ARTICLE 4

Local and Foreign Personal Representatives; Ancillary Administration

Editor's Note

2013 Act No. 100, Section 4, provides as follows:

"SECTION 4. (A) This act [amending Articles 1, 2, 3, 4, 6, and 7] takes effect on January 1, 2014.

"(B) Except as otherwise provided in this act, on the effective date of this act:

"(1) this act applies to any estates of decedents dying thereafter and to all trusts created before, on, or after its effective date;

"(2) the act applies to all judicial proceedings concerning estates of decedents and trusts commenced on or after its effective date;

"(3) this act applies to judicial proceedings concerning estates of decedents and trusts commenced before its effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

"(4) subject to item (5) and subsection (C) of this section, any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date of the act unless there is a clear indication of a contrary intent in the terms of the governing instrument; and

"(5) an act done and any right acquired or accrued before the effective date of the act is not affected by this act. Unless otherwise provided in this act, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust and a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death.

"(C) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the act, that statute continues to apply to the right even if it has been repealed or superseded."

Part 1

Definitions

**SECTION 62‑4‑101.** Definitions.

In this article [Sections 62‑4‑101 et seq.]:

(1) "Local administration" means administration by a personal representative appointed in this State pursuant to appointment proceedings described in Article 3 [Sections 62‑3‑101 et seq.].

(2) "Local personal representative" includes any personal representative appointed in this State pursuant to appointment proceedings described in Article 3 [Sections 62‑3‑101 et seq.] and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to Section 62‑4‑205.

(3) "Resident creditor" means a person domiciled in, or doing business in, this State who is, or could be, a claimant against an estate of a nonresident decedent.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

Part 2

Powers of Foreign Personal Representatives

**SECTION 62‑4‑201.** Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.

At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this State;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑4‑202.** Payment or delivery discharges.

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property or of the instrument evidencing a debt, obligation, stock, or chose in action to the same extent as if payment or delivery had been made to a local personal representative.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 63; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑4‑203.** Resident creditor notice.

Payment or delivery under Section 62‑4‑201 may not be made if a resident creditor of the nonresident decedent has given written notice to the debtor of the nonresident decedent or the person having possession of the personal property or of the instrument evidencing a debt, obligation, stock, or chose in action belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 64; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑4‑204.** Proof of authority; bond.

If no local administration or application or petition therefor is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of the will, if any. The filing of a bond shall not be required unless the court in its discretion orders it.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

Effect of Amendment

The 2013 amendment substituted "appointment and of the will, if any" for ", the will, if any, and of any official bond he has given, which bond shall name the court in this State as co‑obligee on such bond", and added the second sentence, relating to filing of bond.

**SECTION 62‑4‑205.** Powers.

A domiciliary foreign personal representative who has complied with Section 62‑4‑204 may exercise as to assets (including real and personal property) in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 80; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑4‑206.** Power of representatives in transition.

The power of a domiciliary foreign personal representative under Section 62‑4‑201 or 62‑4‑205 shall be exercised only if there is no administration or application therefor pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 62‑4‑205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this State.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑4‑207.** Ancillary and other local administrations; governing provision.

In respect to a nonresident decedent, the provisions of Article 3 [Sections 62‑3‑101 et seq.] govern (1) proceedings, if any, in a court of this State for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration. The initiation of a proceeding under Article 3 (Sections 62‑3‑101 et seq.) is the appropriate procedure for an ancillary administration relating to the real property of a nonresident decedent located in this State and is an alternative to the procedures available to a foreign personal representative under Sections 62‑4‑201 through 62‑4‑206.

HISTORY: 1986 Act No. 539, Section 1; 2000 Act No. 398, Section 9; 2013 Act No. 100, Section 1, eff January 1, 2014.

Effect of Amendment

The 2013 amendment inserted at the end "and is an alternative to the procedures available to a foreign personal representative under Sections 62‑4‑201 through 62‑4‑206".

Part 3

Jurisdiction Over Foreign Personal Representatives

**SECTION 62‑4‑301.** Jurisdiction by act of foreign personal representative.

A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in Section 62‑4‑204, (2) receiving payment of money or taking delivery of personal property under Section 62‑4‑201, or (3) doing any act as a personal representative in this State which would have given the State jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑4‑302.** Jurisdiction by act of decedent.

In addition to jurisdiction conferred by Section 62‑4‑301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that his decedent was subject to jurisdiction immediately prior to death.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑4‑303.** Service on foreign personal representative.

(a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this State on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed thirty days within which to appear or respond.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

Part 4

Judgments and Personal Representatives

**SECTION 62‑4‑401.** Effect of adjudication for or against personal representative.

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication; provided, however, that notice and the opportunity to defend must be given to the local representative in order that the judgment be collectible.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.