

STATE OF MINNESOTA

IN SUPREME COURT

In re Appointment of  
the Advisory Committee  
on Probate Rules

PETITION FOR HEARING  
ON PROBATE RULES

OFFICE OF  
APPELLATE COURTS  
FILED

To: The Supreme Court, State of Minnesota  
Attention: Chief Justice Douglas Amdahl

APR 29 1986

WAYNE TSCHIMPERLE  
CLERK

The undersigned Petitioner hereby petitions the  
Supreme Court of the State of Minnesota as follows:

1. That on January 24, 1984, Chief Justice Douglas Amdahl of the Minnesota Supreme Court duly appointed an Advisory Committee on Probate Rules to study and recommend rules pertaining to probate administration in the State of Minnesota "to draft and submit to this Court proposed uniform rules for the handling and disposition of probate matters in the courts of this state."

2. That petitioner was appointed by said Order to serve as the Chairman. Pursuant to said appointment, several meetings have been called by the Chairman from time to time, and after deliberation and study the Committee has completed its work and has submitted herewith its Proposed Rules for adoption.

3. That said Rules were unanimously adopted by the Committee with the exception of two dissenting reports by Committee members Elizabeth Drake and John Connelly, whose dissents have been printed and also submitted to the Court.

4. That it is necessary that a public hearing be held to legally promulgate said Rules to make them effective.

Now, therefore, Petitioner requests that the Supreme Court fix a time and place for hearing on said Rules with proper notice in order to afford all interested and affected parties an opportunity to be heard with respect to their views on said Rules and that the Rules be adopted by the Court with such revisions and changes as the Court may deem appropriate.

April 29, 1986.

A handwritten signature in black ink, appearing to read "Melvin J. Peterson", written over a horizontal line.

Melvin J. Peterson  
Chairman, Advisory Committee  
on Probate Rules

MINNESOTA PROBATE RULES COMMITTEE  
OF THE SUPREME COURT

DISSENT:

The undersigned hereby submits this dissent to the following proposed rules adopted by the Committee, viz:

1. Rule 42 which pertains to the sale of real property during the period of probate.
2. Rule 43 which pertains to the distribution of real property.
3. Rule 15 which pertains to the duties and powers of the registrar.

The above proposed rules as drafted are in conflict with established real property practice as set forth in the probate portion of the so-called "white pages" approved and used by members of the Real Property Section throughout the State. The probate section of the "white pages" were first printed and placed in the back of the Title Standard Book in 1976, and were updated, approved by the Real Property Council, and printed and placed in the back of the Title Standard Book in 1985. These white pages set forth a consensus among real estate practitioners throughout the State of title requirements. The real property council of the Minnesota State Bar Association, which council represents attorneys from all areas of the state, unanimously voted at their regular council meeting on November 16, 1984, against the adoption of the probate rules as then proposed. (see attached copy of letter to Judge Peterson from Ralph H. Tully, chairperson of Real Property Section, dated December 3, 1984, marked Exhibit "A").

It should be pointed out the rules as submitted to the council on November 16, 1984, have been slightly amended, but the amendments made subsequent to November 16, 1984 and submitted in the final draft of the rules now presented to the Court for approval, do not correct or change any of the objections of the members of the council to rules 42 and 43 as stated at the meeting of November 16, 1984.

The probate rules as submitted deal inappropriately with documents required for passage of title by title examiners, and not with procedures for and requirements of the Courts and the Registrars in administering real property matters in probate proceedings. If the rules are properly drawn, there should be no problem with the documentation for either sale or distribution in either the informal, formal, or supervised proceeding.

The objection to each rule will be hereinafter discussed and proposed substitute rules are set forth in Exhibits B, C and D.

RE RULE 42: TRANSFER OF REAL ESTATE IN SUPERVISED AND UNSUPERVISED ADMINISTRATION: TRANSFER BY PERSONAL REPRESENTATIVE OF REAL PROPERTY FOR VALUE: DOCUMENTS REQUIRED: PROTECTION OF TRANSFEREE.

The rule submitted for approval not only omits the requirement of the filing of a Will with the County Recorder, but actually attempts to dictate that a Will shall not be filed unless the transferee has actual knowledge of the provisions of the Will. Even with knowledge that a Will exists, the proponents of the rule believe there is no duty to check the document. Because the letters are designated letters testamentary, the transferee does have knowledge

of the existence of a Will, and therefore is put on notice that there may be provisions in the Will that limit the rights of the personal representative to transfer the property. Can a transfer contrary to the provisions of a Will be made valid merely because a transferee didn't look at the Will, although he or she had knowledge that a Will did exist? It has been the practice of examining attorneys, both prior to and subsequent to the passage of the Uniform Probate Code to require the filing of the Will. If the Will prohibits the sale of the property, or if the property is specifically devised, then examiners require either Court approval of the transfer after notice to proper parties or a recordable deed executed by the devisee and spouse, if any, as well as a recordable probate deed of sale executed by the personal representative.

The purpose of filing the Will is to ascertain whether the decedent in his or her Will either prohibited the sale of the property, or gave the property to a specific devisee. Who is to determine whether a transferee has "actual knowledge" of a provision of the Will? Will a mortgagee who is financing the purchase of a sale of property in probate assume the purchaser has no actual knowledge of a provision of the Will, and therefore finance the purchase of the property without checking the Will? It is doubtful any attorney representing a mortgagee would render an opinion as to the marketability of the title without first checking the provisions of the Will.

The rule has a vague caveat in regard to registered land. Minnesota Statutes, Section 508.68, which was amended subsequent

to the passage and adoption of the Uniform Probate Code, states, in part, as follows, viz:

" x x x Unless restricted by letters of testamentary or letters of administration, a personal representative may sell, convey or mortgage registered land in the same manner as if the land were registered in his name. Such personal representative shall first file with the registrar a certified copy of any Will of the decedent and a certified copy of his letters." (Underline mine)

Instead of the caveat, why doesn't the rule as proposed state that if the property is registered a certified copy of the Will of the decedent shall be filed? This statute indicates a legislative intent that the Will should be of record and available for examination, which intent title examiners believe is applicable not only to registered land but to abstract land as well.

If one of the purposes of the new Probate Rules is to have uniformity and avoid confusion, then, inasmuch as the statute requires the filing of the Will for registered land, it should also be filed in abstract property. It is interesting to note that approximately forty per cent of the property in Hennepin County is registered property. Wherever possible, special rules for either registered or abstract property should be avoided.

Minnesota Statutes, Section 508.02 is, in part, as follows, viz:

"Registered land subject to same incidents as unregistered: adverse possession excepted.  
Registered land shall be subject to the same burdens and incidents which attach by law to unregistered land. x x x "

Shouldn't the converse rule apply so that abstract land should be subject to the same burdens and incidents which attach to registered land?

Minnesota Statutes Section 524.3-101 states in part as follows:

"x x x Upon the death of a person, his real and personal property devolves to the person to whom it is devised by his last Will or to those indicated as substitutes for them in cases involving lapse, disclaimer, renunciation or other circumstances affecting the devolution of testate estate x x x subject to the provisions of section 525.14 and 525.145, the allowance provided for by section 525.15, to the rights of creditors, elective share of the surviving spouse and to administration."

Real property vests in the devisee upon the death of the decedent subject to the provisions of the statutes above set forth in MSA 524.3-101. The decision of the Minnesota Court of Appeals, In re Estate of Edward F. Fitzgerald, a.k.a. Edward Fitzgerald, Deceased, No. C2-85-18 (370 NW 2nd 683), dated July 2, 1985, in its analysis of the case, stated as follows, viz:

"(6-8) In general, the law favors vesting. In re Estate of Freeman, 151-Minn. 446, 449, 187 NW 411, 412 (1922), and the rule is that, subject to administration, real property will pass to a devisee at the time of death. x x x)

Minnesota Statutes Section 524.3-715 does not grant the personal representative an absolute or unqualified right to sell the real property. The very title of the section indicates there are exceptions to the authority of the personal representative. The right authorized to sell is as follows:

Minnesota Statutes, Section 524.3-715. "Except as restricted or otherwise provided by the Will or by an order in a formal proceeding and subject to the priorities stated in section 524.3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly: x x x

(2) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances, provided, however, that the homestead of a decedent when the spouse takes any interest therein shall not be sold, mortgaged or leased unless the written consent of the spouse has been obtained. (underline mine)

Minnesota Statutes Section 524.3-714 attempts to protect a person dealing with a personal representative. The statute goes so far as to attempt to protect a "good faith purchaser" against any procedural irregularity or jurisdictional defect occurring in the proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. Mr. Connolly has discussed the constitutionality of this statute in his dissent. The statute further states:

"x x x no provision in any will or order of Court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof."

It has always been the practice of title examiners who have knowledge of the existence of a document that might pertain to the property being examined, to make inquiry and examine the document. There certainly could be a question as to what is "actual knowledge". What constitutes a bona fide purchaser. Both are questions of fact.

Title examiners do not want to expose their clients, or themselves, to the possibility of a lawsuit. It should be pointed out that usually the personal representative is not bonded and often in informal proceedings is not represented by attorney. There is virtually no supervision of the personal representative. There is great opportunity for fraud or mistake. An interested person who has been notified in the original probate proceeding that he or she has been devised a specific piece of property should have the right to expect the property will be distributed to him or her unless consent is given by the devisee to the sale of the property, or



unless notified of a Court hearing to determine the property will be sold because of statutory reasons. Because real property is unique, if the property were improperly sold by the personal representative, a devisee probably would sue the purchaser for the return of the property. In turn, the purchaser might sue the examining attorney for malpractice on the basis the Will specifically gave the property to the devisee, and allege that the attorney should have looked at the Will. The examining attorney does have notice of a Will. It certainly is prudent that the examining attorney check the Will in order to avoid a lawsuit against the client, and against the attorney.

For the above reasons, in lieu of the proposed rule 42 I suggest a substitute rule as set forth in Exhibit B of this dissent.

RE RULE 43: DISTRIBUTION OF REAL PROPERTY: DOCUMENTS REQUIRED: PROTECTION OF TRANSFEREE FROM DISTRIBUTE.

RE RULE 15: DESIGNATION, FUNCTION AND POWERS OF REGISTRAR.

Prior to and subsequent to the passage of the Uniform Probate Code a certified copy of Decree of Distribution has been accepted by title examiners as a proper document to transfer the title to real property. The Uniform Probate Code included an additional procedure wherein the Court could sign an Order of Distribution, which order would direct the personal representative to execute a probate deed of distribution to the heirs or devisees named in the Order. The Order of Distribution together with the personal representative's deed of distribution drawn pursuant to the Order also has been acceptable as a way to transfer title of real property. The portion of the proposed rule 43 which states that only a certified

copy of letters and a personal representative's deed are sufficient to transfer title in an informal proceeding is not acceptable as a method to transfer title. The reasons for objecting to this portion of the rule are as follows, viz:

A. In a testate situation

It has been the procedure of title examiners to require the filing of the Will if the Will identifies the real property and is specific in designating devisee by name, or if the entire estate or residue is given to a devisee; then the Will together with letters and the deed would be acceptable to transfer the title. The reasons for filing the Will are basically the same reasons as set forth above re rule 42. If the Will does not name the devisee by name, or does not identify the real property, title examiners are of the opinion that the personal representative should procure an Order of the Court which does name the devisee and/or identify the real property. In such case, instead of the Will being filed, then the Order would be filed, together with the letters and deed. The personal representative should not have the power to make an adjudication of who the devisee is, or what property is to be distributed if the Will is not definite and free from ambiguities or definiteness.

B. In an intestate situation

After the passage of the Uniform Probate Code the "white pages" referred to above required a certified copy of the Registrar's determination of heirs setting forth the names of the decedent's heirs and the fractional interest received by each heir in the property, in the informal proceeding. Many personal repre-

representatives are not learned in the law, are not represented by attorneys, and do not know who the heirs are, or what interest each heir is to receive. All the information required by title examiners in the Registrar's determination of heirs can be ascertained by the Registrar from the Application. (see Rule 30). Title examiners are not willing to accept a deed of distribution from a personal representative without some evidence of who the heirs are, what property is involved, and what share or interest each heir has in the property. For example, a personal representative may not know there is a difference in what the surviving spouse is entitled to if the property is homestead, or if it is non-homestead property. We have all had experiences where clients have not known that a child of a deceased child is entitled to an interest in the property, or, if there is only one child and a surviving spouse that each received one-half of the property, except for the homestead. There are many laws of descent which are not known of by the personal representative. We cannot rely on the knowledge and the wisdom of the personal representative to properly convey the property. If the title examiner has the registrar's determination of heirs, he or she can determine from that information if the probate deed of distribution is correct.

The proposed rule 15 which sets forth the duties of the Registrar should add that the Registrar should make an administrative determination of the heirs, and the share or interest of each heir in the real property, as well as the legal description of the homestead property, if any.

Some have argued that the Registrar has no statutory authority

to determine the heirs of the decedent. It should be noted that the statute does require the Registrar to determine if the application is complete, and that the applicant is under oath.

Minnesota Statutes, Section 524.3-308. Informal appointment proceedings; proof and findings required.

"(a) In informal appointment proceedings, the registrar must determine whether:

- (1) the application for informal appointment of a personal representative is complete;
- (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

x x x " (underline mine)

In order for the registrar to determine whether the application is complete as required in Minnesota Statutes Section 524.3-308, reference must be made to the statutory requirements of Minnesota Statutes Section 524.3-301. That statute states that applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to matters set forth in the statute.

Minnesota Statutes, Section <sup>524.</sup>3-301.

" x x x

- (1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:
  - (i) a statement of the interest of the applicant
  - (ii) the name, birthdate and date of death of the decedent, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant.

x x x "

How can a registrar determine an application is complete (524.3-308)

unless the registrar determines the application contains the names of all the heirs and devisees? (524.3-301)

Rule 30 as proposed specifically requires the application contain certain categories of probate and non probate assets, and the values of each. In addition, the application must contain an allegation that specifically eliminates all heirs or devisees other than those listed in the application. Inasmuch as the Registrar has the duty to determine if the application is complete, the registrar under both the statute and Court rules is making a determination of the heirs and devisees in an informal proceeding.

For the above reasons, in lieu of the proposed rules 43 and 15 I suggest a substitute rules as set forth in Exhibits C and D of this dissent.

Respectfully submitted

Dated: March 4, 1986

  
Elizabeth Drake

EXHIBIT A

LAW OFFICES OF  
STRONG, TULLY, TULLY & CROUCH, LTD.

600 NORWEST MIDLAND BUILDING  
MINNEAPOLIS, MINNESOTA 55401

HARLAN B. STRONG  
RALPH H. TULLY  
FORD W. CROUCH  
WELLINGTON TULLY (1908-1983)

TELEPHONE  
333-0911

December 3, 1984

Judge Melvin P. Peterson  
Judge of Probate Court  
Hennepin County Government Center  
Minneapolis, MN 55487

RE: ATTORNEY THOREN'S PROPOSED RULES

Dear Judge Peterson:

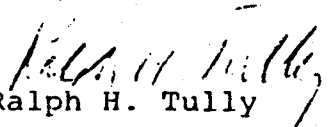
The undersigned is the current chairperson for the Real Estate Section of the Minnesota State Bar Association. On November 16, 1984, the Real Estate Council for said Section held its quarterly meeting. Said Council is composed of two members from each district throughout the State as well as several members from the Twin City area.

A lengthy discussion was held relative to the proposed rules. Concern was expressed over several matters, but one point seemed to be more important than the rest, i.e., the nonrequirement of filing the will with the possible result of a personal representative defeating a specific devise of real property.

A resolution was passed unanimously to inform the Probate Rules Committee of the Council's opposition to Mr. Thoren's proposed rules.

We are not trying to tell the Rules Committee what to do, nor is our intention to look over the Committee's shoulder. We merely wanted to point out that there are many of us who view such a drastic change as not in the best interest of the lawyers and the clients we represent.

Yours, very truly,

  
Ralph H. Tully

RHT/CF

EXHIBIT B

Rule to be substituted for Rule No. 42

TRANSFER OF INTEREST IN REAL PROPERTY BY SALE, LEASE, OR ENCUMBRANCE

A. A personal representative may sell, lease or encumber any interest in real property owned by decedent at the time of death unless

1. there is a Will in which the property is specifically devised. In such case, if it is necessary to sell the real property, the specifically devised property may be transferred
  - a. by a Court Order the property be sold
  - or
  - b. by a recordable deed executed by the specific devisee, and spouse, if any, together with deed executed by personal representative.
2. the Will prohibits the sale of the property. If it is necessary to sell the real property, a Court Order to sell is necessary.
3. A sale to a person who is the personal representative, his spouse, agent or attorney, or others named in Minnesota Statutes 524.3-713 is not acceptable unless
  - a. the will or a contract entered into by the decedent expressly authorized the transaction; or

- b. the transaction is approved by the Court  
after notice to interested persons.
- B. When real property is being sold, leased or encumbered,  
the certified copy of letters must
1. be unrestricted
  2. be 30 days or more since issuance of letters  
if proceeding is informal
  3. certify that no objections to appointment  
have been filed and/or no formal proceedings  
have been commenced, if proceeding is informal.
- C. The probate deed of sale, lease, or mortgage executed  
by the personal representative must
1. state the marital status of the decedent, and  
if decedent survived by spouse, spouse must  
consent to sale, lease or encumbrance.
  2. state the amount of the state deed tax
  3. name the preparer of the deed.



EXHIBIT C

Rule to be substituted for Rule No. 43

RULE 43 DISTRIBUTION OF REAL PROPERTY 43

Unless sold during the period of administration, any interest in real property owned by decedent at death, whether a vendor's interest, vendee's interest, fractional interest, or lease of three years or more, must be distributed by

a Decree of Distribution

OR

an Order of Distribution together with probate deed of distribution executed by personal representative.

OR

a Registrar's Determination of heirs and fractional interest received by each heir in the property, together with probate deed of distribution executed by personal representative.

OR

a Will which identifies real property to be distributed which is specific in designation of devisee by name together with deed of distribution executed by personal representative in favor of named devisee. If entire estate or residue is given to a named devisee in the Will that will suffice as a sufficient identification of the real property. If a Will does not identify the real property to be distributed, or is not specific in designation of devisee by name, it is necessary to petition

the Court for a Decree of Distribution, an Order of Distribution, an Order identifying real property, or an Order designating devisee by name. A probate deed of distribution is necessary if any of the above Orders are issued by the Court.

EXHIBIT D

Addition to Rule 15

RULE 15 DESIGNATION, FUNCTION AND POWERS OF REGISTRAR.

(The following should be added to rule 15 of the proposed rules)

The registrar shall determine the heirs and fractional interest in real property of each heir, including the homestead status of the land.

Submitted by John Connelly  
April 15, 1986  
OFFICE OF  
APPELLATE COURTS  
FILED

MINNESOTA PROBATE RULES COMMITTEE  
OF THE SUPREME COURT.

APR 29 1986

**WAYNE TSCHIMPERLE**  
CLERK

DISSENT:

The undersigned, a member of the above named committee, hereby submits this dissent with respect to Rules 42 and 43 adopted by the Committee at its meeting on March 1, 1985 relating to transfers of real property which bear the following heading:

Rule 42. Transfer by Personal Representative of Real Property for Value;  
Documents Required; Protection of Transferee.

Rule 43. Distribution of Real Property; Documents Required; Protection of  
Transferee from Distributee.

The objection pertains essentially to the omission of the Rules to provide for a Certified Copy of Will to be furnished among the documents required where transfer is made by a Personal Representative in Testate Proceedings.

A brief statement relative to the restructuring of the Probate Court system and the adoption of the Uniform Probate Code in 1974 might be helpful. In 1974 by Constitutional Amendment the Court system was restructured and authority to establish Probate Jurisdiction for the administration of the estates of deceased persons was delegated to the Legislature. (MSA Const Art 6 Sec 11); (Guardianships are not here involved and so will not be discussed). The Legislature has acted and has established the County Court as the Probate Court in all counties except Hennepin and Ramsey, and as to Hennepin and Ramsey has established the Probate Court as a Division of the District Court. In 1974 the Legislature enacted the Uniform Probate Code (MSA Chap 524) and by Sec 524.1-302 (a) To the full extent permitted by the constitution,

conferred upon the Probate Court jurisdiction over all subject matter relating to estates of decedents, including construction of wills and determination of heirs and successors of decedents. MSA Const Art 6 Sec 11 authorizes additional jurisdiction over administration of trust estates as provided by law and MSA 524.3-105 authorizes concurrent jurisdiction in a number of areas which may have heretofore been considered as properly belonging to the District Court. Expressly excluded from the concurrent jurisdiction provisions of this subdivision are foreclosure of mechanics liens and any action under section 573.02 (Death by wrongful act).

The Uniform Probate Code was extensively amended by Chap 347 Laws of 1975, and to a lesser degree from time to time in subsequent years.

With respect to Rule 42. referred to at the top of page 1 hereof:

The Rule as adopted by the committee relates to the transfer of real estate by a Personal Representative during probate. It provides he shall furnish to the transferee (1) a certified copy of Letters, and (2) a deed or other instrument of conveyance which contains the marital status of the decedent and consent of spouse, if any. It omits any requirement to furnish a certified copy of any will in testate proceedings. It is based upon Sec 524.3-714 of the Uniform Code obviously and reliance upon the good faith purchaser doctrine. It further negates any need to inquire into the provisions of any will.

Sec 524.3-714 is extremely broad in favor of a good faith purchaser, in fact so broad that it creates some doubt as to whether it would stand the test of judicial scrutiny. The particular provision in question reads as follows:

"The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive." It does cause some concern where the subject matter jurisdiction is for the administration of the estates of deceased persons.

Sec 524.3-715 entitled: "Transactions authorized for personal representatives; exceptions" contains the following heading: "Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 524.3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:"

then follows 29 specifically enumerated powers of personal representatives including power to sell, mortgage, or lease any real property etc. at #23.

The language of the heading must be construed to limit all 29 of the powers following including 23, and almost amounts to an admonition to examine the will to ascertain if it contains any applicable restrictions or provisions.

Yet the next previous Section 524.3-714 provides that except for restrictions which are endorsed on letters by the court in supervised proceedings, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.

Rather than elaborate further on construction of statutory language and jurisdictional questions, there is a more practical, current and compelling reason for providing that a Certified copy of the Will be included among the documents to be furnished to a transferee in Testate Proceedings.

Among the extensive amendments to the Uniform Probate Code adopted by the Legislature by Chap 347 Laws 1975, this Act also included amendments to two sections of Chap 508 of MSA pertaining to Registered Land, commonly known as the Torrens System. MSA 508.68 as amended insofar as it applies to the proposed Rule in question, provides that unless restricted by letters (of) testamentary or letters of administration, a personal representative may sell, convey, or mortgage registered land in the same manner as if the land were registered in his name. Such personal representative shall first file with the registrar a certified copy of any will of the decedent and a certified copy of his letters.

Sec 508.69, the other of the two amended sections referred to, as amended, provides that a personal representative may sell, mortgage or lease any real property of the estate as authorized by section 524.3-715. Authority under this section is subject to any restrictions or provisions contained in the will as stated in the heading thereof. It is most interesting to note here that this section 508.69, as amended, makes no mention of the protection contained in 524.3-714 in favor of persons without actual knowledge. This leads to the conclusion that the protection in favor of persons without actual knowledge expressed in 524.3-714 is inapplicable at least insofar as registered land is concerned. 508.69 further provides that a purchaser receiving a deed executed by a personal representative shall be entitled to register his title and to the entry of a new certificate of title. It also provides that no certificate shall be issued pursuant to the provisions of this section or of section 508.68 except upon the written certification of the examiner of titles or upon the order of the district court. From the foregoing it seems quite clear that the filing of a certified copy of the will is not only advisable but obligatory where the sale of registered land is concerned.

Activity in the sale and transfer of land registered under the Torrens system has been increasing steadily over a number of years and increased significantly during the last 25 or 30 years, particularly in the Twin Cities Area. Recent statistical estimates indicate that of the active parcels of land being transferred in Hennepin County 40% of the filings are under the Torrens system and in Ramsey County the percentage is 33%. Figures for counties outside this area are not available although it is known that St. Louis County does have considerable activity under its Torrens system. It is my judgment that any rule which sets forth documents required to transfer real estate that ignores the Torrens system except for a simple Caveat at the end of a rule which provides the direct opposite simply does not do the job.

I do not question for a minute that the Probate Court has authority to order real estate to be sold even though the will may contain provisions otherwise. What I do question is a sale by the personal representative at his discretion in informal and in formal but unsupervised proceedings where it appears to be contrary to provisions of the will. As evidence of this I am attaching hereto as an Exhibit a draft of a proposed rule which I submitted in Committee as an alternative which was defeated with preference shown for the two rules here in question which were adopted by majority vote. For purposes of illustration I refer to #3 on page 2 of the Exhibit which sets forth procedure which I consider to be appropriate to cover the situation where the will contains a specific devise or a prohibition of sale. In this connection the way is open to easily obtain interim orders issued by the court at any time during the pendency of administration. MSA 524.3-105. It is quite different where sale is based on an order of court and the procedure consists of a petition followed by a hearing and notice is given to interested parties with an opportunity to be heard, and whereupon such an order constitutes an adjudication. In my judgment such court procedure is a necessity in order to meet the requirements of due process.

In July of 1985 the Court of Appeals of Minnesota rendered a decision pertaining to the sale of specifically devised real estate by the personal representative during probate in the case of *In Re Estate of Fitzgerald*, 370 NW<sup>2</sup> -683 (Minn App 1985). While this case does not go to the issue of the rights of a good faith purchaser for value without actual knowledge, it does have a bearing on the question of the rights of specific devisees of real estate under a will and is worthy of consideration, particularly where the rights of those persons are being divested by a sale and transfer of title by the personal representative during probate. Briefly stated, the decedent died testate and was survived by 2 sons and 5 daughters. His will devised certain real property to his sons and certain other real property to his daughters. The devise to the daughters contained a proviso that his 2 sons shall have the option, within 6 months of his death to



purchase "said 55 acres". On the date the option expired the attorney for the estate mailed to one of the daughters a letter explaining that an agreement had been signed by the two sons which indicated that they had exercised the option, and which included the terms of purchase. That one daughter executed the agreement. The other daughters did not receive notice of this agreement until after the option had expired and they refused to sign. Two of the daughters thereupon filed a petition in probate court to restrain the personal representative (one of the sons) from conveying the property to himself and his brother. Following a hearing, the court determined that neither son had orally exercised their option; and also determined that the option was effectively exercised against the one daughter who had received written notice but that her acknowledgment could not be imputed to the other daughters, who had not received timely notification. The court concluded as a matter of law that the daughters' interest had vested when the decedent died and the sons had failed to exercise their option as against the daughters prior to its expiration. The Court of Appeals affirmed. This decision has significance on two points of law: (1) that real estate vests in specific devisees as of the time of death, and (2) the importance of giving timely notice when specific devisees are being divested of their interest by personal representative's sale during probate.

With respect to Rule 43. referred to at the top of page #1 hereof:

This will be discussed in two parts, namely:

- (a) Distribution of real property; Documents required; and
- (b) Distribution of real property; Protection of transferee from distributee.

With regard to (a) above;

I have no objection to the proposed rule insofar as it applies to Formal Supervised Administration where distribution is made by Decree of Distribution of the Court. Neither do I have any objection in such supervised administration

where distribution is made by the personal representative pursuant to an order of distribution entered by the court with one exception. In testate proceedings MSA 508.68 includes a certified copy of the Will among the documents specified to be filed where registered land is concerned.

In unsupervised administration I believe additional documentation is necessary and in order to obviate redundancy to the extent possible I refer to Exhibit A hereto attached on pages 4 and 5 thereof for further detail, including the CAVEAT on page 5 which is advisory.

In connection with distribution the exhibit also sets forth on page 3 thereof an admonition when a vendor's interest in a contract for deed remains to be distributed. The reason for this is because in this instance error seems to occur more frequently than in any other in probate proceedings. The tendency is to assign the vendors interest in the contract as personal property and forget about the legal title. The situation becomes more important where administration was informal and the omission is discovered after the estate has been settled and the personal representative discharged or after 1 year after a closing statement has been filed. At that point in time correction becomes much more difficult in Subsequent Administration. MSA 524.3-1008.

With regard to (b) on page 6: Protection of transferee from distributee.

This portion of the Rule as adopted by the committee relates to the transfer of real estate by a distributee to a third party transferee who was a stranger to the probate proceeding. It is based upon Sec 524.3-910 of the Uniform Code and, like Sec 524.3-714 supra, reliance upon the good faith purchaser doctrine. It is recognized there has been an expansion of jurisdiction of the Probate Court by sections of the Uniform Probate Code and also by Art 6, Sec 11 of the Constitution as restructured. This is apparent from the language of Sec 524.3-105 relating to concurrent jurisdiction. This subject was also discussed

by our committee. There still remains a question whether it was the intention of the Legislature by Sec 524.3-105 to confer concurrent jurisdiction as to the broad general powers of the District Court or in the nature of the incidental powers necessary for the complete administration and distribution of an estate. The Minnesota Supreme Court case of Leslie v Minneapolis Society of Fine Arts et al 259 NW<sup>2</sup> 898 indicates it was the latter. This case, although not squarely in point and may be considered dicta, nevertheless was decided in 1977 subsequent to enactment of the Uniform Probate Code and the Constitution as Restructured, as evidenced by citations to both therein. Pertinent paragraphs of the opinion are found on page 903 (2,3) and (4) wherein the court stated:

"In a number of areas, probate courts possess exclusive subject matter jurisdiction which is separate and distinct from the jurisdiction of the district courts. The most obvious function of the probate court, both in 1929 and presently, is to distribute the assets of a decedent's estate by determining those persons entitled to take under a will. (Citations). Probate courts also have, for example, the exclusive power to admit a will and to appoint a representative. On the opposite side of the spectrum, probate courts have no jurisdiction to consider issues that are unrelated to the administration, settlement, or distribution of a decedent's estate. As we have frequently held, probate courts have no "independent jurisdiction in equity or at law over controversies between the representatives of the estate, or those claiming under it, with strangers claiming adversely, (or) of collateral actions." (With citations).

(4,5) As a general rule, a probate court also has jurisdiction to exercise all incidental powers which are necessary for an effective exercise of those powers committed exclusively to its jurisdiction. This jurisdiction to exercise incidental powers is frequently concurrent with the jurisdiction of the district courts. Etc etc."

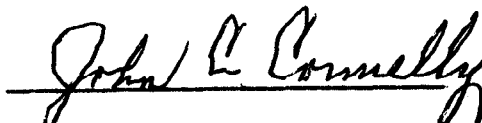
Another instance where the intent of the Legislature is that concurrent jurisdiction not extend to the broad general powers of the District Court but to incidental powers can be deduced from the last sentence of MSA 508.69 where registered land is concerned, which section was discussed supra. This sentence provides that no certificate (of title) shall be issued pursuant to the provisions of this section or of section 508.68 except upon the written certification of the examiner of titles or upon order of the district court. This implies that the probate court, for instance, would not have authority to include in its order or decree a direction that the Registrar of Titles accept specified instruments for filing, to cancel the existing certificate of title and issue a new certificate to the purchaser. For the foregoing reasons it is my contention that a transfer of real estate by a distributee, subsequent to distribution (and possibly after the estate has been closed) to a purchaser who was a stranger to the probate proceeding, is not a proper subject for a rule of practice and procedure in probate court.

From the foregoing analysis the conclusion is quite clear that where registered land is concerned the obtaining and filing of a certified copy of the Will in testate proceedings is obligatory. This applies equally to informal or formal proceedings where transfer is made by deed of the personal representative either during probate or upon distribution. With respect to documents required to transfer real estate there is no essential difference whether the land is registered or unregistered. The same form of instruments are used and every instrument which would affect title to unregistered land if filed with the county recorder in like manner affects the title to registered land if filed with the registrar. MSA 508.02, 508.47, 508.48, 508.68, 508.69.

In the interest of uniformity it is certainly advisable that there be a rule of Probate Court which deals with the transfer of real estate titles which is an important function of probate administration. However, in adopting that rule I believe it is also important to recognize the two systems of filing which exist in this state. I submit that to adopt the proposed rules in question would be a significant departure from the established practice which now exists in this state and that recommended by the Real Property Section of the Minnesota State Bar Association. See Appendix to Minnesota Title Standards (so called White Pages) "Examination of Title", Revision published February 1986, Instruments required to transfer title to Real Property, Chap 1, Sec F and G, pages 25 to 34 incl.

I consider it impractical to adopt a rule which differs in provisions for the two systems of filing. In the first place drafting becomes unwieldy and there is really no necessity for it. In the final analysis the ultimate goal and objective of the transferee, his attorney if he is represented by one, and the title examiner is to obtain the documents which are legally sufficient to establish a marketable title in the land records whether filing be under the Torrens system or abstract-County Recorder system. I perceive that many title examiners will prefer to examine the will rather than put blind faith and total reliance in a statute which purports to give protection to persons without actual knowledge, especially where the lack of knowledge was occasioned by the omission to look or make inquiry with respect to a document which is contained in the same probate court file which was the source of the Letters, and where the court file is a public record and the record is readily available.

Respectfully submitted this 15th day of April 1986.

A handwritten signature in cursive script, reading "John L. Connelly", written over a horizontal line.

E X H I B I T A

TRANSFERS OF REAL ESTATE: ~~222~~ DOCUMENTS REQUIRED TO EFFECT A SALE.

General Comment: The documents hereafter set forth are documents which must be delivered to a purchaser at time of closing. Furthermore it is possible a title examiner for a purchaser or lender will require additional documents at the time of closing.

TRANSFERS ON SALE OF REAL ESTATE BY THE PERSONAL REPRESENTATIVE DURING PROBATE:

General comment: The sale of real estate without Court Order is authorized by 524.3-711.

A sale or encumbrance to a personal representative, his spouse, agent or attorney, or others set forth in 524.3-713 should not be made unless the Will or a contract entered into by the decedent expressly authorizes the transaction, or the Court by Order permits the sale.

INFORMAL OR FORMAL:

Intestate---Full consideration paid:

1. Certified copy of unrestricted Letters.

If appointment was informal, 30 days must have passed since date of Letters; also certificate must state that no objection to appointment has been filed and no formal proceedings have been commenced.

2. Personal representative's deed of sale.

The deed should indicate the marital status of decedent, and (contd)

2. (continued)

contain the consent of surviving spouse, if any. It should also state the amount of state deed tax and the name of the preparer of the deed.

Testate---Full consideration paid:

1. Certified copy of unrestricted Letters. If appointment was informal, 30 days must have passed since date of Letters; also certificate must state that no objection to appointment has been filed and no formal proceedings have been commenced.
2. Certified copy of probated Will and Order for Probate by Court (formal) or Registrar's statement (informal).
3. If the Will specifically devises designated property, that property cannot be sold unless the named devisee and spouse, if any, execute a recordable deed, or the Court, upon notice to interested persons, orders the sale. If the Will prohibits the sale or encumbrance of designated property, there must be a Court Order authorizing sale or encumbrance.
4. Personal representative's deed of sale.

The deed should indicate the marital status of decedent, and contain the consent of surviving spouse, if any. It should also state the amount of state deed tax, and the name of the preparer of the deed.

Personal Representative's Deed pursuant to Contract for Deed wherein decedent was the vendor:

Where decedent was the vendor on a contract for deed, and the contract is fully paid by the vendees during administration of decedent's estate:

Informal or Formal:

1. Certified copy of unrestricted Letters.

If appointment was informal, 30 days must have passed since date of Letters.

2. Personal Representative's Deed of sale.

The deed should indicate the marital status of decedent, and contain the consent of surviving spouse, if any.

If the contract is not of record, the deed should state that it is given pursuant to a contract for deed, and identify the vendors and vendees in the contract and their assigns, if any.

It should also state the amount of state deed tax and the name of the preparer of the deed.

TRANSFERS MADE UPON DISTRIBUTION OF AN ESTATE:

DOCUMENTS REQUIRED:

REAL ESTATE SOLD UNDER CONTRACT FOR DEED:

When the decedent has sold his interest in real estate under contract for deed during his lifetime, or when decedent's interest in real estate is sold during administration under contract for deed, the legal title is retained until the contract has been fulfilled. Unless the legal title has been conveyed by the personal representative during administration either because the contract has become fully paid, or by sale of the vendor's interest, the situation constitutes a distribution for probate purposes at the time the estate is closed and the requirements for distribution of both the legal title and the vendor's interest in the contract should be followed under either formal or informal proceedings.



TRANSFERS MADE UPON DISTRIBUTION---UNSUPERVISED ADMINISTRATION:

INFORMAL OR FORMAL:

Intestate:

1. Certified copy of Letters. If appointment was informal, 30 days must have passed since date of Letters; also certificate must state that no objection to appointment has been filed and no formal proceedings have been commenced.
2. Certified copy of Registrar's determination of heirs, (informal), setting forth the names of decedent's heirs, their relationship to decedent, and their interest, including fractional interests, in both homestead and non-homestead property.

OR

Certified copy of Order of Court determining heirs (formal) setting forth the interest of each, including fractional interests, in both homestead and non-homestead property.

3. Personal representative's Deed of Distribution in accordance with the determination of the Registrar or the Court.

Testate:

For Distribution to be made under this category 2 conditions are required to be met; viz:

- (a) Definite identification in the Will of the real property, and
- (b) Definite identification in the Will of the devisees by specific name designation.

If these conditions are met:

1. Certified copy of Letters. If appointment was informal, 30 days must have passed since date of Letters; also certificate must state that no objection to appointment

1. (continued)

has been filed and no formal proceedings have been commenced.

2. Certified copy of Will and Registrar's Statement probating Will (informal), or Court Order for Probate of Will (formal).
3. Personal Representative's Deed of Distribution to Devisees named in the Will.

**CAVEAT:**

In an intestate estate where any real estate is to be distributed and a spouse and issue survive the decedent, an informal distribution would not be proper unless the legal description of all real estate owned by decedent is set forth on the Application or Petition commencing the estate and repeated in the corresponding Order Determining Heirs issued by the Registrar or the Court, and the Order must distinguish between homestead and non-homestead property.

In an estate where a Will is to be probated and any real estate is to be distributed a careful examination of the Will is advisable before selecting the ~~the~~ type of administration to be conducted and the commencement of probate proceedings. In many cases it would be wise to select formal/supervised administration if either the real estate or the devisees, or both, are not clearly identified in the Will.

TRANSFERS MADE UPON DISTRIBUTION---FORMAL/SUPERVISED ADMINISTRATION

General comment: No partial or final distribution shall be made in Supervised Administration without prior Court Order.

Intestate or Testate:

1. Certified copy of Decree of Distribution

OR

1. Certified copy of Order of Distribution
2. Certified copy of Letters
3. Personal Representative's Deed of Distribution to persons named in the Order. The deed should state the name of the preparer of the deed.
4. Certified copy of Will and Court Order for Probate of Will where Registered Land is concerned. (See MSA 508.68)

MAY 1 1986

C3-84-146

MINNESOTA PROBATE RULES

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## MINNESOTA PROBATE RULES

### POLICY; RULE OF CONSTRUCTION

Rule 1. Declaration of Policy - Chapters 524 and 525 of the Minnesota Statutes and these Rules shall be liberally construed by the Court so that the intention of the legislature shall be effectuated with the least expense and time consumption in the administration of estates and guardianships. M.S. 524.1-102

### DEFINITIONS

Rule 2. Formal Proceedings - A formal proceeding is a proceeding conducted before the Court with notice to interested persons. Formal proceedings seek a judicial determination. M.S. 521.1-201(15)

Rule 3. Informal Proceedings - An informal proceeding is a proceeding conducted by the Judge, the Registrar, or the person or persons designated by the Judge for probate of a will or appointment of a personal representative in accordance with M.S. 524.3-301 to 524.3-311. Informal proceedings seek an administrative determination and not a judicial determination. M.S. 524.1-201(19)

### PRACTICE IN COURT

Rule 4. Appearance on Behalf of Others - No person shall appear in any action or proceeding as an attorney unless duly admitted to practice law before the Courts of Minnesota. M.S. 487.23

Rule 5. Appointment of Counsel - The Court may appoint an attorney for an interested person upon a determination of necessity. The attorney appointed shall serve with such compensation as the Court may order. M.S. 524.1-403(4)

Rule 6. Court Assistance - The Court, Registrar or Court Administrator or any person appointed or employed by the Court, Registrar or Court Administrator shall not give an opinion or assistance which constitutes the practice of law as to the meaning or interpretation of any law, regulation or procedure, and shall not provide legal assistance in the preparation of any documents or forms.

Rule 7. Conflicts of Interest - No attorney or member of the same firm shall appear representing conflicting interests. No attorney or member of the same firm shall appear as an attorney or in any manner represent any party to a contested proceeding where such attorney also appears as a witness.

Rule 8. Attorney Serving as a Fiduciary - If the attorney for the estate, his or her partner, associate or employee is personal representative of the estate, the administration shall be supervised. In such a case, both the attorney for the estate and the personal representative must keep separate time records and differentiate the charges for their duties in each capacity. The

attorney should only serve as fiduciary at the unsolicited suggestion of his or her client and if he or she agrees to serve, he or she should realize that there are grave legal, ethical and practical problems that he or she may have to overcome in order to perform his or her duties as a fiduciary and as an attorney.

Rule 9. Applicable Discovery Rules - Practice, procedure and forms relating to depositions and discovery in all probate proceedings shall be governed insofar as practicable by the applicable Rules of Civil Procedure for the District Courts, as amended.

Rule 10. Official Forms - In all proceedings brought before the Court or Registrar, the official forms adopted by the appropriate Judges' Association or promulgated by the Commissioner of Securities shall be used in conformity with Rules 11 and 12.

Rule 11. Original Documents - It shall be the responsibility of attorneys and others appearing before the Court or Registrar to prepare for review and execution appropriate orders, decrees, statements, applications, petitions, notices and related documents.

Rule 12. Drafted Forms - All forms submitted for filing must be properly drafted to address the subject matter and relief requested. It is the responsibility of attorneys and others submitting these forms that they be complete when presented.

Rule 13. Documents and Files - Every document filed or used in any proceeding shall be legible, on 8-1/2 x 11 paper, properly entitled and endorsed so as to show the character of the instrument and to facilitate the filing and recording thereof. No file, or any part thereof, shall be taken from the custody of the Court, except the original court order required to be displayed to an individual or entity when the order is served. A document or exhibit which has been filed or submitted in any proceeding can thereafter be withdrawn only with the permission of the Court. Any document which is written in a language other than English shall be accompanied by a verified translation thereof into the English language.

The Court being responsible for its files and records shall have and make them available for inspection and copying.

Rule 14. Photocopies of Forms - The Court will accept photocopies of forms if the copies are made by a process that is permanent, on hard stock paper, are free of smudges and otherwise clearly legible and have been reproduced in the same length as the original form and prescribed type size. In using photocopies of forms in Courts that are not utilizing a flat file system, the case heading and nomenclature must appear on the outside of the form when folded appropriately for permanent filing.

## REGISTRAR

### Rule 15. Designation, Function and Powers of Registrar -

"Registrar" refers to the official of the Court designated to perform the functions of Registrar as provided in this rule. The acts and orders which Chapter 524 and these rules specify as performable by the Registrar may be performed either by a Judge of the Court or by a person, including the Court Administrator, designated by the Court by a written order filed and recorded in the office of the Court, subject to the following:

(a) Each Judge of the Court may at any time perform the functions of Registrar regardless of whether the Court has designated one or more other persons to perform the functions of Registrar.

(b) Any person designated Registrar by the Court shall be subject to the continuing direction of the Court, and the functions and powers of such Registrar may be limited by the Court in its order designating such person.

(c) The functions and powers of the Registrar are limited to the acts and orders which Chapter 524 and these rules specify as performable by the Registrar and the ministerial acts specified in M.S. 524.1-307.

M.S. 524.1-307

## VERIFICATION OF DOCUMENTS

Rule 16. Verification of Filed Documents - Every document filed with the Court under Chapter 524 or 525 must be verified as

required by M.S. 524.1-310, except a written statement of claim filed with the Court Administrator by a creditor and a pleading signed by the attorney for a party in accordance with the Rules of Civil Procedure for the District Courts. M.S. 524.1-310

#### NOTICE IN FORMAL PROCEEDINGS

Rule 17. Notice in Formal Proceedings - In all formal proceedings which do not adjudicate testacy or appoint a personal representative, notice of a hearing on any petition shall be given as provided in M.S. 524.1-401 after issuance by the Court of the order for hearing. Notice shall be given on forms prescribed by the Court and in accordance with the provisions of law. Where mailed notice is required, proof of mailing the notice of hearing shall be filed with the Court Administrator before the formal order sought will issue. Mailed notice shall be given to any interested person as defined by law or his or her attorney if he or she has appeared by attorney or requested that notice be sent to his or her attorney. Where notice by personal service or notice by publication is required by M.S. 524.1-401(a)(2) or (3), proof of such personal service or of publication of the notice of hearing shall be filed with the Court Administrator before the formal order sought will issue. M.S. 524.1-401

Rule 18. Notice in Formal Testacy or Appointment Proceedings -See Rule 37 relating to the specific notice requirements for formal testacy or appointment proceedings provided in M.S. 524.3-403 and 524.3-414.

Rule 19. Waiver of Notice in Formal Proceedings - Except in cases governed by Rule 18, an interested person may waive notice of any formal proceeding in accordance with M.S. 524.1-402. The written waiver shall evidence such interested person's consent to the order sought in the proceeding. An order may be obtained without a notice of hearing in any formal proceeding in which all interested persons waive notice. M.S. 524.1-402

FORMAL PROCEEDINGS:

GENERAL PROVISIONS

Rule 20. Independent Formal Proceedings - Any interested person, including fiduciaries representing interested persons, may petition the Court for formal proceedings at any stage of estate administration. M.S. 524.3-105

Rule 21. Interim Orders Available from Court Only - The Registrar is not empowered to intervene or issue orders resolving conflicts related to the administration of the estate, and the Court has no power to intervene in any unsupervised administration unless a formal petition invoking the Court's authority is filed by an interested person. M.S. 524.3-105

Rule 22. Judicial Determinations After Informal Appointment - Determinations by the Registrar are informal and do not bring the estate or interested persons under the supervisory authority of the Court. A personal representative appointed in informal

proceedings may petition the Court for a formal determination as to any matter within the jurisdiction of the Court. It may also be necessary to seek the formal determination of the Court as to the admissibility of a will, determination of heirship, or other matters as a condition precedent to obtaining the requested relief. For notice requirements, see Rules 17, 37, 44 and 45. For waiver of notice of hearing see Rule 19. M.S. 524.3-105

Rule 23. Orders in Unsupervised Administration - The authority of the Court or Registrar is limited by the nature of the proceeding, petition or application brought before the Court or Registrar. The Court or Registrar does not have authority to issue ex parte interim orders in unsupervised proceedings, since each proceeding is a separate proceeding, except that the Registrar may issue the Certificate of Discharge provided for in M.S. 524.3-1007. Unsupervised administration may be commenced or closed either formally or informally. M.S. 524.3-105 and 524.3-107

Rule 24. Ex Parte and Interim Orders on Waiver and Consent - In supervised administration, ex parte orders are available. Such orders shall be granted only upon strong and compelling reasons. In unsupervised administration, interim orders may be obtained upon written consent and waiver of notice of hearing by the affected and interested persons except in cases where formal hearing and notice is required as provided in Rules 44 and 45. M.S. 524.1-402 and 524.3-505



Rule 25. Uncontested Formal Proceedings; Hearings and Proof - The Court shall call the calendar in open court for all hearings set for a designated time. If a petition in a formal proceeding is unopposed, the Court will enter in the record the fact that there was no appearance in opposition to the petition at the hearing and that no objection to the petition has been filed with the Court. Thereupon, if the petition in a formal proceeding is unopposed, the Court shall:

(a) Make its determination after conducting a hearing in open court, requiring appearance of petitioner and testimony or other proof of the matters necessary to support the order sought; unless by local rule the Court decides to:

(b) Make its determination on the strength of the pleadings without requiring the appearance of petitioner or of petitioner's attorney and without requiring testimony or proof other than the verified pleadings; or

(c) Make its determination based on such combination of (a) and (b) above as the Court in its discretion deems proper.

In any uncontested formal proceeding, the Court shall determine that (i) the time required for any notice has expired; (ii) any required notice has been given; (iii) the Court has jurisdiction of the subject matter; (iv) venue is proper; and (v) the proceeding was commenced within the time limitations prescribed by M.S. 524.3-108 as a prerequisite to determining other issues presented to the Court for determination in the proceeding. The

Court shall be satisfied that the pleadings and any other proof presented support the order sought in any uncontested formal proceeding.

VENUE FOR PROBATE AND ADMINISTRATION;  
PRIORITY TO ADMINISTER

Rule 26. Notice of Related Actions - It shall be the duty of the personal representative, his or her attorney and any persons appearing pro se to promptly advise the Court or Registrar of any action or proceeding in any other Court of which they have knowledge which directly affects a matter presently before the Court or Registrar in a formal or informal proceeding.

M.S. 524.3-201

Rule 27. Petition for Administration by Creditor - A creditor may seek appointment of a personal representative only by appropriate petition to the Court. No petition by a creditor to commence a testacy or appointment proceeding shall be accepted for filing unless accompanied by an itemized statement of the claim or account. M.S. 524.3-203

Rule 28. Nomination and Renunciation - A person entitled to letters under M.S. 524.3-203(a)(2) to (5) may nominate a qualified person to act as personal representative. Any person aged 18 and over may renounce his right to nominate or to appointment by appropriate writing filed with the Court. When two or more persons have equal or higher priority, those who do not renounce

must concur in nominating another to act for them, or in applying for appointment. In formal appointment proceedings, concurrence by persons who have equal or higher priority is presumed after required commencement notice has been given to those of equal or higher priority unless a written objection to the nomination is filed. Accordingly, absent an objection, no written renunciation of persons of equal or higher priority is required.

M.S. 524.3-203

Rule 29. Nonresident Personal Representatives - The Court or Registrar may appoint a nonresident personal representative.

M.S. 524.3-203

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

Rule 30. Contents of the Application - Application for informal probate or appointment proceedings shall contain information required by M.S. 524.3-301 and the approximate value of the following categories of assets:

Probate Assets

Homestead	\$ _____
Other Real Estate	\$ _____
Cash	\$ _____
Securities	\$ _____
Other	\$ _____

Non-Probate Assets

Joint Tenancy \$ \_\_\_\_\_

Insurance \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Approximate Indebtedness \$ \_\_\_\_\_

In all estate proceedings, whether testate or intestate, the application must contain an allegation that specifically eliminates all heirs or devisees other than those listed in the application. The allegation will necessarily vary, depending upon who survives the decedent, and must close out any class affected.

EXAMPLES

(These are not intended to be exhaustive)

(1) Where only the spouse survives, the allegations should state "That the decedent left no surviving issue, natural or adopted, legitimate or illegitimate."

(2) Where only children survive, the allegation should state, "That the decedent left surviving no spouse; no children, natural or adopted, legitimate or illegitimate, other than herein named; and no issue of any deceased children."

(3) Where the spouse and children survive, the allegation should state "That the decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children."

(4) Where only brothers or sisters of decedent survive, the allegation should state, "That the decedent left surviving no spouse; issue; parents; brothers or sisters other than herein named; and no issue of deceased brothers or sisters."

(5) Where only first cousins survive, the allegation should state, "That the decedent left surviving no spouse; issue; parents; brother or sisters or issue thereof; grandparents; aunts or uncles; and no first cousins other than herein named."

M.S. 524.3-301

Rule 31. Will Testimony - The Registrar shall not require any affidavit or testimony with respect to execution of a will prior to informal probate if it is a self-proved will or appears to have been validly executed. Applicants for the informal probate of a will which is not self-proved are encouraged to preserve evidence concerning the execution of the will if a formal testacy proceeding may later be required or desired. M.S. 524.3-303(c)

Rule 32. Appearances - The applicant is required to appear before the Registrar. However, if the applicant is represented by counsel and such counsel is familiar with the composition of the estate and the decedent's domicile, heirship and state of testacy, the applicant's appearance may be waived. Additionally, appearance by counsel also may be waived by the Registrar. M.S. 524.3-303 and 524.3-308

Rule 33. Ruling on Application - The Registrar may refuse informal probate or appointment if the requirements of M.S. 524.3-303, 524.3-307 or 524.3-308 have not been satisfied or circumstances indicate that formal probate or appointment would be more appropriate. M.S. 524.3-305, 524.3-309 and 524.3-311

Rule 34. Registrar Has No Continuing Authority - The Registrar does not have any continuing authority over an estate after the informal probate is granted or denied and shall not require the filing of any additional documents other than are required by the statutes and these rules.

Rule 35. Informal Proceedings: Notice of Informal Probate of Will and Informal Appointment of Personal Representative - In informal proceedings, notice of appointment of a personal representative shall be given after issuance by the Registrar of the order appointing personal representative. Notice shall be given on forms prescribed by the Court and in accordance with the provisions of law. Proof of placement for publication shall be filed with the Court Administrator before Letters will issue. Where mailed notice is required, an affidavit of mailing of the order appointing personal representative shall be filed with the Court Administrator before Letters will issue. If the informal proceedings include the informal probate of a will, the notice shall include notice of the issuance of the statement of informal probate of will. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for informal probate and all interested persons as defined by law or as ordered by the Court or Registrar and shall include in appropriate cases the Attorney General, foreign consul and attorneys representing interested persons.

If the decedent was survived by a spouse, mailed notice on a form prescribed by the Court shall be given to the surviving spouse to inform the surviving spouse of the following rights:

(a) The right to receive the decedent's wearing apparel, furniture and household goods and other personal property as provided in M.S. 525.15.

(b) The right to receive maintenance payments during administration of the estate as provided in M.S. 525.15.

(c) The right of election to take an elective share of one-third of the augmented estate as provided in M.S.

524.2-201 to 524.2-207.

M.S. 524.3-306 and 524.3-310

#### FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

Rule 36. Contents of Petition - A petition in formal testacy and appointment proceedings shall contain the information required by M.S. 524.3-402 and the information concerning the approximate value of assets required by Rule 30. In all estate proceedings, whether testate or intestate, the petition must contain an allegation that specifically eliminates all heirs or devisees other than as listed in the petition. The allegations will necessarily vary, depending upon who survives the decedent, and must close out any class affected. For examples of appropriate allegations, see Rule 30. M.S. 524.3-402

Rule 37. Formal Proceedings: Notice of Formal Determination of Testacy Status and Formal Appointment of Personal Representative -

In formal testacy proceedings, notice of the hearing on the petition shall be given after issuance by the Court Administrator of the order for hearing. Notice shall be given on forms prescribed by the Court and in accordance with applicable provisions of law. Proof of publication of the order for hearing prior to the date of the hearing in accordance with law shall be filed with the Court Administrator before the order sought will issue. If any formal proceedings include a petition for the formal appointment of personal representative, the same notice requirements shall pertain except that notice by publication shall not be required if testacy has been finally determined. Where creditors claims are to be barred, the published notice shall include notice to creditors.

Mailed notice shall be given to all known heirs-at-law, all devisees under any will submitted for formal probate and all interested persons as defined by law or as ordered by the Court and shall include in appropriate cases the Attorney General, foreign consul and attorneys representing interested persons.

If the decedent was survived by a spouse, mailed notice on a form prescribed by the Court shall be given to the surviving spouse to inform the surviving spouse of the following rights:

- (a) The right to receive the decedents wearing apparel, furniture and household goods and other personal property as provided in M.S. 525.15.



(b) The right to receive maintenance payments during administration of the estate as provided in M.S. 525.15.

(c) The right of election to take an elective share of one-third of the augmented estate as provided in M.S. 524.2-201 to 524.2-207, and the homestead as provided in M.S. 525.145. M.S. 524.3-403 and 524.3-414

Rule 38. Uncontested Formal Testacy and Appointment Proceedings; Hearings and Proof - If a petition in a formal testacy or appointment proceeding is unopposed, the Court may make its determination as provided in Rule 25. M.S. 524.3-405

#### SUPERVISED ADMINISTRATION

Rule 39. Supervised Administration - Supervised administration is a single in rem proceeding, as set forth in M.S. 524.3-501. A supervised administration is commenced by a formal proceeding. M.S. 524.3-501 and 524.3-502.

Rule 40. Conversion to Supervised Administration - Any estate which has been commenced as an informal proceeding or as an unsupervised formal proceeding may be converted at any time to a supervised administration upon petition. The Court shall enter an order for hearing on said petition. Notice of hearing shall be given in accordance with Rule 17. If testacy has not been adjudicated in a prior formal proceeding, notice of hearing on said petition must meet the specific notice requirements for

formal testacy proceedings provided in M.S. 524.3-403, including notice by publication. See Rule 37. M.S. 524.3-502

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES  
AND TRANSFER OF REAL ESTATE

Rule 41. Inventory - In accordance with M.S. 524.3-706, the personal representative must prepare an inventory, mail a copy to the surviving spouse, if any, and either (a) file the same with the Court or (b) mail a copy of the same to (i) all residuary distributees and (ii) interested persons or creditors who request a copy thereof. Whenever the personal representative seeks an order from the Court formally closing administration pursuant to either M.S. 524.3-1001 or M.S. 524.3-1002, the inventory must be filed with the court. M.S. 523.3-706

Rule 42. Transfers of Real Estate in Supervised and Unsupervised Administration; Transfer by Personal Representative of Real Property for Value; Documents Required; Protection of Transferee - A personal representative shall provide a transferee of real property for value with the following documents:

(a) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative).

(b) A personal representative's deed or other instrument transferring any interest in real property which shall contain the marital status of the decedent and the consent of spouse, if any.

When the personal representative provides the above documents to a good faith transferee for value, the transferee is protected as if the representative properly exercised his power to make the transfer. No provision in any will which purports to limit the power of a personal representative is effective except as to a transferee with actual knowledge of the provision of the will, but, absent such actual knowledge, the transferee need not inquire into the provisions of any will. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value. M.S.

524.3-714

CAVEAT: Where registered land is concerned, the personal representative shall also meet any additional requirements imposed by M.S. 508.68.

SPECIAL PROVISIONS RELATING TO  
DISTRIBUTION OF REAL ESTATE IN  
SUPERVISED AND UNSUPERVISED ADMINISTRATION

Rule 43. Distribution of Real Property; Documents Required;

Protection of Transferee from Distributee - A personal representative shall provide a distributee of real property with the following documents:

(a) When distribution is made by decree, a certified copy of the decree of distribution assigning any interest in real property to the distributee.

(b) When distribution is made by deed from a personal representative in unsupervised administration:

- (1) A certified copy of unrestricted letters (30 days must have elapsed since date of issuance of letters to an informally appointed personal representative).
- (2) A personal representative's deed of distribution of any interest in real property to the distributee which shall contain the marital status of the decedent and consent of spouse, if any.

(c) When distribution is made by deed from the personal representative in supervised administration:

- (1) A certified copy of unrestricted letters.
- (2) A certified copy of an order of distribution which authorizes the distribution of any interest in real property to the distributee.
- (3) A personal representative's deed of distribution of any interest in real property to the distributee.

When the personal representative provides the above documents to a distributee of any interest in real property, a good faith transferee for value from said distributee is protected and said transferee takes title to said real property free of any claims of the estate and any interested person, and incurs no personal liability to them, whether or not the distribution was proper. No provision in any will which purports to dispose of said real property is effective except as to a transferee with actual knowledge of the

provisions of the will but, absent such actual knowledge, the transferee need not inquire into the provisions of any will. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. Any good faith transferee of real property for value may assume that any prior transfer affecting the title to the real property was in good faith and for value. M.S. 524.3-910

#### CLOSING ESTATES

Rule 44. Notice in Formal Proceedings for Complete Settlement under M.S. 524.3-1001 - If testacy has been adjudicated in a prior formal proceedings, notice of hearing on a petition for complete settlement under M.S. 524.3-1001, must meet the requirements of M.S. 524.1-401, but the notice by publication specifically provided for in M.S. 524.1-401(3) is not required. If testacy has not been adjudicated in a prior formal proceeding, notice of hearing on a petition for complete settlement under M.S. 524.3-1001, must meet the specific notice requirements for formal testacy proceedings provided in M.S. 524.3-403, including notice by publication. See Rules 17 and 19. M.S. 524.3-1001

Rule 45. Notice of Formal Proceedings for Settlement of Estate under M.S. 524.3-1002 - If an estate is administered under an informally probated will and there has been no adjudication of testacy in a prior formal proceeding, the Court may make a final

determination of rights between the devisees under said will and against the personal representative under M.S. 524.3-1002. If, under the will, no part of the estate is intestate, notice of hearing on a petition for settlement of the estate under M.S. 524.3-1002, must meet the requirements of M.S. 524.1-401, but the Court will not adjudicate the testacy status of the decedent and the notice by publication specifically provided for in M.S. 524.3-403 therefore is not required. M.S. 524.3-1002

Rule 46. Fees - The fees charged by an attorney and a personal representative in a proceeding shall be fair and reasonable as determined pursuant to M.S. 524.3-719 and 525.515. The Court may require documentation to establish, or appoint counsel to examine, the reasonableness of the fees charged by the attorney and the personal representative. M.S. 524.3-719 and 525.515

Rule 47. Vouchers - Unless otherwise ordered by the Court, vouchers for final and interim accounts are not required.

Rule 48. Tax Returns - Copies of the U. S. Estate Tax closing letter and the Minnesota notification of audit results need not be filed unless ordered by the Court.

Rule 49. Filing of Documents in Unsupervised Administration - If not otherwise required, at the request of the personal representative, the Court may accept for filing documentation necessary to create a permanent record of the administration.

Rule 50. Dormant Estates - If a personal representative does not close the estate within eighteen (18) months after appointment, an interested person may petition the Court for an order to show cause why the probate is not completed. In supervised administration the Court may do so on its own motion. M.S. 525.475

Rule 51. Personal Representative's Informal Closing Statement - The closing statement provided for under M.S. 524.3-1003 is an important document in the unsupervised administration of an estate. The personal representative should not file the statement until the representative verifies that the estate has been fully administered and that all statutory requirements for the statement have been fulfilled. M.S. 524.3-1003

Rule 52. Authority of Personal Representative During One Year Period After Filing Informal Closing Statement - For one year from the date of filing the statement authorized by M.S. 524.3-1003, the personal representative shall have full and complete authority to execute further transfers of property; to complete transactions; to complete distributions; to correct misdescriptions or improper identification of assets; or to transfer or distribute omitted property. During this period, the personal representative also should ascertain any matters of unfinished administration which must be completed prior to the termination of representative's authority. M.S. 524.3-1003

Rule 53. Authority of Personal Representative to Transfer or Distribute Omitted Property During One Year Period After Filing Informal Closing Statement - In the case of omitted property discovered after the filing of the statement authorized by M.S. 524.3-1003 but before termination of the personal representative's authority, the personal representative must, as required by M.S. 524.3-708, file a supplemental inventory with the Court and mail a copy to any surviving spouse, other distributees, and other interested persons, including creditors whose claims are unpaid and not barred. Proof of service by mail must be filed with the Court prior to any transfer of the omitted property by the personal representative. M.S. 524.3-708 and 524.3-1003

Rule 54. Notice of Proceedings for Subsequent Administration under M.S. 524.3-1008 (the one year period after filing informal closing statement having expired) - Appointment of a personal representative in subsequent administration under M.S. 524.3-1008 may only be secured in formal proceedings. If testacy has been adjudicated in a prior formal proceeding, notice of hearing on a petition for subsequent administration must meet the requirements of M.S. 524.1-401, but the notice by publication specifically provided for in M.S. 524.3-403 is not required. If testacy has not been adjudicated in a prior formal proceeding, and only appointment of a personal representative is sought with unsupervised administration without an adjudication of testacy status, notice of hearing on a petition for subsequent administration must meet



the specific notice requirements for formal testacy proceedings provided in M.S. 524.3-403, but notice by publication is not required. In the case of subsequent administration under this paragraph involving omitted assets, the personal representative must, as required by M.S. 524.3-708, file a supplemental inventory with the Court and mail a copy to any surviving spouse, other distributees, and other interested persons, including creditors whose claims are unpaid and not barred. Proof of service by mail must be filed with the Court prior to any transfer of the omitted property by the personal representative. M.S. 524.3-108, 524.3-414 and 524.3-1008

Rule 55. Proof Required for Formal Settlement or Distribution in Subsequent Administration - When during subsequent administration an order of settlement of the estate and decree (or order) of distribution in accordance with M.S. 524.3-1001 or M.S. 524.3-1002 is sought, the court shall be satisfied that the pleadings and any other proof (including accounting for all assets, disbursements and distributions made during the prior administration) presented support the order sought.

#### GUARDIANSHIPS/CONSERVATORSHIPS

Rule 56. Responsibility of Attorney - Upon the appointment of a conservator or guardian of the estate, the appointee shall nominate an attorney of record for that conservatorship or guardianship, or shall advise the Court that he or she shall act

pro se. The named attorney shall be the attorney of record until terminated by the conservator or guardian, or, with the consent of the Court, by withdrawal of the attorney. If the attorney is terminated by the conservator or guardian, written notice of substitution or pro se representation shall be given to the Court (by the conservator or guardian, or by the attorney who has received oral or written notice of termination), and until such notice, the former attorney shall be recognized.

Rule 57. Visitors in Guardianship and Conservatorship Proceedings

- A visitor, as defined in M.S. 525.539(6), may be appointed in every general guardianship or conservatorship proceeding.

Every visitor shall have training and experience in law, health care or social work, as the case may be, depending upon the circumstances of the proposed ward or conservatee.

The visitor shall be an officer of the Court and shall be disinterested in the guardianship or conservatorship proceedings. If the Court at any time determines that the visitor, or the firm or agency by which he or she is employed, has or had, at the time of hearing, a conflict of interest, the Court shall immediately appoint a new visitor and may, if necessary, require a hearing de novo.

The visitor shall, (a) without outside interferences, meet with the proposed ward or conservatee, either once or more than once as the visitor deems necessary, (b) observe his or her appearance, lucidity and surroundings, (c) serve, read aloud, if

requested, and explain the petition and notice of hearing, (d) assist, if requested, in obtaining a private or Court appointed attorney, (e) advise the proposed ward or conservatee that a report will be filed at least five (5) days before the hearing and that the report is available to the proposed ward or conservatee or his attorney, (f) prepare a written report to the Court setting forth all matters the visitor deems relevant in determining the need for a guardian or conservator, including recommendations concerning appointment and limitation of powers, (g) file the original report with the Court and, (h) serve a copy upon the Petitioner or his attorney at least five (5) days prior to the hearing, (i) appear, testify and submit to cross examination at the hearing concerning his or her observations and recommendations, unless such appearance is excused by the Court.

Rule 58. Voluntary Petition - If an adult voluntarily petitions or consents to the appointment of a guardian or conservator of the estate as set forth in M.S. 525.54, subd. 3(a), then it is not necessary for such adult to be an "incapacitated person" as defined in M.S. 525.54, subd. 3.

Rule 59. Amount of Bond - The Court may, at any time, require the filing of a Bond in such amount as the Court deems necessary and the Court, either on request of an interested party, or on its own motion, may increase or decrease the amount of the Bond. The Court, in requiring a Bond, if any, or in determining the amount

thereof, shall take into account not only the nature and value of the assets, but also the qualifications of the guardian or conservator.

Rule 60. Effect of Allowance of Accounts - The filing, examination and acceptance of an annual account, without notice of hearing, shall not constitute a determination or adjudication on the merits of the account, nor does it constitute the Court's approval of the account.

Rule 61. Required Periodic Settlement of Accounts - No order settling and allowing an annual or final account shall be issued by the Court except on a hearing with notice to interested parties. A hearing for the settlement and allowance of an annual or final account may be ordered upon the request of the Court or any interested party. A hearing shall be held for such purpose in each guardianship or conservatorship of the estate at least once every five years upon notice as set forth in M.S. 525.581, and the rules pursuant thereto. However, in estates of the value of \$20,000 or less, the five year hearing requirement may be waived by the Court in its discretion. Such five year hearings shall be held within 150 days after the end of the accounting period of each fifth annual unallowed account and the Court Administrator shall notify such guardian or conservator, his attorney and the Court if the hearing is not held within the 150 day period.

Rule 62. Notice of Hearing on Account - Notice of time and place for hearing on the petition for final settlement and allowance of any account shall be given to the ward or conservatee, to the guardian or conservator if such person was not the petitioner for settlement of the accounts, to the spouse, adult children and such other interested persons as the Court may direct. Whenever any funds have been received by the estate from the Veterans Administration during the period of accounting, notice by mail shall be given to the regional office. The notice may be served in person or by depositing a copy in the U.S. mail to the last known address of the person or entity being served. When a ward or conservatee is restored to capacity, that person is the only interested person. When a ward or conservatee dies, the personal representative of the estate is the only interested person.

Rule 63. Appearance on Petition for Adjudication of Accounts - When a verified annual or final account is filed in accord with M.S. 525.28, subd. 1, and an adjudication is sought, and notice given as required by M.S. 525.581 or waived as provided below, and the Court determines that the account should be allowed, the account may be allowed upon the pleadings without appearance of the guardian or conservator. If the ward, conservatee or any interested person shall object to the account, or demand the appearance of the guardian or conservator for hearing on the account, at any time up to and including the date set for the hearing, the Court will continue the hearing, if necessary, to a

later date and require the appearance of the guardian/conservator for examination. Notice of hearing may be waived with the consent of all interested persons.

Rule 64. Successor Guardian; Notice to Ward or Conservatee - The notice required by M.S. 525.59 shall include the right of the ward or conservatee to nominate a successor and charge him with instructions.