

**DISPENSING WITH OR SIMPLIFYING PROBATE ADMINISTRATION
UNDER THE UNIFORM PROBATE CODE**

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The probate codes of most states incorporate procedures for shortening or entirely dispensing with probate administration in situations where a full blown administration serves no practical purpose. This is also true of the Uniform Probate Code. This article will explore briefly the mechanisms established as part of the UPC for curtailing or eliminating what might be termed the “formal” administration process. The reader should keep in mind that the normal administration of a probate estate would be accomplished by the personal representative or executor, usually, over a minimum period of six months to a year (depending on the particular state) and would entail a substantial volume of administrative responsibility. Among the responsibilities of the representative would be the supervision of funeral and burial arrangements, collection of estate assets, inventorying assets for the Court, identifying creditors and classifying their claims for proper payment, providing support to surviving family members, determining and paying all state and federal taxes (including income taxes, generation skipping taxes, possibly gift taxes and estate and inheritance taxes), liquidation and distribution of assets according to the terms of the will or the intestacy statutes. Between administrative responsibilities the representative would be responsible for formal accountings to the court and the management of the estate’s tax obligations.

It is quite typical for a probate code to provide for the shortening or elimination of the administrative process in a variety of situations. Among these would be the situation where the estate is relatively small and the assets of the estate would be entirely used up

in funding allowances to the surviving spouse and minor, unemancipated children of decedent. Another situation would be that where the value of the estate is small, there are neither surviving spouse nor minor children but there are one or more creditors whose claims, if allowed, would consume a portion of the estate. Finally, there is the case of the small estate with a number of beneficiaries entitled to all personal and real property (this entitlement established either by a will or by the intestacy laws of the particular state) who have filed an affidavit alleging this entitlement together with a statement that they will pay all claims (in order of preference) and distribute the remaining estate among themselves.

The approach of the UPC is to provide parties interested in the estate a number of procedures ranging from informal to supervised administration. The level of formality and court involvement is by and large up to the interested parties. The Code's procedures are straight forward, uncomplicated and efficient. The approach is similar in some ways to independent administration (where an estate is administered without order or adjudication of a court). The Uniform Probate Code attempts to provide more flexibility in its approach by reducing procedural alternatives and combinations to some specific procedural devices: informal appointment, formal appointment, informal probate, formal testacy, formal closing and supervised administration. Included in these specific procedures are detailed provisions establishing title to property, affidavit and summary procedures for handling very small estates, universal succession rules and informal procedures. Under the UPC, all proceedings are independent of each other with the exception of supervised administration. The net result is that the beneficiaries themselves tailor make the administration of the estate to suit their needs.

As with the administration of any estate, interested persons will consider certain factors in determining how formalized administration procedures should be and to what extent the Court should be involved. Obvious factors to be considered are the size and complexity of the estate, the relationship of interested parties and the level of trust amongst those parties, the wishes of the decedent as expressed in his or her will, whether or not the personal liability of the parties or the personal representative are issues to be dealt with and whether or not there are assets having particular requirements for succession of title (such as real estate).

So, what this boils down to is that in UPC jurisdictions there are three basic types of procedures: “informal,” “formal,” and “supervised.” Informal actions would be ministerial functions which could be accomplished by filing an application with the clerk (the UPC would refer to this office as “registrar”). Examples would be proceedings for the probate of a will or proceedings to officially appoint the fiduciary (executor, personal representative, etc.). There are no notice requirements, there is no hearing, the clerk simply does it or refuses to do it.

Notwithstanding the overall efficiency and simplicity of administration under the Code, it includes one implied procedure and two special procedures for addressing the transfer of the small estate.

1. The Summary Procedure for Small Estates. This procedure is contained in §§3-1203 and 3-1204 of the Code. It was designed to streamline and abbreviate the administration process. A person with “priority”¹ would file an application with the

¹ Priority deals with the order for appointment of a domiciliary personal representative. Priorities 1 through 3 concern a testate estate; priorities 4 and 5 concern an intestate estate and the last priority is given to creditors when no persons fit the other priority categories. Priority rank 1 includes persons named in a will, including named successors and nominated selectees under a power in the will. Priority 2 would include the surviving spouse who is a devisee, or the

clerk for the informal appointment of a personal representative.² There is then estate inventory and appraisal to determine the value of the estate. If the net value (that is the value less liens and encumbrances) will not exceed the value of the family protections³, costs of administration, reasonable funeral expenses and the expenses of final sickness, the personal representative may immediately disburse and distribute the estate to the appropriate persons without giving the normal mandatory notice to creditors. This permits speedy payment of bills and payment of family protections. The personal representative can then close the estate by filing an affidavit that to the best of his/her knowledge, the value of the estate did not exceed the value of the family protections and other deductible expenses and that distribution of the estate is now complete⁴. Once this affidavit is filed, certain consequences attach: (1) successors and unpaid creditors have only six months to assert any claims they may have; (2) the appointment of the personal representative terminates one year after the filing if no claims are pending.⁵

2. Universal Succession. The second summary procedure for small estates is termed by the Code as “universal succession,” or succession without administration. This

surviving spouse’s selectee. Priority 3 would include other devisees or their selectees. Priority 4 would include the surviving spouse or his or her selectees. Priority 5 would include other heirs or their selectees. Priority 6 would include any creditor after forty-five days after decedent’s death. Code §3-203 deals with both qualification and disqualification. Priority ranking applies to both formal and informal appointment proceedings. In informal proceedings the clerk must strictly comply with the order of priorities.

² An informal proceeding simply means that an application is filed with the clerk who passes on the sufficiency of the application and issues the appropriate document evidencing the appointment. No notice is required. This informal appointment gives the personal representative full status. [See §3-307(b)]

³ Family protections are provided for to ensure that the surviving spouse and minor and dependent children are adequately cared for. These protections include the Homestead Allowance, the Family Allowance, and the Exempt Property Allowance. These allowances are exempt from the claims of creditors.

⁴ A copy of the statement is sent to all distributees and known but unpaid creditors. The personal representative asserts in the sworn statement that this was done.

⁵ This procedure is the same for testate and intestate estates with two possible exceptions for the testate estate: the person designated in the will as executor has priority of appointment; second, the person who is designated in the will should, at the same time file an application for informal probate and informal appointment. The informal probate protects the devisees’ titles and rights if additional property is discovered.

procedure offers successors⁶ interested in the estate the ability to settle the estate without going through any administrative process. If successors follow Code requirements, they can pay creditor claims, distribute assets to those entitled and prove title to the assets upon transfer. There is no notice that must be given creditors and there no non-claim limitation. The use of universal succession carries no dollar limitation on its use.

If an estate has no complicated tax issues (that is, if no federal estate tax return is due and there are no issues with gift tax or with the generation skipping transfer tax or perhaps valuation issues) the use of universal succession would be ideal providing:

(1) there are no creditors or, if there are, their claims can be settled without difficulty; (2) estate assets can be gathered and obligations owing to the estate can be collected without the assistance of a formal administrative process; and (3) successors are easily identifiable and cooperative.

Indeed, the universal succession vehicle is more convenient than some of the small estate procedures available in a number of states because the universal succession feature is available regardless of the estate size.⁷ For example, in non-Code states a spousal refusal may be available to simplify estate settlement, but obviously there must be a surviving spouse and unmarried minor children for the process to work most efficiently.⁸ In the case of a creditor's refusal, the dollar limitation is in some states quite low⁹ and the creditor may be required to post a bond. Small estate procedures might

⁶ The term "successors" means persons entitled to estate assets. The term would include legatees and devisees in testate estates and heirs at law in intestate estates.

⁷ For instance, in Missouri, if the estate is \$40,000 or less, the small estate feature is available. Estates over that limitation must be administered by opening a full probated estate.

⁸ With a spousal refusal, the estate would consist of only enough assets to fund the homestead allowance, the family support allowance and the exempt property allowance. The surviving spouse and unmarried minor children would take the assets without concern about creditors.

⁹ In Missouri, for instance, the dollar limitation is \$15,000, so if the estate assets exceed this the procedure cannot be used. [See §473.090.1(2) RSMo.

cover non-spousal situations where assets are in excess of the creditor refusal limits and less than \$40,000.¹⁰ The successors must agree to assume personal liability for decedent's debts and agree to distribute the assets to other persons entitled to the assets. Heirs (in the case of intestate estates) and residual legatees (in testate estates) must join in the application for universal succession.¹¹ Upon filing this application the clerk will grant the application if the application is complete, all proper persons have been joined, if venue is proper, if notice has been given or waived, if time limitations for initial probate have not expired or appointment proceedings have not expired, if informal probate is requested that the requirements of admitting a will to probate have been complied with and that no applicant is a minor, incapacitated or protected person.

¹⁰ The limit in Missouri, for example.

¹¹ The application is addressed to the clerk (or registrar, if that term is used) and must include certain specific information: (1) if filed by heirs of an intestate the same information required for informal appointment under §§3-301(a)(1) and (4)(i) [which is the applicant's interest in the appointment of a personal representative, decedent's vital statistics including name, date of death and age; the names and addresses of decedent's spouse, children, heirs and devisees so far as the applicant knows or with reasonable diligence can ascertain along with the ages of any who are minors; the decedent's domicile and if not within the state, the basis of venue; the identity and address of any untermiated personal representative of the decedent and appointed in the state or elsewhere; whether the applicant has received a demand for notice or is aware of any demand for notice in any probate or appointment proceeding concerning the decedent which might have been filed in this state or elsewhere; that more than three years have not passed since decedent's death or if such time has elapsed, circumstances exist authorizing tardy informal appointment under §3-108] (2) if filed by residuary devisees under a will, all statements required for informal appointment and informal probate under §§3-301(a)(1) and (2)(and that the applicants include all competent residuary devisees plus all heirs if the estate is partially intestate; (3) whether letters of administration are outstanding, whether a petition for appointment of a personal representative is pending in any court in the state, and whether the applicants waive their right to seek appointment as a personal representative of the decedent; (4) the applicants accept responsibility for the estate and assume personal liability for the decedent's and decedent's estate's taxes, debts, claims and distributions due to appropriate successors; and (5) an optional requirement of describing in general terms the assets of the estate.