

APPENDIX A

Uniform Powers of Foreign Representatives Act

(This text was taken from the *Handbook of the National Conference of Commissioners on Uniform State Laws* (1944) 325)

Be it enacted . . .

Section 1. (*Definitions.*) As used in this act:

(1) "Representative" means an executor, administrator, testamentary trustee, guardian or other fiduciary of the estate of a decedent or a ward, duly appointed by a court and qualified. It includes any corporation so appointed, regardless of whether the corporation is eligible to act under the law of this state. This act does not change the powers or duties of a testamentary trustee under the non-statutory law or under the terms of a trust.

(2) "Foreign representative" means any representative who has been appointed by the court of another jurisdiction in which the decedent was domiciled at the time of his death, or in which the ward is domiciled, and who has not also been appointed by a court of this state.

(3) "Local representative" means any representative appointed as ancillary representative by a court of this state who has not been appointed by the domiciliary court.

(4) "Local and foreign representative" means any representative appointed by both the domiciliary court and by a court of this state.

Section 2. (*Powers of Foreign Representative in General.*) When there is no administration or application therefor pending in this state, a foreign representative may exercise all powers which would exist in favor of a local representative, and may maintain actions and proceedings in this state subject to the conditions imposed upon nonresident suitors generally.

Section 3. (*Proof of Authority in Court Proceedings—*

Bond.) Upon commencing any action or proceeding in any court of this state, the foreign representative shall file with the court authenticated copies of his appointment, and of his official bond if he has given a bond. If the court believes that the security furnished by him in the domiciliary administration is insufficient to cover the proceeds of the action or proceeding, it may at any time order the action or proceeding stayed until sufficient security is furnished in the domiciliary administration.

Section 4. (*Proceedings to Bar Creditors' Claims.*) Upon application by a foreign representative to the [probate] court of the county in which property of the decedent or of the ward is located, the court shall cause notice of the appointment of the foreign representative to be published once in each of [three] consecutive weeks in some newspaper of general circulation in the county. The claims of all creditors of the decedent or of the ward, unless filed with the court within [] after date of the first publication, are barred as a lien upon all property of the decedent or of the ward in this state, to the extent that claims are barred by a local administration. If before the expiration of such period any claims have been filed and remain unpaid after reasonable notice thereof to the foreign representative, ancillary administration may be had.

Section 5. (*Effect of Local Proceedings.*) The Powers granted by this act shall be exercised only when there is no administration or application therefor pending in this state, except to the extent that the court granting local letters may order otherwise, but no person who, before receiving actual notice of local administration or application therefor, has changed his position by relying on the powers granted by this act shall be prejudiced by reason of the application for, or grant of, local administration. The local representative or the local and foreign representative shall be subject to all burdens which have accrued by virtue of the exercise of the powers, or otherwise, under this act and

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may be substituted for the foreign representative in any action or proceeding in this state.

Section 6. (*Uniformity of Interpretation.*) This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 7. (*Short Title.*) This act may be cited as the Uniform Powers of Foreign Representatives Act.

Section 8. (*Repeal.*) [and] all [other] acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Section 9. (*Time of Taking Effect.*) This act shall take effect. . . .

APPENDIX B

Uniform Ancillary Administration of Estates Act

(This text was taken from the *Handbook of the National Conference of Commissioners on Uniform State Laws* (1949) 330)

Be it enacted . . .

Section 1 (*Definitions*) As used in this act:

(1) "Representative" means an executor, administrator [testamentary trustee], guardian or other fiduciary of the estate of a decedent or a ward, duly appointed by a court and qualified. It includes any corporation so appointed, regardless of whether the corporation is eligible to act under the law of this state. [This act does not change the powers or duties of a testamentary trustee under the non-statutory law or under the terms of a trust.]

(2) "Foreign representative" means any representative who has been appointed by the court of another jurisdiction in which the decedent was domiciled at the time of his death, or in which the ward is domiciled, and who has not also been appointed by a court of this state.

(3) "Local representative" means any representative appointed as ancillary representative by a court of this state who has not been appointed by the domiciliary court.

(4) "Local and foreign representative" means any representative appointed by both the domiciliary court and by a court of this state.

Section 2. (*Application for Ancillary Letters and Notice Thereof.*)

(1) *Qualifications of and Preference for Foreign Representative.*

(a) Any foreign representative upon the filing of an authenticated copy of the domiciliary letters with the [probate court] may be granted ancillary letters in this state notwithstanding that the representative is a nonresident of this state or is a foreign corporation.

(b) If the foreign representative is a foreign corporation it need not qualify under any other law of this state to authorize it to act as local and foreign representative in the particular estate if it complies with the provisions of sections 4 and 5 of this act.

(c) If application is made for the issuance of ancillary letters to the foreign representative, the court shall give preference in appointment to the foreign representative unless the court finds that it will not be for the best interests of the estate or the decedent shall have otherwise directed.

(2) *Intervention upon application.* When application is made for issuance of ancillary letters any interested person may intervene and pray for the appointment of any person who is eligible under this act or the law of this state.

(3) *Notice to foreign representative.* When application is made for issuance of ancillary letters to any person other than the foreign representative, the applicant shall send notice of the application by registered mail to the foreign representative if the latter's name and address are known and to the court which appointed him if the court is known. These notices shall be mailed upon filing the application if the necessary facts are then known, or as soon thereafter as the facts are known. If notices are not given prior to the appointment of the local representative, he shall give similar notices of his appointment as soon as the necessary facts are known to him. Notice by ordinary mail is sufficient if it is impossible to send the notice by registered mail. Notice under this subsection is not jurisdictional.

Section 3. (*Denial of Ancillary Letters.*) The [probate court] may deny the application for ancillary letters if it appears that the estate may be settled conveniently without ancillary administration. Such denial is without prejudice to any subsequent application if it later appears that ancillary administration should be had.

Section 4 (*Bond.*) No nonresident shall be granted ancillary letters unless he gives an administration bond.

Section 5. (*Agent to Accept Service of Process.*) No non-resident shall be granted ancillary letters and no person shall be granted leave to remove assets under Section 7, until he files in the [probate court] an irrevocable power of attorney constituting the [clerk of the court] as his agent to accept and be subject to service of process or of notice in any action or proceeding relating to the administration of the estate. The [clerk] shall forthwith forward to the representative at his last known address any process or notice so received, by registered mail requesting a return receipt signed by addressee only. Forwarding by ordinary mail is sufficient if when tendered at a United States Post Office an envelope containing such notice addressed to such representative, as aforesaid, is refused registration.

Section 6. (*Substitution of Foreign for Local Representative.*)

(1) *Application and procedure.* If any other person has been appointed local representative, the foreign representative, not later than [fourteen] days after the mailing of notice to him under section 2, unless this period is extended by the court because the foreign representative resides outside continental United States or in Alaska, or for other cause which the court deems adequate, may apply for revocation of the appointment and for grant of ancillary letters to himself. [Ten] days' written notice of hearing shall be given to the local representative. If the court finds that it is for the best interests of the estate, it may grant the application and direct the local representative to deliver all the assets, documents, books and papers pertaining to the estate in his possession and make a full report of his administration to the local and foreign representative as soon as the letters are issued and he is qualified. The local representative shall also account to the court. The hearing on the account may be forthwith or upon such notice as the court directs. Upon compliance with the court's directions, the local representative shall be discharged.

(2) *Effect of substitution.* Upon qualification, the local and foreign representative shall be substituted in all actions and

proceedings brought by or against the local representative in his representative capacity, and shall be entitled to all the rights and be subject to all the burdens arising out of the uncompleted administration in all respects as if it had been continued by the local representative. If the latter has served or been served with any process or notice, no further service shall be necessary nor shall the time within which any steps may or must be taken be changed unless the court in which the action or proceedings are pending so orders.

Section 7. (*Removal of Assets to Domiciliary Jurisdiction.*)

(1) *Application.* Prior to the final disposition of the ancillary estate under section 12 and upon giving such notice as the [probate court] directs, the foreign representative or the local and foreign representative may apply for leave to remove all or any part of the assets from this state to the domiciliary jurisdiction for the purpose of administration and distribution.

(2) *Prerequisites to granting application.* Before granting such application, the court shall require compliance with section 5 and the filing of a bond by the foreign representative or of an additional bond for the protection of the estate and all interested persons unless the court finds that the bond given under section 4 by the local and foreign representative is sufficient.

(3) *Granting application—terms and consequences.* Upon compliance with this section, the court shall grant the application upon such conditions as it sees fit unless it finds cause for the denial thereof or for postponement until further facts appear. The granting of the application shall not terminate any proceedings for the administration of property in this state unless the court finds that such proceedings are unnecessary. If the court so find, it may order the administration in this state closed, subject to reopening within [one year] for cause.

Section 8. (*Effect of Adjudications for or against Representatives.*) A prior adjudication rendered in any jurisdiction for or against any representative of the estate shall be as conclusive as to the local or the local and foreign representative as if he were a party to the adjudication unless it resulted

from fraud or collusion of the party representative to the prejudice of the estate. This section shall not apply to adjudications in another jurisdiction admitting or refusing to admit a will to probate.

Section 9. (*Payment of Claims.*) No claim against the estate shall be paid in the ancillary administration in this state unless it has been proceeded upon in the manner and within the time required for claims in domiciliary administrations in this state.

Section 10. (*Liability of Local Assets.*) All local assets are subject to the payment of all claims, allowances and charges, whether they are established or incurred in this state or elsewhere. For this purpose local assets may be sold in this state and the proceeds forwarded to the representative in the jurisdiction where the claim was established or the charge incurred.

Section 11. (*Payment of Claims in Case of Insolvency.*)

(1) *Equality subject to preferences and security.* If the estate either in this state or as a whole is insolvent, it shall be disposed of so that, as far as possible, each creditor whose claim has been allowed, either in this state or elsewhere, shall receive an equal proportion of his claim subject to preferences and priorities and to any security which a creditor has as to particular assets. If a preference or priority is allowed in another jurisdiction but not in this state, the creditor so benefited shall receive dividends from local assets only upon the balance of his claim after deducting the amount of such benefit. The validity and effect of any security held in this state shall be determined by the law of this state but a secured creditor who has not released or surrendered his security shall be entitled only to a proportion computed upon the balance due after the value of all security not exempt from the claims of unsecured creditors is determined and credited upon the claim secured by it.

(2) *Procedure.* In case of insolvency and if local assets permit, each claim allowed in this state shall be paid its proportion, and any balance of assets shall be disposed of in accordance with section 12. If local assets are not sufficient

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to pay all claims allowed in this state the full amount to which they are entitled under this section, local assets shall be marshalled so that each claim allowed in this state shall be paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

Section 12. (*Transfer of Residue to Domiciliary Representative.*) Unless the court shall otherwise order, any moveable assets remaining on hand after payment of all claims allowed in this state and of all taxes and charges levied or incurred in this state shall be ordered transferred to the representative in the domiciliary jurisdiction. The court may decline to make the order until such representative furnishes security or additional security in the domiciliary jurisdiction, for the proper administration and distribution of the assets to be transferred.

Section 13. (*General Law to Apply.*) Except where special provision is made otherwise, the law and procedure in this state relating generally to administration and representatives apply to ancillary administration and representatives.

Section 14. (*Uniformity of Interpretation.*) This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 15. (*Short Title.*) This act may be cited as the Uniform Ancillary Administration of Estates Act.

Section 16. (*Repeal.*) [. . . and] all [other] acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Section 17. (*Time of Taking Effect.*) This act shall take effect. . . .

Amendment to Uniform Ancillary Administration of Estates Act

(The text of this amendment was taken from the *Handbook of the National Conference of Commissioners on Uniform State Laws* (1953) 241.)

Section 11 of the Uniform Ancillary Administration of Estates Act as approved in 1949 is amended to read as follows:

Section 11. (*Payment of Claims in Case of Insolvency.*)

(1) *Equality subject to preferences and security.* If the estate either in this state or as a whole is insolvent, it shall be disposed of so that, as far as possible, each creditor whose claim has been allowed, either in this state or elsewhere, shall receive an equal proportion of his claim subject to preferences and priorities and to any security which a creditor has as to particular assets. If a preference, priority or security is allowed in another jurisdiction but not in this state, the creditor so benefited shall receive dividends from local assets only upon the balance of his claim after deducting the amount of such benefit. Creditors who have security claims upon property not exempt from the claims of general creditors, and who have not released or surrendered them, shall have the value of the security determined by converting it to money according to the terms of the security agreement, or by such creditor and the personal representative by agreement, arbitration, compromise or litigation, as the court may direct, and the value so determined shall be credited upon the claim, and dividends shall be computed and paid only on the unpaid balance. Such determination shall be under the supervision and control of the court.

(2) *Procedure.* In case of insolvency and if local assets permit, each claim allowed in this state shall be paid its proportion, and any balance of assets shall be disposed of in accordance with Section 12. If local assets are not sufficient to pay all claims allowed in this state the full amount to which they are entitled under this section, local assets shall be so marshalled so that each claim allowed in this state shall be paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.