

ARTICLE IV

FOREIGN FIDUCIARIES

MASSACHUSETTS COMMENT

This Article is substantially similar to Massachusetts G.L. c. 199A, which itself was based upon prior versions of the UPC. Nothing in this Article is intended to limit the jurisdiction of the Probate Court under other provisions of the General Laws.

GENERAL COMMENT

This Article concerns the law applicable in estate problems which involve more than a single state. It covers the powers and responsibilities in the adopting state of personal representatives appointed in other states.

Some provisions of the Code covering local appointment of personal representatives for non-residents appear in Article III. These include the following: 3-201 (venue), 3-202 (resolution of conflicting claims regarding domicile), 3-203 (priority as personal representative of representative previously appointed at domicile), 3-307(a) (30 days delay required before appointment of a local representative for a non-resident), 3-803(a) (claims barred by non-claim at domicile before local administration commenced are barred locally) and 3-815 (duty of personal representative in regard to claims where estate is being administered in more than one state). See also 3-308, 3-611(a) and 3-816. Also, see Section 4-207.

The recognition provisions contained in Article IV and the various provisions of Article III which relate to administration of estates of non-residents are designed to coerce respect for domiciliary procedures and administrative acts to the extent possible.

The first part of Article IV contains some definitions of particular relevance to estates located in two or more states.

The second part of Article IV deals with the powers of foreign personal representatives in a jurisdiction adopting the Uniform Probate Code. There are different types of powers which may be exercised. First, a foreign personal representative has the power under Section 4-201 to receive payments of debts owed to the decedent or to accept delivery of property belonging to the decedent. The foreign personal representative provides an affidavit indicating the date of death of the non-resident decedent, that no local administration has been commenced and that the foreign personal representative is entitled to payment or delivery. Payment under this provision can be made any time more than 60 days after the death of the decedent. When made in good faith the payment operates as a discharge of the debtor. A protection for local creditors of the decedent is provided in Section 4-203, under which local debtors of the non-resident decedent can be notified of the claims which local creditors have against the estate. This notification will prevent payment under this provision.

A second type of power is provided in Sections 4-204 to 4-206. Under these provisions a domiciliary foreign personal representative can file with the appropriate court a copy of his appointment and official bond if he has one. Upon so filing, the domiciliary foreign personal representative has all of the powers of a personal representative appointed by the local court. This would be all of the powers provided for in an unsupervised administration as provided in Article III of the Code.

The third type of power which may be obtained by a foreign personal representative is conferred by the priority the domiciliary personal representative enjoys in respect to local appointment. This is covered by Section 3-203. Also, see Section 3-611(b) regarding removal of a personal representative.

Part 3 provides for power in the local court over foreign personal representatives who act

locally. If a local or ancillary administration has been started, provisions in Article III subject the appointee to the power of the court. See Section 3-602. In Part 3 of this Article, it is provided that a foreign personal representative submits himself or herself to the jurisdiction of the local court by filing a copy of his or her appointment to get the powers provided in Section 4-205 or by doing any act which would give the state jurisdiction over him or her as an individual. In addition, the collection of funds as provided in Section 4-201 gives the court quasi-in-rem jurisdiction over the foreign personal representative to the extent of the funds collected.

Finally, Section 4-303 provides that the foreign personal representative is subject to the jurisdiction of the local court "to the same extent that the decedent was subject to jurisdiction immediately prior to death." This is similar to the typical non-resident motorist provision that provides for jurisdiction over the personal representative of a deceased non-resident motorist, see Note, 44 Iowa L.Rev. 384 (1959). It is, however, a much broader provision. Section 4-304 provides for the mechanical steps to be taken in serving the foreign personal representatives.

Part 4 of the Article deals with the res judicata effect to be given adjudications for or against a foreign personal representative. Any such adjudication is to be conclusive on a local personal representative "unless it resulted from fraud or collusion . . . to the prejudice of the estate." This provision must be read with Section 3-408 which deals with certain out-of-state findings concerning a decedent's estate.

PART 1

DEFINITIONS

Section 4-101. [Definitions.]

In this Article

- (1) "Domiciliary foreign guardian or foreign conservator", a foreign guardian or foreign conservator currently qualified and acting under appointment by a court of another jurisdiction in which the protected person is currently domiciled.
- (2) "Domiciliary foreign personal representative", a foreign personal representative under the law of the jurisdiction of a decedent's domicile.
- (3) "Foreign guardian or foreign conservator", a guardian or conservator who was appointed by a court of another jurisdiction to administer the estate of a minor or other protected person.
- (4) "Local administration", administration by a personal representative appointed in the commonwealth pursuant to appointment proceedings described in article III.
- (5) "Local guardian or conservator", a guardian or conservator appointed in the commonwealth pursuant to appointment proceedings described in article V, but excluding one who is merely a guardian ad item.
- (6) "Local personal representative", includes any personal representative appointed in the commonwealth pursuant to appointment proceedings described in article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 4-205.
- (7) "Nonresident protected person", a protected person who is currently domiciled in another jurisdiction.
- (8) "Protected person", a minor or other person whose estate in the commonwealth or in any other jurisdiction is currently administered by a guardian or conservator appointed by a court.
- (9) "Resident creditor", a person domiciled in, or doing business in the commonwealth, who is, or could be, a claimant against an estate of a non-resident decedent or a nonresident protected person.

COMMENT

Section 1-201 includes definitions of "foreign personal representative", "personal representative" and "non-resident decedent".

PART 2

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

Section 4-201. [Payment of Debt and Delivery of Property to Domiciliary Foreign Personal Representative Without Local Administration.]

(a) At any time after the expiration of 60 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, or holding personal property subject to a general power of appointment exercised by the will of a nonresident decedent duly admitted to probate in a foreign jurisdiction, 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 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.

(b) Payment or delivery may be made to a foreign personal representative of a nonresident decedent appointed in a jurisdiction which was not the domicile of the decedent upon similar proof of appointment and affidavit, if such affidavit also states that there is no domiciliary foreign personal representative and no proceedings are pending for appointment of a personal representative in any court in the jurisdiction of the decedent's domicile and that the foreign personal representative is the personal representative appointed in the appointment proceeding first commenced.

(c) If such nonresident decedent owned tangible personal property located in the commonwealth at the time of death, or at any time during the twelve months preceding death had a permanent or temporary place of abode in the commonwealth, a foreign personal representative of the decedent shall not accept payment or delivery pursuant to this section earlier than one month after filing proof of his or her authority in accordance with Section 4-204 with a copy to the commissioner of revenue.

(d) Any person indebted to a nonresident protected person who has not been domiciled in the commonwealth at any time within the preceding year, or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to such nonresident protected person may pay the debt or deliver the personal property or the instrument to the domiciliary foreign guardian or conservator upon being presented with proof of his or her appointment and an affidavit made by or on behalf of the guardian or conservator stating:

(1) that the protected person is not and has not been domiciled in the commonwealth at any time within the preceding year,

(2) that no local guardian or conservator has been appointed for the protected person and no application or petition therefor is pending in the commonwealth, and

(3) that the foreign guardian or conservator has duly qualified, is currently acting and is entitled to payment or delivery.

(e) Payment or delivery may be made to a foreign guardian or conservator of a nonresident protected person appointed in a jurisdiction which is not the current domicile of the protected person upon similar proof of appointment and affidavit, if such affidavit also states:

(1) that there is no domiciliary foreign guardian or conservator and no proceedings are pending for appointment of a guardian or conservator in any court of the jurisdiction of the protected person's domicile, and

(2) that either the protected person was domiciled in the jurisdiction in which the foreign guardian or conservator was appointed at the time of his or her appointment, or that the foreign guardian or conservator is the guardian or conservator appointed in the appointment proceeding first commenced.

COMMENT

Section 3-201(d) refers to the location of the tangible personal estate and intangible personal estate which may be evidenced by an instrument. The instant section includes both categories.

Section 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 to the same extent as if payment or delivery had been made to a local personal representative or local guardian or conservator.

Section 4-203. [Resident Creditor Notice.]

Payment or delivery under section 4-201 may not be made if a resident creditor of the nonresident decedent or nonresident protected person has notified the debtor of the nonresident decedent or nonresident protected person or the person having possession of the personal property belonging to or appointed by the nonresident decedent or belonging to the nonresident protected person that the debt should not be paid nor the property delivered to the foreign personal representative, guardian or conservator.

Section 4-204. [Proof of Authority-Bond]

If no local administration or application or petition therefor is pending in the commonwealth, a domiciliary foreign personal representative may file with a court in the commonwealth in a county in which property belonging to the decedent is located, authenticated copies of the domiciliary appointment and of any official bond given.

Section 4-205. [Powers.]

A domiciliary foreign personal representative who has complied with section 4-204 may exercise as to personal property in the commonwealth all powers of a local personal representative acting in a similar representative capacity and may maintain actions and proceedings in the commonwealth subject to any conditions imposed upon nonresident parties generally.

Section 4-206. [Power of Representatives in Transition.]

The power of a foreign personal representative under section 4-201 or 4-205 shall be exercised only if there is no administration or application therefor pending in the commonwealth. An application or petition for local administration of the estate terminates the power of the domiciliary foreign personal representative to act under section 4-205, but the court may allow the domiciliary 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 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 the foreign personal representative in any action or proceedings in the commonwealth.

The power of a foreign guardian or conservator under section 4-201 shall be exercised only if no local guardian or conservator has been appointed and no application therefor is pending in the commonwealth. No person who, before receiving actual notice of such appointment or application, has changed position in reliance upon the powers of a foreign guardian or conservator shall be prejudiced by reason of the appointment of a local guardian or conservator or an application therefor.

Section 4-207. [Ancillary and Other Local Administrations; Provisions Governing.]

In respect to a nonresident decedent, the provisions of article III of this code govern (1) proceedings, if any, in a court of the commonwealth 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.

COMMENT

The purpose of this section is to direct attention to Article III for sections controlling local probates and administrations. See in particular, 1-301, 3-201, 3-202, 3-203, 3-307(a), 3-308, 3-611(b), 3-803(a), 3-815 and 3-816.

PART 3

JURISDICTION OVER FOREIGN REPRESENTATIVES

Section 4-301. [Jurisdiction by Act of Foreign Personal Representative.]

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

A foreign guardian or conservator shall submit to the jurisdiction of the courts of the commonwealth by acting under clauses (2) and (3) of the preceding paragraph.

COMMENT

The words "Courts of the commonwealth" are sufficient under federal legislation to include a federal court having jurisdiction in the commonwealth.

A foreign personal representative appointed at the decedent's domicile has priority for appointment in any local administration proceeding. See Section 3-203(g). Once appointed, a local personal representative remains subject to the jurisdiction of the appointing court under Section 3-602.

Section 4-302. [Jurisdiction by Act of Decedent.]

In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of the commonwealth to the same extent that the decedent was subject to jurisdiction immediately prior to death.

Section 4-302A. [Proceedings to Determine Property Rights.]

In any proceeding in the commonwealth to determine rights in real or personal property in the commonwealth or administered by a fiduciary in the commonwealth or under a will admitted to probate in the commonwealth:

- (a) The interest of a nonresident decedent whose estate is not under local administration may be represented by any foreign personal representative of a decedent named a party to the proceeding and served in the manner provided in section 4-303 or by other lawful means;
- (b) The interest of a nonresident protected person named a party to the proceeding for whom there is no local guardian or conservator may be represented by a foreign guardian or conservator served in the manner provided in section 4-303 or by other lawful means. The authority of a foreign personal representative or of a foreign guardian or conservator under this section shall

include authority to be a party to an agreement of compromise in respect of the rights of the decedent or the protected person in such property. The procedures authorized in this section are in addition to and not in limitation of all other applicable procedures.

Section 4-303. [Service on Foreign Personal Representative.]

(a) In addition to and not in limitation of other provisions of law, service of process may be made upon the foreign personal representative, guardian or conservator by registered or certified mail, addressed to the 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 the commonwealth on either the foreign personal representative or the decedent immediately prior to death.

(b) If service is made upon a foreign personal representative, guardian or conservator as provided in subsection (a), the foreign personal representative shall be allowed at least 30 days within which to appear or respond.

COMMENT

The provision for ordinary mail as a substitute for registered or certified mail is provided because, under the present postal regulations, registered mail may not be available to reach certain addresses, 39 C.F.R. Sec. 51.3(c), and also certified mail may not be available as a process for service because of the method of delivery used, 39 C.F.R. Sec. 58.5(c) (rural deliver) and (d) (star route delivery.)

PART 4

CONCLUSIVENESS OF JUDGMENTS

Section 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 of a non resident decedent is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

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