

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 546

By: Hendrick of the Senate

and

Davis of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to probate procedure; amending 18 O.S. 1991, Sections 803, 809, 810 and 815, which relate to professional corporations, 58 O.S. 1991, Sections 25, 82, 83, 239, 241, 677, 912, as amended by Section 3, Chapter 274, O.S.L. 1992, 1071, as amended by Section 4, Chapter 274, O.S.L. 1992, 1072.1, as amended by Section 5, Chapter 274, O.S.L. 1992 (58 O.S. Supp. 1992, Sections 912, 1071 and 1072.1), which relate to probate procedure and to durable powers of attorney, and 60 O.S. 1991, Section 175.23, which relates to trusts; defining terms; providing for issuance of stock to certain persons; prohibiting certain persons from being shareholders; allowing redemption of shares under certain circumstances; conforming language; excluding certain persons from certain notice requirement; providing for certain notice under certain circumstances; providing for admission of certain copies; providing for court certification of certain documents; requiring certain determinations before entry of certain court order; allowing certain service of notice under certain circumstances; specifying frequency of publication of certain notice; requiring filing of certain affidavit under certain circumstances; ratifying certain affidavits; clarifying property which may be subject to durable power of attorney; requiring certain parties to certain actions; providing for distribution of certain trust property under certain circumstances; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 18 O.S. 1991, Section 803, is amended to read as follows:

Section 803. A. As used herein, unless the context clearly indicates that a different meaning is intended:

1. "Professional corporation" means a corporation organized under the Professional Corporation Act.

2. "Professional service" means the personal service rendered by:

- a. A physician, surgeon or doctor of medicine pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 481 through 524, and any subsequent laws regulating the practice of medicine.
- b. An osteopathic physician or surgeon pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 621 through 643, and any subsequent laws regulating the practice of osteopathy.
- c. A chiropractor pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 161 through 170, and any subsequent laws regulating the practice of chiropractic.
- d. A chiropodist-podiatrist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 136 through 160.2, and any subsequent laws regulating the practice of chiropody.
- e. An optometrist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 581 through 606, and any subsequent laws regulating the practice of optometry.
- f. A veterinarian pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 698.1 through 698.19, and any subsequent laws regulating the practice of veterinary medicine.
- g. An architect pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 45.1 through 45.24, and any subsequent laws regulating the practice of architecture.
- h. An attorney pursuant to his authority to practice law granted by the Supreme Court of the State of Oklahoma.
- i. A dentist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 328.1 through

328.50, and any subsequent laws regulating the practice of dentistry.

- j. A public accountant pursuant to his authority to practice accounting under Title 59 of the Oklahoma Statutes, Sections 15.1 through 15.35, and any subsequent laws regulating the practice of public accountancy.
- k. A psychologist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 1351 through 1375, and any subsequent laws regulating the practice of psychology.
- l. A physical therapist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 887.1 through 887.17, and any subsequent laws regulating the practice of physical therapy.
- m. A registered nurse pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 567.1 through 567.16, and any other subsequent laws regulating the practice of nursing.
- n. A professional engineer pursuant to a license under Sections 475.1 through 475.22 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of engineering.
- o. A land surveyor pursuant to a license under Sections 475.24 through 475.37 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying.

3. "Related professional services" means those services which are combined for professional corporation purposes as follows:

- a. Any combination of the following professionals:
 - (1) A physician, surgeon or doctor of medicine pursuant to a license under Sections 481 through 524 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of medicine;

- (2) An osteopathic physician or surgeon pursuant to a license under Sections 621 through 643 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of osteopathy;
 - (3) A dentist pursuant to a license under Sections 328.1 through 328.50 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of dentistry;
 - (4) A chiropractor pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 161 through 170, and any subsequent laws regulating the practice of chiropractic;
 - (5) A psychologist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 1351 through 1375, and any subsequent laws regulating the practice of psychology; or
 - (6) A podiatrist pursuant to a license under Sections 136 through 160.2 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of podiatry.
- b. Any combination of the following professions:
- (1) An architect pursuant to a license under Sections 45.1 through 45.24 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of architecture;
 - (2) A professional engineer pursuant to a license under Sections 475.1 through 475.22 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of engineering; or
 - (3) A land surveyor pursuant to a license under Sections 475.24 through 475.37 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying.

4. "Regulating board" means the board which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render.

5. "Individual", "incorporator" and "shareholder" each include the trustee of an express trust created by a person duly licensed to render a professional service who has the right to revoke said trust and who is serving as the trustee of said trust. Any certificate required by this act to be issued to an individual incorporator or shareholder may be issued to the grantor on behalf of a trust. All references in this act to death and incapacity of a shareholder shall include the death and incapacity of the grantor of a trust which owns stock in a professional corporation.

6. "Incapacity" of a shareholder means a determination by a court of competent jurisdiction, or otherwise by two independent licensed physicians, that the shareholder is fully incapacitated or is partially incapacitated to the extent that the shareholder is not capable of rendering the professional service for which the professional corporation was organized.

7. "Other personal representative" includes the successor trustee of an express trust owning stock in a professional corporation, which trust was created by a person duly licensed to render the professional service for which the professional corporation was organized who has the right to revoke the trust and who is the original trustee of the trust.

B. The definitions of the Oklahoma General Corporation Act shall apply to this act, unless the context clearly indicates that a different meaning is intended.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 809, is amended to read as follows:

Section 809. A professional corporation may issue the shares of its capital stock to ~~persons~~ individuals who are duly licensed to render the same professional services or related professional services as those for which the corporation is organized. A shareholder may voluntarily transfer his shares in a professional corporation to ~~a person~~ one or more individuals who ~~is~~ are duly licensed to render the same professional services or related

professional services as those for which the corporation is organized. Any shares issued in violation of this section are ~~null and~~ void. The voluntary transfer of any shares ~~transferred~~ in violation of this section is ~~null and~~ void. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the ~~person~~ individual or individuals to whom the transfer is to be made or the shares issued is duly licensed to render the same professional services or related professional services as those for which the corporation is organized.

SECTION 3. AMENDATORY 18 O.S. 1991, Section 810, is amended to read as follows:

Section 810. No person may be a director, ~~shareholder~~ or officer, other than the secretary, of a professional corporation who is not ~~an individual~~ a person duly licensed to render the same professional services or related professional services as those for which the corporation is organized. No person may be a shareholder of a professional corporation who is not an individual duly licensed to render the same professional services or related professional services as those for which the corporation is organized.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 815, is amended to read as follows:

Section 815. The certificate of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death, incapacity or disqualification of such shareholder, or the same may be provided in the bylaws or by private agreement. In the absence of a provision ~~for the same~~ in the certificate of incorporation, ~~or~~ the bylaws, or ~~by~~ a private agreement, the professional corporation shall purchase the shares of a deceased shareholder or a shareholder who is incapacitated or who is no longer qualified to own shares in such corporation within ninety (90) days after the death of the shareholder, incapacity or qualification ~~disqualification~~ of the shareholder, as the case may be. The price for such shares shall be the book value as of the

end of the month immediately preceding the death, incapacity or disqualification of the shareholder. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by ~~such~~ the corporation. If the corporation shall fail to purchase ~~said~~ the shares by the end of ~~said~~ the ninety ~~(90) days~~ day period, then the executor or administrator or other personal representative of the deceased ~~shareholder or any~~ incapacitated or disqualified shareholder may bring an action in the district court of the county in which the principal office or place of practice of the professional corporation is located for the enforcement of this provision. If the plaintiff is successful in such action, he shall be entitled to recover the book value of the shares involved ~~and~~ a reasonable attorney's fee and costs. The professional corporation shall repurchase such shares without regard to restrictions upon the repurchase of shares provided for in the Oklahoma General Corporation Act.

If there ~~be but~~ is only one shareholder of a professional corporation, and ~~such~~ the shareholder dies or becomes ~~incompetent~~ incapacitated, the executor or administrator or other personal representative of ~~such~~ the shareholder shall have the authority to sell the shares of capital stock owned by ~~said~~ the shareholder to a qualified purchaser, or to cause a dissolution of the professional corporation as provided by law. The vesting of ownership of shares of stock in a professional corporation in the executor or administrator or other personal representative shall be solely for the purposes set forth above and shall not be deemed to contravene any other provisions of this act.

SECTION 5. AMENDATORY 58 O.S. 1991, Section 25, is amended to read as follows:

Section 25. When ~~the~~ a petition for probate of a will is filed, the court must fix a day for hearing ~~said~~ the petition, not less than ten (10) nor more than thirty (30) days from the date of filing of the petition, and if the names and addresses of all heirs, legatees, and devisees of the testator are known to the petitioner and are set out in ~~said~~ the petition, the court shall

cause notice of such hearing to be given as provided in ~~Title 58,~~
~~O.S.S. Annot., Sec. 34; Laws 1969, c. 302, Sec. 38~~ Section 34 of
this title, by mailing copies of ~~such the~~ notice to all heirs,
legatees, and devisees, other than devisees and legatees whose
devises and bequests are conditioned upon another named person's
predeceasing the testator in accordance with terms stated in the
will and such named person did not predecease the testator in
accordance with terms stated in the will, postage prepaid, at
their last-known place of residence not less than ten (10) days
prior to the date of ~~said the~~ hearing; provided, however, if the
name or address of one or more heirs, legatees, ~~and or~~ devisees of
the testator is not known to the petitioner, or if one or more
heirs, legatees, or devisees of the testator are alleged to have
survived the testator but died prior to the filing of the petition
and the petitioner alleges that he knows of no personal
representative for the decedents' estates, notice of the hearing
of ~~said the~~ petition shall be given by mailing, as above provided,
and, in addition thereto, ~~said the~~ notice shall be published in
one issue of a newspaper, and in such case ~~said the~~ hearing shall
not be less than ten (10) days from the date of publication of
~~such the~~ notice. For purposes of this section, if a legatee or
devisee is the trustee of an express trust or testamentary trust,
notice need be given only to the trustee and not to the
beneficiaries of the trust unless the beneficiaries are otherwise
entitled to notice as heirs or as legatees or devisees of property
not devised or bequeathed to the trust.

SECTION 6. AMENDATORY 58 O.S. 1991, Section 82, is
amended to read as follows:

Section 82. No will shall be proved as a lost or destroyed
will, unless the same is proved to have been in existence at the
time of the death of the testator or is shown to have been
fraudulently destroyed in the lifetime of the testator, nor unless
its provisions are clearly and distinctly proved by at least two
credible witnesses. For purposes of this section, a copy of the
alleged lost or destroyed will can be admitted into evidence,
whether or not the copy reflects the signature or signatures

appearing on the original will, if the copy is properly identified, and the court shall determine what probative value, if any, is to be assigned to such copy.

SECTION 7. AMENDATORY 58 O.S. 1991, Section 83, is amended to read as follows:

Section 83. When a lost or destroyed will is established, the provisions thereof must be distinctly stated and certified by the judge of the district court, under his hand and the seal of the court, and the certificate must be filed and recorded as wills are filed and recorded, and letters testamentary or of administration with the will annexed, must be issued thereon in the same manner as upon wills produced and duly proved; if the court has admitted into evidence a copy of the lost or destroyed will and finds that the copy distinctly states the provisions of the will, the court may certify the copy of the will as distinctly stating the provisions of the will; the testimony must be reduced to writing; signed, certified and filed as in other cases, and shall be admissible as evidence in any subsequent proceeding.

SECTION 8. AMENDATORY 58 O.S. 1991, Section 239, is amended to read as follows:

Section 239. A. After the appointment of the personal representative, and, provided that a determination of the identities of the heirs, devisees and legatees of the decedent has been made pursuant to the provisions of Section 240 of this title, and upon the filing of a petition or application, ~~said the~~ petition to be accompanied by ~~verified~~ acknowledged, written consents by all heirs, devisees, ~~and~~ and legatees, other than contingent devisees and legatees, and persons authorized to act on behalf of any heir, devisee or legatee under any legal disability, the court may enter an order:

1. Authorizing the personal representative to sell, grant, lease, mortgage or encumber any real or personal property including mineral interests, and to execute and issue deeds, leases, bills of sale, notes, mortgages, easements and other documents of conveyance, without further judicial authorization or a return of sale or confirmation of such sale or transaction. Any

sale or transaction so authorized shall pass title to the purchaser without being confirmed by the court, notwithstanding any statutory provision to the contrary; or

2. Waiving the filing of any accounting specified in the consents of the persons herein named, or waiving the necessity for presentation to the court for approval of any such accounting.

B. Waivers or consents may be withdrawn at any time and thereafter all acts shall be in accordance with regular statutory procedures. A withdrawal of a waiver or consent shall be effected by filing a written statement of withdrawal with the court clerk and by ~~personally~~ serving a certified copy on the personal representative or the attorney for the personal representative by certified mail.

C. Notwithstanding the foregoing, if the petition or application is filed after three (3) months from the date of admission of the will to probate, and no appeal of the admission of the will is pending nor has any contest to admission of the will to probate been filed after admission of the will to probate, and if the will contains a residuary disposition clause, then the consents of heirs, who are neither devisees or legatees, shall not be required.

SECTION 9. AMENDATORY 58 O.S. 1991, Section 241, is amended to read as follows:

Section 241. ~~(a)~~ A. If, upon filing a petition for probate and after the appointment of the personal representative, it appears that the value of the real and personal property in the estate does not exceed Sixty Thousand Dollars (\$60,000.00), the court shall order the personal representative to make an inventory of the estate, and the court shall appoint appraisers unless the court determines that appraisalment is not necessary.

B. If, upon return of the inventory of the estate of the decedent, and appraisalment of the estate if required, it appears that the value of the whole estate, both real and personal property, does not exceed Sixty Thousand Dollars (\$60,000.00), and upon application of the personal representative, the court shall dispense with the regular proceedings or any part thereof

prescribed by law, and the court shall order notice to creditors, and issue order for hearing upon the final accounting and petition for determination of heirship, distribution and discharge~~ri~~; provided, nothing herein shall affect the lien upon any property for any estate or transfer tax which may be due upon the estate of the decedent.

~~(b)~~ C. Notice to creditors and notice of hearing upon the final accounting and petition for determination of heirship, distribution and discharge shall be published once each week for two (2) consecutive weeks in some newspaper of general circulation, published in the county where the probate is filed, or, where there is no newspaper published in the county, posted in three public places in said county, one of which shall be the county courthouse. Notice to creditors and notice of hearing upon the final accounting, determination of heirship, distribution and discharge may be combined in one notice, referred to as a "combined notice". The notice to creditors or combined notice shall be mailed to creditors of the decedent as provided in ~~Section~~ Sections 331 and 331.1 of this title ~~and Section 5 of this act~~. Notice of the hearing or the combined notice shall be mailed to all persons interested in the estate of said decedent at their respective last-known addresses not less than ten (10) days prior to the date of the hearing, and said notice shall set forth a date by which final account and petition for distribution will be filed. The date of said filing shall precede by at least five (5) days the order allowing final accounting, determination of heirs, and of legatees and devisees, if any, and distribution.

~~(c)~~ Said D. The matter shall be set for hearing not less than thirty-five (35) days following the first publication of notice to creditors or combined notice, and upon such hearing the court shall, after proof of payment of funeral expenses, expenses of last sickness and of administration and allowed claims, issue an order allowing such final accounting, determining heirship and the legatees and devisees, if any, of said decedent, distributing the property of said estate and discharging the personal representative and surety or sureties on the personal

representative's bond, or defer such discharge if in the discretion of the court such deferral is necessary or desirable.

SECTION 10. AMENDATORY 58 O.S. 1991, Section 677, is amended to read as follows:

Section 677. A. Title to Oklahoma property owned by a nonresident may be passed by the filing of a petition having attached thereto a duly certified copy of the last will and testament, an order admitting the will to probate and an order distributing the estate from the domiciliary probate proceeding, or if the decedent died intestate, by attaching a duly certified copy of the order appointing the personal representative and an order distributing estate from the domiciliary estate.

B. The petition shall contain:

1. The jurisdictional facts;

2. A statement whether the person named as personal representative consents to act, or renounces his right to letters, or if it is even necessary for a personal representative to be appointed;

3. If necessary, a statement stating that if the domiciliary personal representative renounces his right to act, the personal representative may waive such right in favor of a resident of the State of Oklahoma;

4. The names, ages and residences of all the heirs, legatees and devisees of the decedent so far as known to the petitioner, including the heirs, legatees and devisees named in the last will and testament or determined in the order determining heirs issued in the domiciliary estate;

5. The description, probable value and character of the property, subject to the jurisdiction of the Oklahoma probate court; 6. The name and address of the person for whom letters are prayed; and

7. An affidavit from the domiciliary personal representative that notice to ~~the~~ all creditors, including Oklahoma creditors, known or reasonably ascertainable, has been given as required by the domiciliary state. Provided, however, if the domiciliary state lacks a procedure for giving notice by mail to Oklahoma

creditors, known or reasonably ascertainable, then notice to such creditors shall be given pursuant to Sections 331, 331.1, 331.2, 332, 333, 334, 335, 337, 338 and 351 of ~~Title 58 of the Oklahoma Statutes~~ this title or there shall be filed an affidavit by the domiciliary personal representative that there is no Oklahoma creditor known to or reasonably ascertainable by the domiciliary personal representative. For purposes of this section, the definitions contained in subsection A of Section 331.1 of this title shall apply.

C. The petition shall be in writing and signed by the applicant or his counsel.

D. Upon the filing of the petition, the court shall issue an order setting the matter for hearing not less than twenty (20) days thereafter, requiring publication of a notice one time, not less than twenty (20) days prior to the date of hearing. Notice of hearing shall be mailed to all devisees, legatees and heirs at law, including those named in the last will and testament or in the order determining heirs, not less than twenty (20) days prior to the date of such hearing. If there are devisees, legatees or heirs at law for which an address is not known, publication of the notice of hearing shall constitute notice to such persons or entities.

E. If an interested party or creditor does not file a written objection to the entry of an order distributing Oklahoma property, in accordance with the documents from the domiciliary estate attached to the petition, on or before the hearing date, the court shall enter an order distributing the Oklahoma property in accordance with the last will and testament of the decedent, and if the decedent died intestate, in accordance with the laws of intestate succession of this state.

F. If a written objection is filed by an interested party or creditor, at the hearing on the petition, the court shall determine if such objection has merit. If the court so determines, a personal representative shall be appointed and the proceeding shall be conducted in accordance with this title. If the objection filed by an interested party is withdrawn at the

hearing on the petition, or if the court finds and adjudicates that such objection has no merit, the court shall enter an order distributing the Oklahoma property in accordance with the provisions hereinbefore set forth, and in that event, such order shall be appealable to the Supreme Court of the State of Oklahoma in the same manner as other final orders.

G. The court shall not be required to hold a hearing on any written objection on the date the petition is set for hearing, but may set the matter for hearing at a later date, and shall, if requested by the objecting party, set the matter for hearing at a later date. If the objection is set for hearing at a later date, the hearing shall be held within thirty (30) days after the date the hearing on the petition was originally set, unless the court finds that such hearing shall be further delayed for good cause.

H. If the court, upon hearing objection to the petition, finds and determines that the objection has merit, the court shall appoint a personal representative and the estate shall be conducted in accordance with the law as it applies to probate of an estate of a resident of the State of Oklahoma.

I. If the domiciliary probate proceeding has not been concluded, the petition as described in this section may be filed without having attached thereto a duly certified copy of the order distributing estate and determining heirs. In such event:

1. At the hearing on the petition the court may appoint a personal representative for the estate to administer it in accordance with the law as it applies to estates of Oklahoma residents; or

2. The court may enter an order finding that the petitioner has requested no action be taken in the proceeding until the domiciliary estate is closed and a duly certified copy of the order distributing estate and determining heirs is filed in the proceeding. Upon the order being filed, the court shall set the matter for hearing for the purpose of entering an order distributing Oklahoma property, which hearing shall be held not less than twenty (20) days after the date of the order. Notice of the hearing shall be mailed to all of the devisees, legatees and

heirs at law as named in the last will and testament and determining heirs as entered in the domiciliary proceeding, and, if the address of any of the devisees, legatees or heirs is unknown, the order for hearing shall be published not less than twenty (20) days prior to the date of the hearing.

J. If an interested party or creditor files a written objection, the written objection shall be heard and acted upon as set forth in this section.

SECTION 11. AMENDATORY 58 O.S. 1991, Section 912, as amended by Section 3, Chapter 274, O.S.L. 1992 (58 O.S. Supp. 1992, Section 912), is amended to read as follows:

Section 912. A. If title to any real property is held by two or more persons in joint tenancy with right of survivorship, any surviving joint tenant or the personal representative or duly appointed attorney in fact of any surviving joint tenant, may evidence the termination of the interest of a deceased joint tenant in such real property by filing the documents described in subsection C of this section.

B. If title to any real property is held by two or more persons where at least one of them holds a life tenancy interest in such property and at least one of them holds a remainder interest in such property, any surviving life tenant or remainderman, or the personal representative or duly appointed attorney of any survivor of them may evidence the termination of the interest of any deceased life tenant in such real property by filing the documents described in subsection C of this section.

C. A person entitled, by subsection A or B of this section, to evidence the termination of the interest of a decedent in real property pursuant to this section may do so by filing in the office of the county clerk of the county in which said real property is located, the following:

1. A certified copy of the certificate of death of the joint tenant or life tenant issued by the court clerk as prescribed in ~~Section 1-307~~ Article 3 of the Public Health Code, Section 1-301 et seq. of Title 63 of the Oklahoma Statutes, or by the State

Department of Health or comparable agency of the place of the death of the joint tenant or life tenant; and

2. An affidavit by the surviving joint tenant, life tenant or remainderman or the personal representative or duly appointed attorney in fact of the surviving joint tenant, life tenant or remainderman describing the real property, stating that the decedent named in such certificate of death is one and the same person as the deceased joint tenant or life tenant named in a previously recorded document which created or purported to create such joint tenancy or life tenancy in such real property and identifying such recorded document by book and page where recorded, that the survivor making or on whose behalf the affidavit is made and the decedent were husband and wife, if such is the case, and the date of death of the deceased joint tenant or life tenant. If the affidavit is filed by a personal representative or duly appointed attorney in fact, the letters of administration, letters testamentary, letters of guardianship or the power of attorney shall accompany the affidavit and be filed with the county clerk. ~~Such~~ An affidavit properly sworn before a notarial officer shall, notwithstanding the provisions of Section 26 of Title 16 of the Oklahoma Statutes, be received for record and recorded by the county clerk without having been acknowledged and, when recorded, it shall be effective as if it had been acknowledged. An affidavit filed either before or after the effective date of this act which was either acknowledged or sworn or both acknowledged and sworn before a notarial officer is hereby validated and the title to such real property shall be deemed marketable unless otherwise defective.

3. If such real property is held in joint tenancy other than by two persons only who were husband and wife or other than by two persons only who were husband and wife with one as the life tenant and the other as the remainderman, a waiver or release issued by the Oklahoma Tax Commission of the estate tax lien as to the deceased joint tenant or life tenant must be filed with the affidavit required by paragraph 2 of this subsection, unless the estate tax lien has otherwise been released by operation of law.

D. The filing of the documents described in subsection C of this section shall constitute conclusive evidence of the death of such joint tenant or life tenant and of the termination of the interest of such deceased joint tenant or life tenant in such real property. The title of such real property shall be deemed marketable unless otherwise defective.

SECTION 12. AMENDATORY 58 O.S. 1991, Section 1071, as amended by Section 4, Chapter 274, O.S.L. 1992 (58 O.S. Supp. 1992, Section 1071), is amended to read as follows:

Section 1071. Sections 1071 through 1077 of this title, ~~and Sections 5 and 6 of this act~~ shall be known and may be cited as the "Uniform Durable Power of Attorney Act".

SECTION 13. AMENDATORY Section 5, Chapter 274, O.S.L. 1992 (58 O.S. Supp. 1992, Section 1072.1), is amended to read as follows:

Section 1072.1 A. The durable power of attorney may show or state:

1. The fact of execution under the provisions of the Uniform Durable Power of Attorney Act;
2. The time and conditions under which the power is to become effective;
3. The extent and scope of the powers conferred; and
4. Who is to exercise the power, including any successor attorney-in-fact if a prior appointed attorney-in-fact dies, ceases to act, refuses or is unable to serve, or resigns.

B. The power may grant complete or limited authority with respect to the principal's:

1. Person, including, but not limited to, health and medical care decisions on the principal's behalf, but excluding:
 - a. the execution, on behalf of the principal, of a Directive to Physicians, an Advance Directive for Health Care, Living Will, or other document purporting to authorize life-sustaining treatment decisions, and
 - b. the making of life-sustaining treatment decisions unless the power complies with the requirements for

a health care proxy under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act; and

2. Property, including homestead property, whether real, personal, intangible or mixed.

SECTION 14. AMENDATORY 60 O.S. 1991, Section 175.23, is amended to read as follows:

Section 175.23 A. The district court shall have original jurisdiction to construe the provisions of any trust instrument; to determine the law applicable thereto; the powers, duties, and liability of trustee; the existence or nonexistence of facts affecting the administration of the trust estate; to require accounting by trustees; to surcharge trustee; and in its discretion to supervise the administration of trusts; and all actions hereunder are declared to be proceedings in rem.

B. The venue of such actions shall be in the county where the trustees or any cotrustee resides. Upon obtaining jurisdiction the same shall not be divested by the removal of the trustee from the county where such action is commenced.

C. Actions hereunder may be brought by a trustee, beneficiary, or any person affected by the administration of the trust estate. If the action is predicated upon any act or obligation of any beneficiary, such beneficiary shall be a necessary party to the proceedings. The only necessary parties to such actions shall be those persons designated as beneficiaries by name or class in the instrument creating the trust and who have a current interest in the trust which is the subject of the action, those persons currently serving as trustees of said trust, and any persons who may be actually receiving distributions from the trust estate at the time the action is filed; contingent beneficiaries designated as a class shall not be necessary parties if their interests in the subject trust are contingent upon another named person's predeceasing the grantor of the trust.

D. The provisions of the statutes governing civil procedure, commencement of action, process, process by publication, appointment of guardians ad litem, supersedeas and appeal, shall

govern all actions and proceedings brought under provisions of this act.

E. A court of competent jurisdiction may, for cause shown and upon notice to the beneficiaries, relieve a trustee from any or all of the duties and restrictions which would otherwise be placed upon him by this act, or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for violations of the provisions of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.56 of Title 60, unless there is created a duplication in numbering, reads as follows:

When the declaration or agreement of an express trust provides for any of the property held in trust to be distributed to a beneficiary related by blood to the grantor or to a grantor of the trust, and the beneficiary is living at the time the trust is created but dies before the time for distribution of the trust leaving one or more lineal descendants who are living at the time for distribution of the trust, and no provision is made in the trust declaration or agreement for disposition of the property in the event that the beneficiary is not living at the time for distribution of the trust, the beneficiary's lineal descendants take the share of the trust property so given to the beneficiary in the trust declaration or agreement, by right of representation, in the same manner as the beneficiary would have done had he been living at the time for distribution of the trust.

SECTION 16. This act shall become effective September 1, 1993.

44-1-1146

KS