfully be applied for that purpose, the expenses of ~~such~~ partition or

2085 distribution may be paid by the executor or administrator when it appears to
2086 the court equitable and not inconsistent with the intention of a testator.

2087 § 1741. PARTIES TO PAY COST OF PARTITION, WHEN

2088 If there are ~~no effects~~ insufficient assets in the hands of the executor or
2089 administrator ~~which that~~ may be lawfully applied to ~~that purpose~~ the costs of
2090 partition, the expenses and charges of partition, ~~being ascertained in the~~
2091 ~~probate division of the superior court,~~ determined by the Probate Division of
2092 the Superior Court shall be paid by the parties interested in the partition in
2093 proportion to their respective shares or interests in the premises and the
2094 proportions shall be ~~settled and~~ allowed by the ~~probate division of the superior~~
2095 court. If a person interested in the partition does not pay his or her proportion
2096 or share, the court may issue ~~an execution~~ a judgment order for the sum
2097 assessed, ~~in~~ for the ~~name~~ benefit of the executor or administrator against the
2098 party not paying, returnable in 60 days from the date ~~thereof~~ of the order.

2099 § 1742. RECORD OF DECREES RELATING TO REAL ESTATE; WHERE

2100 RECORDED

2101 Certified copies of final orders or decrees of a ~~probate division of the~~
2102 ~~superior court~~ Probate Division of the Superior Court relating to real estate
2103 shall be recorded in the office where by law a deed of ~~such~~ the real estate is
2104 required to be recorded.

2105 § 1743. ~~PARTIAL DISTRIBUTIONS~~

2106 ~~Probate divisions of the superior courts are hereby authorized to issue orders~~
2107 ~~directing payment of devises, legacies, bequests and partial payment of~~
2108 ~~distributions or shares upon motion of the executor or an administrator for this~~
2109 ~~purpose. An order shall issue when the court is satisfied that sufficient assets~~
2110 ~~have been reserved by the executor or administrator in order to satisfy the~~
2111 ~~several expenses mentioned in section 1721 of this title along with the~~
2112 ~~anticipated administrative expenses and taxes that may be charged to the estate.~~
2113 ~~In the event that the assets remaining in the hands of the executor or~~
2114 ~~administrator thereafter are insufficient to satisfy the ultimate expenses and~~
2115 ~~charges against the estate, those persons having received these distributions~~
2116 ~~shall be liable to repay the executor or administrator on a pro rata basis.~~
2117 ~~However, if the executor or administrator cannot collect against a person, the~~
2118 ~~amount not recoverable shall be equitably apportioned by the court among the~~
2119 ~~other persons subject to apportionment. [Repealed.]~~

2120 Sec. 11. 14 V.S.A. chapter 79 is amended to read:

2121 CHAPTER 79. CONVEYANCE WHEN RECORD HOLDER DECEASED

2122 § 1801. TITLE IN DECEASED PERSONS; PETITION TO PROBATE

2123 DIVISION OF THE SUPERIOR COURT

2124 When the record title to real estate or an interest therein stands in the name
2125 of a person who has been deceased for more than seven years and the estate of
2126 ~~such the~~ person has not been probated and the interest of the heirs in that real
2127 estate has not been conveyed or has been defectively conveyed, the ~~probate~~
2128 ~~division of the superior court~~ Probate Division of the Superior Court where
2129 venue lies, upon verified petition and after notice and hearing as provided by
2130 the ~~rules of probate procedure~~ Rules of Probate Procedure, shall determine
2131 whether the deceased person or the decedent's heirs are possessed of an
2132 existing enforceable title or interest in that real estate.

2133 § 1802. DETERMINATION BY COURT OF PERSONS ENTITLED TO
2134 ESTATE

2135 If the court ~~shall determine~~ determines that the heirs or personal
2136 representatives of the deceased person are not at the time of ~~such the~~ hearing in
2137 possession of the real estate and are not entitled to re-enter ~~the same it~~ or to
2138 institute and maintain a suit to recover possession ~~thereof of it~~, the court shall
2139 adjudge and decree that the real estate constitutes no beneficial part of the
2140 estate of ~~such the~~ deceased person and may appoint an administrator to convey
2141 the record title of the real estate to the person or persons adjudged by ~~it the~~
2142 court to be legally entitled ~~thereto to it~~.

2143 § 1803. PETITION

2144 A petition under this chapter may be brought by any person in possession or
2145 who claims the right to possession of the real estate. It shall recite the facts
2146 upon which it is based and shall specify the names and addresses of the heirs
2147 and representatives of the deceased person, and of all claimants so far as each
2148 class is known to the petitioner.

2149 § 1804. APPEARANCE; APPEAL

2150 A person not so served may become a party defendant by entering his or her
2151 appearance with the ~~probate division of the superior court~~ Probate Division of
2152 the Superior Court before the expiration of the time ~~herein limited~~ provided by
2153 this section for appeal. An appeal may be taken by any person in interest
2154 within 30 days from any final decree of ~~the probate division of the superior~~
2155 ~~court hereunder by any person in interest~~ issued under this chapter by the
2156 Probate Division of the Superior Court.

2157 Sec. 12. 14 V.S.A. chapter 80 is added to read:

2158 CHAPTER 80. WAIVER OF ADMINISTRATION

2159 § 1851. APPLICABILITY

2160 This chapter shall apply to all estates, testate, and intestate, other than small
2161 estates administered under chapter 81 of this title.

2162 § 1852. MOTION FOR WAIVER OF ADMINISTRATION; ORDER

2163 (a) A motion for waiver of administration may be submitted to the Probate
2164 Division of the Superior Court with the petition to open the estate or at any
2165 time before an accounting is due. The motion shall be made under oath and
2166 shall state that:

2167 (1)(A) if the decedent died testate, the moving party is the sole
2168 beneficiary of the decedent's estate, and has been nominated and proposes to
2169 serve as sole executor; or

2170 (B) if the decedent died intestate, the moving party is the sole heir of
2171 the decedent's estate and proposes to serve as sole administrator;

2172 (2)the moving party is the sole fiduciary of the estate;

2173 (3)the decedent owned no real property in the State of Vermont;
2174 and

2175 (4)the administration of the estate will be completed without
2176 supervision by the Probate Division of the Superior Court in accordance
2177 with the decedent's will and applicable law.

2178 (b) The court may grant the motion to waive further administration if it
2179 finds that:

2180 (1) the moving party is the only estate beneficiary under the will of
2181 a decedent or the only heir of a decedent who died intestate;

2182 (2) the moving party is the sole fiduciary of the estate; and

2183 (3) the decedent owned no real property in the State of Vermont.

2184 (c) If the court grants a motion to waive further administration filed under
2185 subsection (a) of this section, it shall issue an order waiving the duty to file an
2186 inventory, waiving or discharging the fiduciary bond, and dispensing with
2187 further filing with the court other than the final affidavit of administration.

2188 § 1853. ADMINISTRATION

2189 (a) Administration of an estate under this chapter may be completed upon
2190 the court's approval of the executor's or administrator's affidavit of
2191 administration. Unless extended by the court, the affidavit shall be filed not
2192 less than six months or more than one year after the date of appointment of the
2193 executor or administrator.

2194 (b)(1) The affidavit of administration shall state that to the best of the
2195 knowledge and belief of the executor or administrator:

2196 (A) there are no outstanding expenses of administration, or
2197 unpaid or unsatisfied debts, obligations, or claims attributable to the
2198 decedent's estate; and

2199 (B) no taxes are due to the State of Vermont, and tax
2200 clearance has been received from the Department of Taxes.

2201 (2) If the executor or administrator fails to file the affidavit of
2202 administration within the time prescribed by subsection (a) of this section, the
2203 executor or administrator shall be in default. If he or she fails to file the

2204 affidavit or a request for additional time within 15 days after receiving notice
2205 of default, the court may impose sanctions it deems appropriate, including an
2206 order that waiver of administration is no longer available. The court shall
2207 provide notice of the default to the executor or administrator by first class mail
2208 or other means allowed by the Rules of Probate Procedure.

2209 § 1854. DISCHARGE OF EXECUTOR OR ADMINISTRATOR

2210 Upon the submission of an affidavit of administration, the Probate Division
2211 of the Superior Court may close the estate and discharge the executor or
2212 administrator if it determines that the provisions of sections 1851 and 1852 of
2213 this title have been met.

2214 Sec. 13. 14 V.S.A. chapter 101 is amended to read:

2215 CHAPTER 101. PROBATE BONDS; EXECUTORS, ADMINISTRATORS,
2216 TRUSTEES, GUARDIANS

2217 § 2101. PROBATE BONDS; AMOUNT; SURETIES; FOR WHOSE
2218 BENEFIT; TO WHOM TAKEN

2219 Bonds required to be taken by order of the ~~probate division of the superior~~
2220 ~~court~~ Probate Division of the Superior Court shall be for such sum and with
2221 such surety or sureties as the court directs, except where the law otherwise
2222 prescribes. ~~Such~~ The bonds shall be for the security and benefit of all persons
2223 interested and shall be taken to the ~~probate division of the superior court~~

2224 Probate Division of the Superior Court except where they are to be taken to the
2225 adverse party.

2226 § 2102. FOREIGN COMPANY; CERTIFICATE OF AUTHORITY; FEE

2227 A Probate Division of the Superior Court shall not accept a foreign fidelity
2228 insurance company as surety on a bond required to be filed in such Court,
2229 unless ~~such~~ the company is authorized to do business in this State and has filed
2230 in ~~such Court~~ the court a certificate of the Commissioner of Financial
2231 Regulation that ~~such~~ the company is so authorized. A fee of \$1.00 for each
2232 certificate so issued shall be paid to the Commissioner of Financial Regulation
2233 for the benefit of the State by the company requesting its issuance.

2234 § 2103. RECORD; EVIDENCE

2235 Upon acceptance and approval of bonds required to be given to a ~~probate~~
2236 ~~division of the superior court~~ Probate Division of the Superior Court, ~~such the~~
2237 bonds shall be filed and docketed in the office of ~~such~~ the court to which they
2238 are given. A copy ~~thereof~~ of the bond duly certified by ~~such~~ the court shall be
2239 evidence in all cases as to the facts ~~therein~~ stated in it, as though the original
2240 were produced.

2241 § 2104. MOTION, WHEN BOND IS INSUFFICIENT

2242 If a surviving spouse, heir, creditor, devisee, or legatee of a decedent or
2243 their legal representatives, or a person interested in a trust estate, considers the

2244 bond given to the ~~probate division of the superior court~~ Probate Division of the
2245 Superior Court by a fiduciary insufficient, they may file a motion for an
2246 additional bond. The court shall ~~thereupon~~ schedule a hearing and notice shall
2247 be given as provided by the ~~rules of probate procedure~~ Rules of Probate
2248 Procedure. If it appears to the court that the bond is not sufficient, it shall
2249 order the fiduciary to give a new and sufficient bond within the time limited.

2250 If the new bond is not filed within that new time, the court shall remove the
2251 fiduciary and fill the vacancy.

2252 § 2105. SURETY MAY MOVE FOR NEW BOND AND SETTLEMENT;

2253 REMOVAL

2254 If the surety for a fiduciary considers himself or herself in danger of being
2255 injured thereby, a motion may be filed to order the fiduciary to settle the
2256 account and give a new bond. Upon notice and hearing, if it appears to the
2257 ~~probate division of the superior court~~ Probate Division of the Superior Court
2258 that the surety is in danger of being injured, it shall order the fiduciary to settle
2259 the account and give a new bond. When a new bond is filed and approved, the
2260 surety shall be discharged. If the fiduciary does not settle the accounts and
2261 give a new bond when so ordered, the ~~probate division of the superior court~~
2262 shall remove the fiduciary and fill the vacancy.

2263 § 2106. NEW BOND

2264 When a fiduciary desires to file a new bond with sureties in substitution for
2265 the bond then on file, the ~~probate division of the superior court~~ Probate
2266 Division of the Superior Court, in its discretion and upon notice may allow a
2267 new bond to be filed. Upon approving the new bond, the court may accept ~~the~~
2268 ~~same~~ it in substitution for any and all bonds previously filed by the fiduciary
2269 and discharge the sureties on the former bond or bonds from liability accruing
2270 after the substituted bond is filed.

2271 § 2107. DISCHARGE OF EXECUTOR, ADMINISTRATOR, TRUSTEE,
2272 GUARDIAN; ACCOUNT; EXONERATION OF SURETY

2273 When an executor, administrator, trustee, or guardian has paid and delivered
2274 over to the persons entitled ~~thereto~~ to it the money or other property in his or
2275 her hands as required by a decree of the ~~probate division of the superior court~~
2276 Probate Division of the Superior Court, he or she may perpetuate the evidence
2277 ~~thereof of payment and delivery~~ by presenting to ~~such~~ the court within one
2278 year after the decree is made or within ~~such~~ a time thereafter as ~~that~~ the court
2279 ~~may allow~~ allows, an account of ~~such~~ the payment or the delivery over of ~~such~~
2280 the property. If it is proved to the satisfaction of the court and verified by the
2281 oath of the accountant, ~~such~~ the account shall be allowed as his or her final
2282 discharge and ordered to be recorded. ~~Such~~ The discharge shall forever

2283 exonerate the accountant and his or her sureties from liability under ~~such the~~
2284 decree, unless ~~his or her the~~ account is impeached for fraud or manifest error.

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2285 § 2108. HOW PROSECUTED

2286 Bonds given to the ~~probate division of the superior court~~ Probate Division
2287 of the Superior Court shall be prosecuted in the ~~superior court~~ Superior Court
2288 of the county in which they were given for the benefit of those injured by the
2289 breach of their conditions, in the following manner:

2290 (1) A person claiming to be injured by a breach of the condition of
2291 a bond may file a motion for permission to prosecute the ~~same~~ bond and shall
2292 give a bond to the adverse party to the satisfaction of the ~~probate division of~~
2293 ~~the superior court~~ Probate Division, on the condition that he or she will
2294 prosecute ~~the same~~ it to effect and pay the costs awarded if recovery is not
2295 obtained;

2296 (2) The ~~probate division of the superior court~~ Probate Division
2297 shall grant permission to prosecute the bond and ~~on paying when~~ the fees have
2298 been paid, shall furnish to the applicant a certified copy of the bond, with a
2299 certificate that leave to prosecute it has been granted, and the name and
2300 residence of the applicant;

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2301 (3) The applicant shall cause his or her name to be endorsed as
2302 prosecutor upon the writ and shall file the copy of the bond and the certificate

2303 furnished by the ~~probate division of the superior court~~ Probate Division, with
2304 the writ, in the ~~superior court~~ Superior Court to which and when it is
2305 returnable; and ~~such the~~ applicant shall be deemed to be the prosecutor of ~~such~~
2306 the bond;.

2307 (4) The complaint on the bond shall definitely assign and set forth
2308 the breaches of the conditions on which the prosecutor relies;.

2309 (5) The ~~superior court~~ Superior Court to which the writ is returned
2310 shall render judgment, as on ~~nihil die~~ default, for the penalty of the bond in
2311 favor of the ~~probate division of the superior court~~ Probate Division of the
2312 Superior Court and against the defendants, or ~~such of them as~~ those defendants
2313 who do not comply with the terms ~~mentioned~~ provided in subdivision (6) of
2314 this section, but costs shall not be taxed on ~~such the~~ judgment;.

2315 (6) The defendants who ~~may~~ wish to resist ~~such the~~ judgment shall,
2316 on or before 21 days after ~~the~~ service of ~~such the~~ writ, plead a general denial,
2317 and, with their plea, file their affidavit, stating that they believe or are advised
2318 that they did not execute or deliver ~~such the~~ bond; or they shall demur to the
2319 complaint;.

2320 (7) On trial, if the issue on ~~such the~~ plea or demurrer is found in
2321 favor of the plaintiff, judgment shall be rendered for the penalty of the bond, as
2322 ~~mentioned~~ provided in subdivision (5) of this section, and the prosecutor shall

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2323 recover against the defendants entering ~~such the~~ plea or demurrer the costs
2324 ~~occasioned thereby of the action,~~ and ~~forthwith~~ have execution for ~~the same~~
2325 ~~them~~ in his or her own name;.

2326 (8) When judgment is rendered for the penalty of the bond against
2327 all the defendants, the ~~same~~ judgment shall remain in force as security for
2328 other breaches of the conditions of the bond, which may be afterwards
2329 assigned and proved;.

2330 (9) The action shall thereafter proceed and be prosecuted in the
2331 name of the prosecutor, on the breaches assigned. Upon prevailing, the
2332 prosecutor shall have judgment in his or her own name for damages and costs,
2333 but if judgment is rendered for the defendants on an issue joined in ~~such the~~
2334 action or on nonsuit, they shall recover double costs against the prosecutor.

2335 § 2109. PERSON INJURED; ACTION ON BOND OR JUDGMENT

2336 After a person is injured by the breach of the condition of the bond, he or
2337 she may bring from time to time an action in his or her own name on the
2338 judgment rendered for the penalty of the bond. In that action, he or she shall
2339 assign and set forth the breaches on which he or she relies and may recover
2340 ~~such damage as~~ the damages that he or she proves, with costs.

2341 § 2110. CLAIMS FOR BREACH MAY BE PROSECUTED BY

2342 REPRESENTATIVES

2343 Claims for damages for breach of the conditions of a bond may be
2344 prosecuted by an executor, administrator, or guardian in behalf of those he or
2345 she represents, in the same manner as by persons living. ~~Such~~ The claims may
2346 be prosecuted against the representatives of deceased persons as other claims
2347 against decedents.

2348 Sec. 14. 14 V.S.A. chapter 103 is amended to read:

2349 CHAPTER 103. MORTGAGES AND LEASES BY EXECUTORS,
2350 ADMINISTRATORS, TRUSTEES, OR GUARDIANS

2351 § 2201. MORTGAGE OF PROPERTY BY FIDUCIARY; MOTION;
2352 ORDER; LICENSE

2353 ~~If on~~ (a) On motion and ~~after notice and hearing it appears to be for~~ with
2354 ~~the benefit~~ written consent of the ~~estate~~ interested persons, or after hearing, the
2355 ~~probate division of the superior court~~ Probate Division of the Superior Court
2356 may authorize a fiduciary to mortgage any of the real estate or to mortgage,
2357 pledge, or assign any of the personalty of the estate for the ~~following purposes:~~
2358 ~~to prevent a sacrifice~~ benefit of the estate; ~~to make repairs and improvements~~
2359 ~~upon the estate; to pay debts, legacies or charges of administration; to pay an~~
2360 ~~existing mortgage, lien or tax on the estate, or to support a ward. The probate~~
2361 ~~division of the superior court~~ court may authorize a fiduciary to ~~make~~ enter
2362 into an agreement for the extension or renewal of ~~that~~ an existing mortgage or

2363 lien or of any other mortgage, lien, pledge, or assignment created under the
2364 provisions of this chapter.

2365 (b) A motion filed under this section shall describe the property to be
2366 mortgaged, pledged, or assigned and shall include the purpose of the
2367 obligation, the limits of the principal amount, the interest rate, and the term of
2368 the note to be secured by the mortgage. A license issued by the Probate
2369 Division pursuant to this section shall fix the terms and conditions under which
2370 the property may be mortgaged, pledged, or assigned. The court may order all
2371 or any part of the obligation secured by the mortgage to be paid from time to
2372 time out of the income of the property mortgaged. A certified copy of the
2373 license shall be recorded in the office where the mortgage is recorded.

2374 § 2202. MOTION; DECREE

2375 ~~The motion shall set forth a description of the property to be mortgaged,~~
2376 ~~pledged or assigned, the amount of money necessary to be raised, the nature~~
2377 ~~and amount of the obligation to be secured and the purpose for which the~~
2378 ~~money or security is required. The decree of the probate division of the~~
2379 ~~superior court shall fix the amount for which the mortgage, pledge or~~
2380 ~~assignment may be given, the terms thereof and the rate of interest which may~~
2381 ~~be paid thereon, and the court may order the whole or any part of the money~~

2382 ~~secured by the mortgage to be paid from time to time out of the income of the~~
2383 ~~property mortgaged. [Repealed.]~~

2384 § 2203. LEASE; ~~WHEN AUTHORIZED~~ OF PROPERTY BY FIDUCIARY;
2385 ORDER; LICENSE

2386 ~~Upon~~ (a) On motion of and with the written consent of the interested
2387 parties, or after hearing, the Probate Division of the Superior Court may
2388 authorize a fiduciary describing to lease all or part of the real or personal
2389 property of the estate which the for the benefit of the estate. The court may
2390 authorize a fiduciary considers necessary or expedient to lease, therein stating
2391 the length of the term and the reason for executing a to enter into an agreement
2392 for the extension or renewal of an existing lease, after notice and hearing, if it
2393 appears to be necessary or expedient, the probate division of the superior court
2394 may authorize the petitioner to execute a written lease of a part or all of the
2395 property, and the order of the court or of any other lease created under the
2396 provisions of this chapter. A lease for a period of less than seven consecutive
2397 months shall not require a license.

2398 (b) A motion filed under this section shall describe the property to be
2399 leased and shall include the prospective lessee, if known, the proposed use of
2400 the leased property, the limits of the proposed term of the lease, and the
2401 proposed rental. A license issued by the Probate Division pursuant to this

2402 ~~section~~ shall fix the terms and conditions under which ~~it~~ the property may be
2403 leased.

2404 Sec. 15. 14 V.S.A. chapter 105 is amended to read:

2405 CHAPTER 105. TRUSTS AND TRUSTEES

2406 § 2303. ~~FILED; HOW SUED~~

2407 ~~A bond shall be filed in the probate division of the superior court and when~~
2408 ~~the superior court upon application so orders, the bond may be sued in the~~
2409 ~~name of the probate division of the superior court to which the same is taken~~
2410 ~~for the benefit of persons interested. [Repealed.]~~

2411 § 2305. ~~TRUSTEES OF ABSENT PERSONS - DEFINITION~~

2412 ~~For the purposes of sections 2306-2310 of this title, an absent person is~~
2413 ~~defined as one having a domicile, property, or evidences of property in this~~
2414 ~~State who suddenly or mysteriously disappears under such circumstances as to~~
2415 ~~satisfy the Probate Division of the Superior Court of the proper district that~~
2416 ~~there is reasonable ground to believe that he or she is lost, dead, or lacks~~
2417 ~~capacity due to a mental condition or psychiatric disability, or is one who,~~
2418 ~~having a domicile, property, or evidences of property in this State, remains~~
2419 ~~beyond the sea or absents himself or herself in this State or elsewhere and is~~
2420 ~~unheard of for three years. [Repealed.]~~

2421 § 2306. ~~TRUSTEES; APPOINTMENT OVER ABSENT PERSON'S~~

2422 ESTATE

2423 ~~(a) In the case of an absent person, the probate division of the superior~~
2424 ~~court shall appoint one or more trustees of the absent person's estate on~~
2425 ~~application by petition, the appointment to take precedence and apply to all~~
2426 ~~property belonging to such absent person wherever the same may be located.~~

2427 ~~(b) A petition to appoint one or more trustees of an absent person's estate~~
2428 ~~shall be made by:~~

2429 ~~(1) One or more of his or her nearest relatives; or~~

2430 ~~(2) The executor or administrator aforesaid; or~~

2431 ~~(3) The town service officer of the town where the absent person~~
2432 ~~had a last known domicile in the state, or in case he or she had no~~
2433 ~~domicile in the state, then where his or her property or any portion~~
2434 ~~thereof is located.~~

2435 ~~[Repealed.]~~

2436 ~~§ 2307. NOTICE OF APPOINTMENT; ACCOUNT; PAYMENT TO~~

2437 ~~TRUSTEE; APPEAL~~

2438 ~~(a) Upon the petition of an executor or administrator for the appointment~~
2439 ~~of a trustee under the provisions of sections 2305 and 2306 of this title, notice~~
2440 ~~shall be given as provided by the rules of probate procedure and the same~~
2441 ~~proceedings shall be had as upon the allowance of an administrator's account.~~

2442 ~~(b) The executor or administrator shall render to the probate division of the~~
2443 ~~superior court an account of the moneys or securities representing the legacy or~~
2444 ~~distributive share of the absent person in the hands of the executor or~~
2445 ~~administrator, and all reasonable charges and expenses pertaining to the care~~
2446 ~~and management thereof. On order of the probate division of the superior~~
2447 ~~court, the executor or administrator shall turn over and pay to the trustee so~~
2448 ~~appointed by the court to receive the same the sums due the absent person, and~~
2449 ~~thereupon the executor or administrator shall be discharged from further~~
2450 ~~liability in the premises.~~

2451 ~~(c) The same appeal may be had from the appointment of a trustee as from~~
2452 ~~the appointment of administrators and upon the settlement of their accounts.~~

2453 ~~[Repealed.]~~

2454 § 2308. ~~POWERS OF TRUSTEES FOR ABSENT PERSONS~~

2455 ~~The trustees shall be vested with all the property, real and personal, rights,~~
2456 ~~chooses in action and evidences of property or indebtedness belonging to such~~
2457 ~~absent person, and may take possession of such property and collect the~~
2458 ~~demands, pay the debts of such person and may maintain or defend an action~~
2459 ~~necessary to protect the property or rights of such person. [Repealed.]~~

2460 § 2309. ~~CLAIMS AGAINST ESTATE OF ABSENT PERSON;~~

2461 ~~PROCEDURE~~

2462 ~~If claims against such person are disputed, the same proceedings shall be~~
2463 ~~had for ascertaining the amount due and its payment as provided in the case of~~
2464 ~~disputed claims against wards. [Repealed.]~~

2465 § 2310. ~~APPEARANCE OF ABSENT PERSON; SURRENDER OF~~
2466 ~~PROPERTY~~

2467 ~~If the person so absent proves to be alive, the trustees shall surrender to him~~
2468 ~~or her all property, or the proceeds of the same, which shall have come into~~
2469 ~~their hands. If administration has been or shall be granted on his or her estate,~~
2470 ~~the trustees shall surrender to the executor or administrator all property, effects~~
2471 ~~and estate of such absent person, upon rendering an account of their~~
2472 ~~trusteeship in the same manner and upon the same notice as in case of~~
2473 ~~settlement of an administrator's account. [Repealed.]~~

2474 § 2318. ~~OTHER TRUSTEES, WHEN~~

2475 ~~The probate division of the superior court may appoint trustees in cases not~~
2476 ~~otherwise provided for when the use of property, real or personal, descends to~~
2477 ~~a person for life or for a term of years, and shall have the same power to~~
2478 ~~enforce such trust which such court has in case of guardians of minor children.~~

2479 ~~[Repealed.]~~

2480 § 2327. ~~FURTHER POWERS OF COURT; EQUITY POWERS~~

2481 ~~The probate division of the superior court may further hear and determine in~~
2482 ~~equity all other matters relating to the trusts mentioned in this chapter.~~

2483 [Repealed.]

2484 § 2329. TESTAMENTARY ADDITIONS TO TRUSTS; POUR OVER
2485 TRUSTS

2486 A devise or bequest, the validity of which is determinable by the law of this
2487 ~~state~~ State, may be made by a will to the trustee or trustees of a trust
2488 established or to be established by the testator or by the testator and some other
2489 person or persons or by some other person or persons (including a funded or
2490 unfunded life insurance trust, although the trustor has reserved any or all rights
2491 of ownership of the insurance contracts) if the trust is identified in the
2492 testator's will and its terms are set forth in a written instrument (other than a
2493 will) executed before or concurrently with the execution of the testator's will
2494 or in the valid last will of a person who has predeceased the testator (regardless
2495 of the existence, size, or character of the corpus of the trust). The devise or
2496 bequest shall not be invalid because the trust is amendable or revocable, or
2497 both, or because the trust was amended after the execution of the will or after
2498 the death of the testator. Unless the testator's will provides otherwise, the
2499 property so devised or bequeathed: (a) shall not be deemed to be held under a
2500 testamentary trust of the testator, but shall become a part of the trust to which it

2501 is given; and (b) shall be administered and disposed of in accordance with the
2502 provisions of the instrument or a will of a person other than the testator setting
2503 forth the terms of the trust, including any amendments thereto made before the
2504 death of the testator (regardless of whether made before or after the execution
2505 of the testator's will) and, if the testator's will so provides, including any
2506 amendments to the trust made after the death of the testator. A revocation or
2507 termination of the trust before the death of the testator shall cause the devise or
2508 bequest to lapse. However, when the testator's will specifically sets forth the
2509 terms of the trust, whether or not such trust is subsequently amended, revoked,
2510 or terminated, the property devised or bequeathed under the will shall be
2511 deemed to be held under a testamentary trust of the testator and shall be
2512 administered and disposed of in accordance with the provision of the testator's
2513 will.

2514 Sec. 16. 14 V.S.A. chapter 107 is amended to read:

2515 CHAPTER 107. CONVEYANCES AND DEVISES TO
2516 UNCERTAIN BENEFICIARIES
2517 § 2401. UNCERTAIN BENEFICIARIES; ~~GOVERNOR~~ PROBATE
2518 DIVISION OF THE SUPERIOR COURT MAY APPOINT AGENT
2519 OR ATTORNEY

2520 When a devise, legacy, gift, or trust is made to or for the benefit of a class
2521 or classes of beneficiaries in this ~~state~~ State, whose members are not all
2522 ascertained or definitely ascertainable, ~~in his discretion, the governor~~ Probate
2523 Division of the Superior Court may in its discretion appoint a person or
2524 persons as agent or attorney to represent ~~such~~ the beneficiaries, who shall act
2525 for them and their interests, without expense to the ~~state~~ State, in any litigation,
2526 contest, or compromise in relation to ~~such~~ the devise, legacy, gift, trust, will,
2527 contract, or instrument by which the same is given.

2528 § 2402. PROBATE DIVISION OF THE SUPERIOR COURT MAY
2529 APPOINT TRUSTEES; DUTIES

2530 (a) When, under the provisions of a will probated in another state or
2531 country, or of a decree of a court of another state or country, a devise, legacy,
2532 gift, or trust belongs to or for the benefit of a class or classes of beneficiaries in
2533 this ~~state~~ State, whose members are not all ascertained or definitely
2534 ascertainable, or is appropriated or devoted to any purpose or benefit in which
2535 the public or a class of the public in this ~~state~~ State is interested, the Probate
2536 Division of the Superior Court may appoint one or more trustees to take charge
2537 of the payment and distribution of the devise, legacy, gift, or trust under the
2538 will or decree.

2539 (b) The trustee or trustees shall give bonds and render accounts annually of
2540 all transactions to the ~~probate division of the superior court~~ Probate Division of
2541 the Superior Court and shall be subject to the same liabilities, and the court
2542 shall have the same power as in case of other trustees appointed by the ~~probate~~
2543 ~~division of the superior court~~ Probate Division of the Superior Court.

2544 § 2403. TRUSTEES, WHEN APPOINTED

2545 A trustee may be appointed by the ~~probate division of the superior court~~
2546 Probate Division of the Superior Court upon petition of any person, class, or
2547 beneficiary coming within the provision of the will or decree, or upon petition
2548 of a corporation representing beneficiaries under the will or decree.

2549 § 2404. ~~DUTIES OF EXECUTOR OR TRUSTEE UNDER WILL OR~~
2550 ~~DECREE~~

2551 ~~The executor or trustee under such will or decree shall pay over to such~~
2552 ~~trustee or trustees named in section 2402 of this title, the amount to be given or~~
2553 ~~distributed to such beneficiaries under such will or decree and take a receipt for~~
2554 ~~the same, and such trustee or trustees shall pay out and distribute the same~~
2555 ~~according to the provisions of such will or decree. [Repealed.]~~

2556 Sec. 17. 14 V.S.A. chapter 109 is amended to read:

2557 CHAPTER 109. ~~PHILANTHROPIC TRUSTS~~ [Repealed.]

2558 § 2501. ~~CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS;~~

2559 ~~ANNUAL REPORTS~~

2560 ~~Every trustee or board of trustees, incorporated or unincorporated, who~~
2561 ~~holds in trust, within this state, property given, devised, or bequeathed to~~
2562 ~~cemetery associations or societies and towns which hold funds for cemetery~~
2563 ~~purposes, and who administers or is under a duty to administer the same in~~
2564 ~~whole or in part for such purposes, annually, on or before the first day of~~
2565 ~~September, shall make a written report to the probate division of the superior~~
2566 ~~court showing the property so held and administered, the receipts and~~
2567 ~~expenditures in connection therewith, the whole number of beneficiaries~~
2568 ~~thereof and such other information as the probate division of the superior court~~
2569 ~~may require. [Repealed.]~~

2570 ~~§ 2502. PENALTY~~

2571 ~~Failure for two successive years to file such report shall constitute a breach~~
2572 ~~of trust and shall be reported by such probate division of the Superior Court to~~
2573 ~~the attorney general or state's attorney, who shall take such action as may be~~
2574 ~~appropriate to compel compliance with this chapter. [Repealed.]~~

1 § 2503. EXEMPTION

2 ~~A trustee or board of trustees who makes a printed annual report that is~~
3 ~~satisfactory to a town, city, incorporated village or town school district~~
4 ~~interested in a trust fund shall be exempt from the provisions of this~~
5 ~~chapter.~~

5 [Repealed.]

6 Sec. 18. EFFECTIVE DATE

7 This act shall take effect on July 1, 2017.