A bill for an act

relating to probate; establishing probate and intestate rights for domestic partners; amending Minnesota Statutes 2008, sections 524.1-201; 524.2-101; 524.2-102; 524.2-103; 524.2-201; 524.2-213; 524.2-301; 524.2-402; 524.2-403; 524.2-404; 524.2-405; 524.2-803; 524.2-804; 524.3-301; 524.3-403; 524.3-703; 524.3-706; 524.3-715; 524.3-901; 524.3-906; 524.3-1203, subdivisions 1, 3; Minnesota Statutes 2009 Supplement, section 524.3-1203, subdivision 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 524.1-201, is amended to read:

524.1-201 GENERAL DEFINITIONS.

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in chapters 524 and 525:

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under article III, part 3.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(5) "Child" includes any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(6) "Claims" includes liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include

taxes, demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate, tort claims, foreclosure of mechanic's liens, or to actions pursuant to section 573.02.

(7) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability" means cause for appointment of a conservator as described in section 524.5-401, or a protective order as described in section 524.5-412.

(13) "Distributee" means any person who has received or who will receive property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee with respect to property which the trustee has received from a personal representative only to the extent of distributed assets or their increment remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Domestic partners" means two persons who:

(i) are the same sex;

(ii) are adults and mentally competent to enter into legally binding contracts;

(iii) have assumed responsibility for each other's basic common welfare, financial obligations, and well-being;

(iv) share a common domicile and primary residence with each other on a permanent basis;

(v) have a committed interdependent relationship with each other, intend to continue that relationship indefinitely, and do not have this type of relationship with any other person;

(vi) are not married to another person and have not entered into a domestic partnership arrangement with another person that is currently in effect; and

(vii) are not related by blood or adoption so that a marriage between them would be prohibited under section 517.03, subdivision 1, paragraph (a), clause (2) or (3).

~~(14)~~ (15) "Estate" includes all of the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

(16) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(17) "Foreign personal representative" means a personal representative of another jurisdiction.

(18) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(21) "Heirs" means those persons, including the surviving spouse or domestic partner, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" is as described in section 524.5-102, subdivision 6, other than a minor.

(23) "Informal proceedings" means those 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 sections 524.3-301 to 524.3-311.

(24) "Interested person" includes heirs, devisees, children, spouses, domestic partners, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(32) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(35) "Person" means an individual, a corporation, an organization, or other legal entity.

(36) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(37) "Petition" means a written request to the court for an order after notice.

(38) "Proceeding" includes action at law and suit in equity.

(39) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(40) "Protected person" is as described in section 524.5-102, subdivision 14.

(42) "Registrar" refers to the judge of the court or the person designated by the court to perform the functions of registrar as provided in section 524.1-307.

(43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(44) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(45) "Special administrator" means a personal representative as described by sections 524.3-614 to 524.3-618.

(46) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will, this chapter or chapter 525. "Successors" also means a funeral director or county government that provides the funeral and burial of the decedent, or a state or county agency with a claim authorized under section 256B.15.

(49) "Supervised administration" refers to the proceedings described in sections 524.3-501 to 524.3-505.

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 528, custodial arrangements pursuant to sections 149A.97, 318.01 to 318.06, 527.21 to 527.44, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" is as described in section 524.5-102, subdivision 17.

(56) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

Sec. 2. Minnesota Statutes 2008, section 524.2-101, is amended to read:

524.2-101 INTESTATE ESTATE.

(a) The intestate estate of the decedent consists of any part of the decedent's estate not allowed to the decedent's spouse or domestic partner or descendants under sections 524.2-402, 524.2-403, and 524.2-404, and not disposed of by will. The intestate estate passes by intestate succession to the decedent's heirs as prescribed in this chapter, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's

intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

Sec. 3. Minnesota Statutes 2008, section 524.2-102, is amended to read:

524.2-102 SHARE OF THE SPOUSE OR DOMESTIC PARTNER.

The intestate share of a decedent's surviving spouse or domestic partner is:

(1) the entire intestate estate if:

(i) no descendant of the decedent survives the decedent; or

(ii) all of the decedent's surviving descendants are also descendants of the surviving spouse or domestic partner and there is no other descendant of the surviving spouse or domestic partner who survives the decedent;

(2) the first $150,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse or domestic partner and the surviving spouse or domestic partner has one or more surviving descendants who are not descendants of the decedent, or if one or more of the decedent's surviving descendants are not descendants of the surviving spouse or domestic partner.

Sec. 4. Minnesota Statutes 2008, section 524.2-103, is amended to read:

524.2-103 SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE OR DOMESTIC PARTNER.

Any part of the intestate estate not passing to the decedent's surviving spouse or domestic partner under section 524.2-102, or the entire intestate estate if there is no surviving spouse or domestic partner, passes in the following order to the individuals designated below who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either

the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half;

(5) if there is no surviving descendant, parent, descendant of a parent, grandparent, or descendant of a grandparent, to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

Sec. 5. Minnesota Statutes 2008, section 524.2-201, is amended to read:

524.2-201 DEFINITIONS.

In this part:

(1) As used in sections other than section 524.2-205, "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under section 524.2-205.

(2) "Interest in property held with right of survivorship" means the severable interest owned by the person or persons whose interest is being determined in property held in joint tenancy or in other form of common ownership with a right of survivorship. The interest shall be identified and valued as of the time immediately prior to the death of the decedent or the date of the transfer which causes the property to be included in the augmented estate, as the case may be. In the case of an account described in article 6, part 2, the severable interest owned by the person is the amount which belonged to the person determined under section 524.6-203. In the case of property described in article 6, part 3, the severable interest owned by the person is the amount consistent with section 524.6-306.

(3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(5) "Power" or "power of appointment" includes a power to designate the beneficiary of an insurance policy or other contractual arrangement.

(6) "Presently exercisable general power of appointment" means a power possessed by a person at the time in question to create a present or future interest in the person, in the person's creditors, in the person's estate, or in the creditor of the person's estate, whether or not the person then had the capacity to exercise the power. "General power of

appointment" means a power, whether or not presently exercisable, possessed by a person to create a present or future interest in the person, in the person's creditors, in the person's estate, or in creditors of the person's estate.

(7) "Probate estate" means property that would pass by intestate succession if the decedent dies without a valid will.

(8) "Property" includes values subject to a beneficiary designation.

(9) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(10) "Transfer" includes: (i) the exercise, release, or lapse of a general power of appointment created by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party; and (ii) the exercise or release by the decedent of a presently exercisable general power of appointment created by someone other than the decedent. "Transfer" does not include the lapse, other than a lapse at death, of a power described in clause (ii).

(11) "Bona fide purchaser" means a purchaser for value in good faith and without notice or actual knowledge of an adverse claim, or a person who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation in good faith without notice of an adverse claim. In the case of real property located in Minnesota purchased from a successor or successors in interest of a decedent, the purchaser is without notice of an adverse claim arising under this part or, if the decedent was not domiciled in Minnesota at the time of death, arising under similar provisions of the law of the decedent's domicile, unless the decedent's surviving spouse or domestic partner has filed a notice in the office of the county recorder of the county in which the real property is located or, if the property is registered land, in the office of the registrar of titles of the county in which the real property is located, containing the legal description of the property, a brief statement of the nature and extent of the interest claimed, and the venue, title, and file number of the proceeding for an elective share, if any has been commenced. The registrar of titles is authorized to accept for registration any such notice which relates to registered land.

Sec. 6. Minnesota Statutes 2008, section 524.2-213, is amended to read:

524.2-213 WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS.

The right of election of a surviving spouse and the rights of ~~the~~ a surviving spouse or domestic partner to the homestead, exempt property, and family allowance, or any of them, may be waived, wholly or partially, after marriage or after the parties entered into a domestic partnership, by a written contract, agreement, or waiver signed by the party

waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a spouse is a waiver only of the right to the elective share. Any waiver prior to marriage must be made pursuant to section 519.11.

Sec. 7. Minnesota Statutes 2008, section 524.2-301, is amended to read:

524.2-301 ENTITLEMENT OF SPOUSE OR DOMESTIC PARTNER; PREMARITAL WILL.

(a) If a testator married or entered into a domestic partnership after making a will and the spouse or domestic partner survives the testator, the surviving spouse or domestic partner shall receive a share of the estate of the testator equal in value to that which the surviving spouse or domestic partner would have received if the testator had died intestate, unless:

(1) provision has been made for, or waived by, the spouse or domestic partner by ~~prenuptial or postnuptial~~ agreement;

(2) the will discloses an intention not to make provision for the spouse or domestic partner; or

(3) the spouse or domestic partner is provided for in the will.

(b) In satisfying the share provided by this section, devises made by the will, other than a devise to a child of the testator who was born before the testator married the surviving spouse or entered into a domestic partnership with the surviving domestic partner and who is not a child of the surviving spouse or domestic partner, or a devise or substitute gift under section 524.2-603 or 524.2-604 to a descendant of such a child, abate first as otherwise provided in section 524.3-902.

Sec. 8. Minnesota Statutes 2008, section 524.2-402, is amended to read:

524.2-402 DESCENT OF HOMESTEAD.

(a) If there is a surviving spouse or domestic partner, the homestead, including a manufactured home which is the family residence, descends free from any testamentary or other disposition of it to which the spouse or domestic partner has not consented in writing or as provided by law, as follows:

(1) if there is no surviving descendant of decedent, to the spouse or domestic partner; or

(2) if there are surviving descendants of decedent, then to the spouse or domestic partner for the term of the spouse's or domestic partner's natural life and the remainder in equal shares to the decedent's descendants by representation.

(b) If there is no surviving spouse or domestic partner and the homestead has not been disposed of by will it descends as other real estate.

(c) If the homestead passes by descent or will to the spouse or domestic partner or decedent's descendants or to a trustee of a trust of which the spouse or domestic partner or the decedent's descendants are the sole current beneficiaries, it is exempt from all debts which were not valid charges on it at the time of decedent's death except that the homestead is subject to a claim filed pursuant to section 246.53 for state hospital care or 256B.15 for medical assistance benefits. If the homestead passes to a person other than a spouse or domestic partner or decedent's descendants or to a trustee of a trust of which the spouse or domestic partner or the decedent's descendants are the sole current beneficiaries, it is subject to the payment of expenses of administration, funeral expenses, expenses of last illness, taxes, and debts. The claimant may seek to enforce a lien or other charge against a homestead so exempted by an appropriate action in the district court.

(d) For purposes of this section, except as provided in section 524.2-301, the surviving spouse or domestic partner is deemed to consent to any testamentary or other disposition of the homestead to which the spouse or domestic partner has not previously consented in writing unless the spouse or domestic partner files in the manner provided in section 524.2-211, paragraph (f), a petition that asserts the homestead rights provided to the spouse or domestic partner by this section.

Sec. 9. Minnesota Statutes 2008, section 524.2-403, is amended to read:

524.2-403 EXEMPT PROPERTY.

(a) If there is a surviving spouse or domestic partner, then, in addition to the homestead and family allowance, the surviving spouse or domestic partner is entitled from the estate to:

(1) property not exceeding $10,000 in value in excess of any security interests therein, in household furniture, furnishings, appliances, and personal effects, subject to an award of sentimental value property under section 525.152; and

(2) one automobile, if any, without regard to value.

(b) If there is no surviving spouse or domestic partner, the decedent's children are entitled jointly to the same property as provided in paragraph (a), except that where it appears from the decedent's will a child was omitted intentionally, the child is not entitled to the rights conferred by this section.

(c) If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 worth of exempt property in the estate, the surviving spouse or domestic partner or children are

entitled to other personal property of the estate, if any, to the extent necessary to make up the $10,000 value.

(d) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the family allowance.

(e) The rights granted by this section are in addition to any benefit or share passing to the surviving spouse or domestic partner or children by the decedent's will, unless otherwise provided, by intestate succession or by way of elective share.

(f) No rights granted to a decedent's adult children under this section shall have precedence over a claim under section 246.53, 256B.15, 256D.16, 261.04, or 524.3-805, paragraph (a), clause (1), (2), or (3).

Sec. 10. Minnesota Statutes 2008, section 524.2-404, is amended to read:

524.2-404 FAMILY ALLOWANCE.

(a) In addition to the right to the homestead and exempt property, the decedent's surviving spouse or domestic partner and minor children whom the decedent was obligated to support, and children who were in fact being supported by the decedent, shall be allowed a reasonable family allowance in money out of the estate for their maintenance as follows:

(1) for one year if the estate is inadequate to discharge allowed claims; or

(2) for 18 months if the estate is adequate to discharge allowed claims.

(b) The amount of the family allowance may be determined by the personal representative in an amount not to exceed $1,500 per month.

(c) The family allowance is payable to the surviving spouse or domestic partner, if living; otherwise to the children, their guardian or conservator, or persons having their care and custody.

(d) The family allowance is exempt from and has priority over all claims.

(e) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or domestic partner or children by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The death of any person entitled to family allowance does not terminate the right of that person to the allowance.

(f) The personal representative or an interested person aggrieved by any determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

Sec. 11. Minnesota Statutes 2008, section 524.2-405, is amended to read:

524.2-405 SOURCE, DETERMINATION, AND DOCUMENTATION.

(a) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse or domestic partner, guardians or conservators of minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make those selections if the surviving spouse or domestic partner, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child.

(b) The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property.

(c) The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a selection or determination under this section other than that which the surviving spouse or domestic partner, guardians or conservators of minor children, children who are adults, or the personal representative selected, could have selected, determined, or could have determined.

Sec. 12. Minnesota Statutes 2008, section 524.2-803, is amended to read:

524.2-803 EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS.

(a) A surviving spouse or domestic partner, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, including an intestate share, an elective share, an omitted spouse's or domestic partner's or child's share, homestead, exempt property, and a family allowance, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond or other contractual arrangement who feloniously and intentionally kills the principal obligee is not entitled to any benefit under the bond or

other contractual arrangement and it becomes payable as though the killer had predeceased the decedent.

(d) A named beneficiary of a life insurance policy who feloniously and intentionally kills the person upon whose life the policy is issued is not entitled to any benefit under the policy and the proceeds of the policy shall be paid and distributed by order of the court as hereinafter provided. If a person who feloniously and intentionally kills a person upon whose life a life insurance policy is issued is a beneficial owner as shareholder, partner or beneficiary of a corporation, partnership, trust or association which is the named beneficiary of the life insurance policy, to the extent of the killer's beneficial ownership of the corporation, partnership, trust or association, the proceeds of the policy shall be paid and distributed by order of the court as hereinafter provided.

Upon receipt of written notice by the insurance company at its home office that the insured may have been intentionally and feloniously killed by one or more named beneficiaries or that the insured may have been intentionally and feloniously killed by one or more persons who have a beneficial ownership in a corporation, partnership, trust or association, which is the named beneficiary of the life insurance policy, the insurance company shall, pending court order, withhold payment of the policy proceeds to all beneficiaries. In the event that the notice has not been received by the insurance company before payment of the policy proceeds, the insurance company shall be fully and finally discharged and released from any and all responsibility under the policy to the extent that the policy proceeds have been paid.

The named beneficiary, the insurance company or any other party claiming an interest in the policy proceeds may commence an action in the district court to compel payment of the policy proceeds. The court may order the insurance company to pay the policy proceeds to any person equitably entitled thereto, including the deceased insured's spouse or domestic partner, children, issue, parents, creditors or estate, and may order the insurance company to pay the proceeds of the policy to the court pending the final determination of distribution of the proceeds by the court. The insurance company, upon receipt of a court order, judgment or decree ordering payment of the policy proceeds, shall pay the policy proceeds according to the terms of the order, and upon payment of such proceeds according to the terms of the court order, shall be fully and completely discharged and released from any and all responsibility for payment under the policy.

(e) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(f) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional

killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(g) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

Sec. 13. Minnesota Statutes 2008, section 524.2-804, is amended to read:

524.2-804 REVOCATION BY DISSOLUTION OF MARRIAGE OR TERMINATION OF DOMESTIC PARTNERSHIP; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.

Subdivision 1. **Revocation upon dissolution or termination of domestic partnership.** Except as provided by the express terms of a governing instrument, other than a trust instrument under section 501B.90, executed prior to the dissolution or annulment of an individual's marriage or termination of an individual's domestic partnership, a court order, a contract relating to the division of ~~the marital~~ property made between individuals before or after their marriage, dissolution, or annulment or domestic partnership termination, or a plan document governing a qualified or nonqualified retirement plan, the dissolution or annulment of a marriage or termination of a domestic partnership revokes any revocable:

(1) disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse or domestic partner in a governing instrument;

(2) provision in a governing instrument conferring a general or nongeneral power of appointment on an individual's former spouse or domestic partner; and

(3) nomination in a governing instrument, nominating an individual's former spouse or domestic partner to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.

Subd. 2. **Effect of revocation.** Provisions of a governing instrument are given effect as if the former spouse or domestic partner died immediately before the dissolution or annulment or termination of the domestic partnership.

Subd. 3. **Revival if dissolution nullified.** Provisions revoked solely by this section are revived by the individual's remarriage to the former spouse or by a nullification of

the dissolution or annulment or if the individual and the former domestic partner entered into a domestic partnership again.

Subd. 4. **No revocation for other change of circumstances.** No change of circumstances other than as described in this section and in section 524.2-803 effects a revocation.

Subd. 5. **Protection of payors and other third parties.** (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a dissolution, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the dissolution, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of the dissolution, annulment, or remarriage under paragraph (a) must be delivered to the payor's or other third party's main office or home. Upon receipt of written notice of the dissolution, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

Sec. 14. Minnesota Statutes 2008, section 524.3-301, is amended to read:

524.3-301 INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS; APPLICATION; CONTENTS.

An informal probate proceeding is an informal proceeding for the probate of decedent's will with or without an application for informal appointment. An informal appointment proceeding is an informal proceeding for appointment of a personal representative in testate or intestate estates. These proceedings may be combined in a single proceeding. Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant, in accordance with section

524.1-310, to be accurate and complete to the best of applicant's knowledge and belief as to the following information:

(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 the decedent's domicile at the time of death, and the names and addresses of the spouse or domestic partner, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed;

(iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(iv) that the time limit for informal probate as provided in this article has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described by section 524.3-108 authorizing tardy probate have occurred.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for

probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

(i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 524.1-301, or, a statement why any such instrument of which the applicant may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 524.3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 524.3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Sec. 15. Minnesota Statutes 2008, section 524.3-403, is amended to read:

524.3-403 FORMAL TESTACY PROCEEDING; NOTICE OF HEARING ON PETITION.

(a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice, in the form prescribed by court rule, shall be given in the manner prescribed by section 524.1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 524.3-204. The petitioner, having reason to believe that the will has been lost or destroyed, shall include a statement to that effect in the notice.

Notice shall be given to the following persons: the surviving spouse <u>or domestic partner</u>, children, and other heirs of the decedent, the devisees and personal representatives named in any will that is being or has been probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the

decedent whose appointment has not been terminated. Notice of the hearing, in the form prescribed by court rule, shall also be given under the direction of the court administrator by publication once a week for two consecutive weeks in a legal newspaper in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for hearing.

If the decedent was born in a foreign country or has heirs or devisees in a foreign country, notice of a formal testacy proceeding shall be given to the consul of that country, if the consul resides in this state and has filed a copy of the appointment with the secretary of state. Any notice received by the secretary of state shall be forwarded to the appropriate consul.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, the court shall direct the petitioner to proceed in the manner provided in chapter 576.

Sec. 16. Minnesota Statutes 2008, section 524.3-703, is amended to read:

524.3-703 GENERAL DUTIES; RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE.

(a) A personal representative is a fiduciary who shall observe the standards of care in dealing with the estate assets that would be observed by a prudent person dealing with the property of another, and if the personal representative has special skills or is named personal representative on a basis of representation of special skills or expertise, the personal representative is under a duty to use those skills. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and applicable law, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred by applicable law, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning

the appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse or domestic partner, any minor and dependent children and any pretermitted child of the decedent as described elsewhere.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

Sec. 17. Minnesota Statutes 2008, section 524.3-706, is amended to read:

524.3-706 DUTY OF PERSONAL REPRESENTATIVE; INVENTORY AND APPRAISEMENT.

Within six months after appointment, or nine months after the death of the decedent, whichever is later, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall mail or deliver a copy of the inventory to the surviving spouse or domestic partner, if there be one, to all residuary distributees, and to interested persons or creditors who request a copy thereof. The personal representative need not personally receive a copy as a surviving spouse or domestic partner or as a residuary distributee.

Sec. 18. Minnesota Statutes 2008, section 524.3-715, is amended to read:

524.3-715 TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES; EXCEPTIONS.

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:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries, or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. The personal representative on holding a mortgage, pledge or other lien upon property of another person may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay in compliance with section 524.3-805, but without the presentation of a claim, the reasonable and necessary last illness expenses of the decedent (except as provided in section 524.3-806 (a)), reasonable funeral expenses, debts and taxes with preference under federal or state law, and other taxes, assessments, compensation of the personal representative and the personal representative's attorney, and all other costs and expenses of administration although the same may be otherwise barred under section 524.3-803;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein, including the homestead, exempt or otherwise, for cash, credit, or for part cash and part credit, with or without security for unpaid balances, and without the consent of

any devisee or heir unless the property has been specifically devised to a devisee or heir by decedent's will, except that the homestead of a decedent when the spouse or domestic partner takes any interest therein shall not be sold, mortgaged or leased unless the written consent of the spouse or domestic partner has been obtained;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in this chapter;

(28) foreclose a mortgage, lien, or pledge or collect the debts secured thereby, or complete any such proceeding commenced by the decedent;

(29) exercise all powers granted to guardians and conservators by sections 524.5-101 to 524.5-502.

Sec. 19. Minnesota Statutes 2008, section 524.3-901, is amended to read:

524.3-901 SUCCESSORS' RIGHTS IF NO ADMINISTRATION.

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property pursuant to sections 524.2-402, 524.2-403, 525.14 or intestacy may establish title thereto by proof of the decedent's ownership and death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse or domestic partner and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

Sec. 20. Minnesota Statutes 2008, section 524.3-906, is amended to read:

524.3-906 DISTRIBUTION IN KIND; VALUATION; METHOD.

(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised, and a spouse or domestic partner or child who has selected particular assets of an estate shall receive the items selected.

(2) Any statutory allowances or devise payable in money may be satisfied by value in kind provided

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities, traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing

received by the personal representative within 30 days after mailing or delivery of the proposal.

Sec. 21. Minnesota Statutes 2008, section 524.3-1203, subdivision 1, is amended to read:

Subdivision 1. **Petition and payment.** Upon petition of an interested person, the court, with or without notice, may determine that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had for it, or if there is no property except property recovered for death by wrongful act, property that is exempt from all debts and charges in the probate court, or property that may be appropriated for the payment of the property selection as provided in section 524.2-403, the allowances to the spouse or domestic partner and children mentioned in section 524.2-404, and the expenses and claims provided in section 524.3-805, paragraph (a), clauses (1) to (6), inclusive, the personal representative by order of the court may pay the estate in the order named. The court may then, with or without notice, summarily determine the heirs, legatees, and devisees in its final decree or order of distribution assigning to them their share or part of the property with which the personal representative is charged.

Sec. 22. Minnesota Statutes 2008, section 524.3-1203, subdivision 3, is amended to read:

Subd. 3. **Summary distribution.** Summary distribution may be made under this section in any proceeding of any real, personal, or other property in kind in reimbursement or payment of the property selection as provided in section 524.2-403, the allowances to the spouse or domestic partner and children mentioned in section 524.2-404, and the expenses and claims provided in section 524.3-805, paragraph (a), clauses (1) to (6), inclusive, in the order named, if the court is satisfied as to the propriety of the distribution and as to the valuation, based upon appraisal in the case of real estate other than homestead, of the property being assigned to exhaust the assets of the estate.

Sec. 23. Minnesota Statutes 2009 Supplement, section 524.3-1203, subdivision 5, is amended to read:

Subd. 5. **Exhaustion of estate.** In any summary, special, or other administration in which it appears that the estate will not be exhausted in payment of the priority items enumerated in subdivisions 1 to 4, the estate may nevertheless be summarily closed without further notice, and the property assigned to the proper persons, if the gross probate

estate, exclusive of any exempt homestead as defined in section 524.2-402, and any exempt property as defined in section 524.2-403, does not exceed the value of $100,000. If the closing and distribution of assets is made pursuant to the terms of a will, no decree shall issue until a hearing has been held for formal probate of the will as provided in sections 524.3-401 to 524.3-413.

No summary closing of an estate shall be made to any distributee under this subdivision, unless a showing is made by the personal representative or the petitioner, that all property selected by and allowances to the spouse or domestic partner and children as provided in section 524.2-403 and the expenses and claims provided in section 524.3-805 have been paid, and provided, further, that a bond shall be filed by the personal representative or the petitioner, conditioned upon the fact that all such obligations have been paid and that all the facts shown on the petition are true, with sufficient surety approved by the court in an amount as may be fixed by the court to cover potential improper distributions. If a personal representative is appointed, the representative's bond shall be sufficient for such purpose unless an additional bond is ordered, and the sureties on the bond shall have the same obligations and liabilities as provided for sureties on a distribution bond.

In the event that an improper distribution or disbursement is made in a summary closing, in that not all of said obligations have been paid or that other facts as shown by the personal representative or the petitioner, are not true, resulting in damage to any party, the court may vacate its summary decree or closing order, and the petitioner or the personal representative, together with the surety, shall be liable for damages to any party determined to be injured thereby as herein provided. The personal representative, petitioner, or the surety, may seek reimbursement for damages so paid or incurred from any distributee or recipient of assets under summary decree or order, who shall be required to make a contribution to cover such damages upon a pro rata basis or as may be equitable to the extent of assets so received. The court is hereby granted complete and plenary jurisdiction of any and all such proceedings and may enter such orders and judgments as may be required to effectuate the purposes of this subdivision.

Any judgment rendered for damages or the recovery of assets in such proceedings shall be upon petition and only after hearing held thereon on 14 days' notice of hearing and a copy of petition served personally upon the personal representative and the surety and upon any distributee or recipient of assets where applicable. Any action for the recovery of money or damages under this subdivision is subject to the time and other limitations imposed by section 524.1-304.