ARTICLE 8

MISCELLANEOUS PROVISIONS

PART 1

RECEIVERSHIPS FOR MISSING AND ABSENT PERSONS

§8-101. Estates of absentees; petition

If a person entitled to or having an interest in property within the jurisdiction of the State has disappeared or absconded from the place within or outside the State where the person was last known to be, has no agent in the State and it is not known where the person is, or if a person, having a spouse or minor child dependent to any extent upon the person for support, has disappeared or absconded without making sufficient provision for support and it is not known where the person is, or, if it is known that the person is outside the State, anyone who would under the law of the State be entitled to administer the estate of the absentee if the absentee were deceased may file a petition under oath in the court for the county where the property is situated. The petition must state the name, age, occupation and last known residence or address of the absentee, the date and circumstances of the disappearance and the names and residences of other persons, whether members of the absentee's family or otherwise, of whom inquiry may be made. The petition must also contain a schedule of the absentee's known property, real and personal, and its location within the State and request that such property be taken possession of and a receiver appointed under this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-102. Warrant

Upon receipt of a petition under section 8-101, the court may issue a warrant, which may run throughout the State, directed to the public administrator in the county where the property or some of it is situated, commanding the public administrator to take possession of the property listed in the schedule and expeditiously make return of the warrant with a schedule of the property taken. The public administrator shall cause any portion of the warrant relating to land to be recorded in the registry of deeds for the county where the land is located. The public administrator is entitled to the fees allowed by the court for serving the warrant, but may not receive more than those established by law for similar service upon a writ of attachment. The fees and the costs of publishing and serving the notice must be paid by the petitioner. If a receiver is appointed under section 8-105, the fees must be repaid by the receiver to the petitioner and the receiver may be compensated for these fees under section 8-112. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-103. Notice

Upon the return of a warrant issued under section 8-102, the court shall issue a notice reciting the substance of the petition, warrant and return, which must be addressed to the absentee, to all persons who claim an interest in the absentee's property and to all whom it may concern, ordering them to

appear at a time and place named and show cause why a receiver of the property should not be appointed to hold and dispose of the property listed in the schedule under this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-104. Publication

The return day may not be less than 30 days nor more than 60 days after the date of the notice. The court shall order the notice to be published once in each of 3 successive weeks in one or more newspapers within the county in which the petition was filed under section 8-101 and a copy of the notice to be mailed to the last known address of the absentee. The court may order additional and alternative notice to be given within or outside the State. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-105. Hearing; appointment of receiver of property; bond

The absentee or a person who claims an interest in any of the property may appear and show cause why the petition should not be granted. The court may, after hearing, dismiss the petition and order that the property in possession of the public administrator be returned to the person entitled to the property or it may appoint as receiver a person who, under the law of the State, is entitled to administer the estate of the absentee if the absentee were deceased or, if no eligible person is known or if all eligible persons decline to serve, the court may appoint the public administrator as receiver of the property in the possession of the public administrator and named in the schedule. If a receiver is appointed, the court shall find and record the date of the absentee's disappearance or absconding and the receiver shall give bond to the State of Maine in a sum and under the conditions ordered by the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-106. Possession by receiver

After approval of a bond under section 8-105, the court may order the public administrator to transfer and deliver to the receiver possession of the property under the warrant. The receiver shall file a schedule of the property received in the registry of probate. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-107. Collection of debts

In addition to property transferred to the receiver under section 8-106, the receiver shall take possession of any other property within the State that belongs to the absentee and demand and collect all debts due the absentee from any person in the State and hold the same as if it had been transferred and delivered to the receiver by the public administrator. If the receiver takes any additional real estate, the receiver shall file a certificate describing the real estate with the register of deeds for the county

where the real estate is located. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-108. Appointment of receiver for absentee's debts

If an absentee has left no corporeal property within the State, but there are debts or obligations due or owing the absentee from persons in the State, a petition may be filed as provided in section 8-101, stating the nature and amount of the absentee's known debts and obligations and praying that a receiver may be appointed. Upon receipt of the petition, the court may issue a notice as provided in section 8-103 without issuing a warrant and may, upon the return of the notice and after a hearing, dismiss the petition or appoint a receiver and authorize and direct the receiver to demand and collect the absentee's debts and obligations. The receiver shall give bond as provided in section 8-105 and shall hold the proceeds of the absentee's debts and obligations and all property received by the receiver and distribute the same as provided in this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-109. Perishable goods

The court may make orders for the care, custody, leasing and investing of all property and its proceeds in the possession of the receiver. If any of the property consists of live animals or is perishable or cannot be kept without great or disproportionate expense, the court may, after the return of the warrant, order the property to be sold at public or private sale. Upon petition of the receiver, the court may order all or part of the property, including the absentee's rights in land, to be sold at public or private sale to supply money for payments authorized by this Part or for reinvestment approved by the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-110. Support of dependents

The court may order the absentee's property or its proceeds acquired by mortgage, lease or sale to be applied in payment of expenses incurred or that may be incurred to support and maintain the absentee's spouse and dependent children and to discharge any debts and claims for spousal support proved against the absentee. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-111. Arbitration of claims

The court may authorize the receiver appointed under section 8-108 to adjust by arbitration or compromise any demand in favor of or against the absentee's estate. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-112. Compensation; cessation of duties

The receiver appointed under section 8-108 may receive compensation and disbursements ordered by the court, to be paid out of the absentee's property or proceeds. If, within 8 years after the date of the disappearance or absconding found by the court under section 8-105, the absentee appears or a personal representative, assignee in insolvency or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver and pay over the remainder of the absentee's property. If the absentee does not appear and claim the absentee's property within 8 years, all of the absentee's right, title and interest in the property, real or personal, or the proceeds thereof, ceases, and no action may be brought by the absentee. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-113. Termination of receivership

If at the expiration of 8 years after the date of the disappearance or absconding found by the court under section 8-105, the absentee's property has not been accounted for, delivered or paid over under section 8-112, the court shall order distribution of the remainder to the persons to whom, and in the shares and proportions in which, the absentee's property would have been distributed if the absentee had died intestate within the State on the day 8 years after the date of the disappearance or absconding. The receiver shall deduct from the share of each distributee and pay to the State Tax Assessor the amount each distributee would have paid in an inheritance tax to the State if the distributee had received the property by inheritance from a deceased resident of the State. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-114. Limitations

Notwithstanding sections 8-112 and 8-113, if a receiver is not appointed within 7 years after the date of disappearance or absconding found by the court under section 8-105, the time limited to accounting for, or fixed for distributing, the absentee's property or its proceeds, or for barring actions relative thereto, is one year after the date of the appointment of a receiver. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

PART 2

PROCEDURES GOVERNING BONDS

§8-201. Applicability to proceedings on other bonds

Except as otherwise provided by law, and whenever the provisions of this Part are applicable, proceedings, judgment and execution on the bonds given to the State of Maine or the court by personal representatives, guardians, conservators, trustees, surviving partners, assignees of insolvent debtors and

others must be conducted in the manner provided in this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-202. Surety on bond may cite trust officers for accounting

Whenever a surety on a bond has reason to believe that the trust officer has depleted or is wasting or mismanaging the estate, the surety may cite the trust officer before the court as provided in section 3-110. If upon hearing the court is satisfied that the estate held in trust by the trust officer has been depleted, wasted or mismanaged, the court may remove the trust officer and appoint a new trust officer. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-203. Agreement with sureties for joint control

It is lawful for any party of whom a bond, undertaking or other obligation is required to agree with the surety or sureties for the deposit of any or all money and assets for which the party and the surety or sureties are or may be held responsible with a national bank, savings bank, safe-deposit company or trust company authorized by law to do business in this State or with another depository approved by the court having jurisdiction over the trust or undertaking for which the bond is required if such deposit is otherwise proper and in a manner that prevents the withdrawal of the money or assets or any part thereof without the written consent of the surety or sureties or an order of the court made on such notice to the surety or sureties as the court may direct. Such agreement does not in any manner release from or change the liability of the principal or sureties under the terms of the bond. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-204. Approval of bond by judge

Except as otherwise provided by sections 3-603 to 3-606, 4-204, 4-207, 5-125, 5-415 and 5-416 and Title 18-B, section 702, a bond required to be given to the State of Maine or the court or to be filed in the probate office is insufficient until it has been examined by the court and approved by the court in writing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-205. Insufficient sureties

When the sureties in a bond under section 8-204 are insufficient, the court, on petition of any person interested and with notice to the principal, may require a new bond with sureties approved by the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-206. Discharge of surety

On application of any surety or principal of a bond under this Part, the court, after notice to all parties interested, may discharge the surety or sureties from all liability for any subsequent breach but not for any prior breaches and may require a new bond of the principal with sureties approved by the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-207. New bonds or removal of principal

In proceedings under sections 8-205 and 8-206, if the principal does not give a new bond within the time ordered by the court, the principal must be removed and another appointed. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-208. Reduction of liability where signed by surety company

If a surety company becomes surety on a bond given to the State of Maine, the court may, upon petition of any party in interest and after notice to all interested parties, reduce the amount for which the principal and surety are liable for a subsequent violation of the conditions of the bond. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-209. Actions on bonds

Actions or proceedings on probate bonds of any kind payable to the State of Maine or the court may be commenced by any person interested in the estate or other matter for which the bond was given, either in the probate court in which the bond was filed or in the Superior Court of the county in which the bond was filed. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-210. Principal made party in action against surety

If the principal of the bond resides in the State when an action is brought under section 8-209, and is not made a party to the action, or if at the trial or on proceedings on a judgment against the sureties only the principal is in the State, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring the principal into court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-211. Proceedings and judgment

With approval of the court after a continuance is issued under section 8-210, the surety may request a writ, in the form prescribed by the court, to arrest the principal, if liable to arrest, or to attach the principal's estate and summon the principal to appear and answer as a defendant in the action. If, 14 days after service of the writ, the principal fails to appear at the time appointed and judgment is rendered for the plaintiff, the judgment must be against the principal and the other defendants as if the principal had been a party. Any attachment made on the writ may be used to satisfy the judgment as if the attachment had been issued in the original action. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-212. Limitation of actions on bonds

Except in the case of personal representatives provided for under sections 3-1005 and 3-1007, and whenever applicable under section 8-201, an action on a bond must be commenced within 6 years after the principal has been cited by the court to appear to settle the account or, if not cited, within 6 years from the time of the breach of the bond, unless the breach is fraudulently concealed by the principal or surety from the persons pecuniarily interested and who are parties to the action, in which case the action must be commenced within 3 years from the time the breach is discovered. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-213. Judicial authorization of actions

The court may expressly authorize or instruct a personal representative or other fiduciary, on the court's own initiative or on the complaint of any interested person, to commence an action on the bond for the benefit of the estate. Nothing in this section may be deemed to limit the power or duty of a successor fiduciary to bring proceedings the fiduciary is authorized to bring without express court authorization under section 3-606, subsection 1, paragraph D; section 5-417, subsection 1, paragraph C; Title 18-B, section 702; or any other provision of law. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-214. Forfeiture for failure to account when ordered

When it appears in an action on a bond against a principal that the principal is unable to account for personal property of the estate that the principal has received, execution must be awarded against the principal for the full value of the unaccounted-for property, without any allowance for charges of administration or debts paid. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8-215. Judgment in trust for all interested

Every judgment and execution in an action on the bond must be recovered by the court in trust for all interested parties. The judge shall order the delinquent fiduciary, if still in office, to account for the amount or to assign the amount to the fiduciary's successor to be collected and distributed or otherwise disposed of as assets. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

PART 3

EFFECTIVE DATE

§8-301. Time of taking effect; provisions for transition

1. Effective date. This Code takes effect on September 1, 2019.
[PL 2019, c. 417, Pt. A, §103 (AMD).]

2. Applicability. Except as provided elsewhere in this Code, on the effective date of this Code:

A. The Code applies to any wills of decedents who die on or after the effective date; [PL 2019, c. 598, §7 (AMD); PL 2019, c. 598, §12 (AFF).]

A-1. The intestate succession provisions of Article 2, Part 1, Subpart 1, the elective share provisions of Article 2, Part 2, the exempt property and allowances provisions of Article 2, Part 4 and the wrongful death provisions of section 2-807 apply to the estates of decedents who die on or after the effective date; [PL 2021, c. 4, §6 (AMD).]

B. The Code applies to any proceedings in court pending on the effective date or commenced on or after the effective date regardless of the time of the death of the decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code; [PL 2019, c. 598, §9 (AMD).]

C. Every personal representative appointed prior to September 1, 2019 continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done on or after the effective date, and a guardian or conservator appointed prior to September 1, 2019 has the powers conferred by this Code on guardians and conservators, unless otherwise limited by the original order of appointment or subsequent court order under this Code; [PL 2019, c. 598, §10 (AMD).]

D. An act done before September 1, 2019 in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before September 1, 2019, the provisions remain in force with respect to that right; [PL 2019, c. 417, Pt. A, §103 (AMD).]

E. Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before September 1, 2019 unless there is a clear indication of a contrary intent; and [PL 2019, c. 417, Pt. A, §103 (AMD).]

F. For an adoption decree entered before January 1, 1981 and not amended after January 1, 1981, the child is the child of both the former and adopting parents for purposes of intestate succession, notwithstanding section 2-117, unless the decree provides otherwise. [PL 2019, c. 598, §11 (AMD); PL 2019, c. 598, §12 (AFF).]
[PL 2021, c. 4, §6 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §103 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 598, §§7-11 (AMD). PL 2019, c. 598, §12 (AFF). PL 2021, c. 4, §6 (AMD).

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