Statutory Reform in the Administration of Estates of Maryland Decedents, Minors and Incompetents

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On Monday morning, March 24, 1969, Governor Mandel signed Senate Bill 316 and House Bill 558. Other than two items of emergency legislation, these were the first Acts signed by the new Governor, and they became Chapters 3 and 4 of the Laws of Maryland of 1969.

It may not be hyperbolic to refer to these two measures jointly as the most significant statutory reform of private law to have been originated in Maryland in this century. Chapter 3 is a recodification and revision of what is commonly known as the “testamentary law” but which is more appropriately denoted as the law of decedents’ estates. Chapter 4 is a recodification and revision of the laws relating to the conservation and administration of property belonging to minors, incompetents and other legally “disabled” persons. The purpose of the enactment of a new Article 93 by Chapter 3 is set forth in Section 1-105(a):^1

The purposes of this Article are to simplify the administration of estates, to reduce the expenses of administration, to clarify the law governing decedents’ estates, and to eliminate certain provisions of existing law which are archaic, often meaningless under modern procedures and no longer useful. This Article


^2 Ch. 3, § 1, [1969] Md. Laws 9 [hereinafter cited by section number of new Article 93 only].
shall be liberally construed and applied to promote its under-
lying purposes.

Almost identical language appears in Section 104 of new Article 93A, 
enacted by Chapter 4, with respect to the estates of minors and dis-
abled persons.

Chapter 4 takes effect on July 1, 1969. Moreover, all guardians, 
committees, conservators, and custodians appointed before July 1, 1969, 
are thereafter to proceed under and be governed by the new law. The 
old procedures have been abolished. Chapter 3, on the other hand, 
does not become effective until January 1, 1970 and will then apply 
generally to the estates of persons dying on or after that date. The 
purpose of this Article is to explain the history and substance of both pieces of legislation.

HISTORY OF THE LEGISLATION

The testamentary law of Maryland was originally codified as 
Chapter 101 of the Acts of 1798. Although this was an elegant and 
organic statute, one hundred seventy years of amendments located in 
odd places and using inconsistent language not only destroyed the 
1798 elegance but often deprived it of its meaning and left a rather 
shabby statutory system for administering decedents' estates.

The testamentary law is archaic: the framework is patterned 
on Chapter 101 of the Acts of 1798, legislation which, while 
coherent and viable in an essentially agricultural and less dynamic 
economy, has little relevance to 1968. It is disorganized: changes 
seem to have been tossed into the Code at random. As the Report 
demonstrates, the testamentary law of Maryland, although it is 
supposed to be contained in the Article of the Maryland Code 
titled "Testamentary Law," is scattered through at least 15 dif-
ferent Articles. Even Article 93 itself is devoid of any coherent 
order. It is cumbersome: it requires a maximum of red tape in 
the administration of an estate; yet, in some instances, its pro-
cedures may well be unconstitutional because of the availability of 
so many ex parte actions which can be taken without notice 
to those primarily interested in the proper administration of the 

Practice and Procedure of the Court of Appeals is currently revising Rules H, L, R 
and V of the Maryland Rules of Procedure to reflect the changes in Chapter 4.


5. A history of this codification is set forth in Gans, Sources of Maryland 
Testamentary Law, 18 TRANS. MD. STATE BAR ASS'N 193 (1913). It is interesting 
to note one aspect of reverse inflation referred to in Mr. Gans' article. Chancellor 
Hanson, who drafted the 1798 law, was paid $1,000 by the Treasurer of the Western 
Shore for his efforts. No mention is given for the reason the Eastern Shore did not 
contribute. The Governor's Commission of 1965-1969 was not compensated.

In addition to testamentary law revision, the legislatures of 1798 and 1969 
had one other common predilection — the law of animals. Compare Ch. 22, [1798] 
Md. Laws (providing a bounty for wolves in Frederick County) with Ch. 30, [1969] 
Md. Laws 167 (repealing the section of the Baltimore City Code defining a cartload 
of manure). See also 8 OP. ATT'Y GEN. 266 (1923); ch. 54, [1958] Md. Laws 195.
estate. It is illogical: the artificial distinction between real property and personal property, for example, so important at common law, can no longer be justified in administering an estate. It is sometimes unintelligible: provisions such as Sections 48-51 of Article 93 have not only become atrophied from disuse but cannot even be explained in rational terms.\(^6\)

H. L. Mencken could well have been aiming at the jumble of this subject in the Annotated Code of Maryland when he remarked that if doctors were as progressive as lawyers, we would still be bleeding patients, as in the fifteenth century.

In 1965, the Registers of Wills Association of Maryland sponsored House Joint Resolution No. 6 which requested the appointment of a gubernatorial commission to study and revise the Maryland laws relating to testamentary matters and death taxes. This proposal was enacted as Joint Resolution No. 23 of 1965, and the Commission was appointed by Governor Tawes under the Chairmanship of William L. Henderson, former Chief Judge of the Maryland Court of Appeals. The Commission membership represented a fair cross-section of those experienced in matters dealing with the administration of estates and related tax matters and included registers of wills and members of the General Assembly as well as lawyers, several of whom were former assistant attorneys general who had represented the registers.\(^7\)

The Second Report of the Commission, dated December 5, 1968, proposed a comprehensive recodification and revision of the testamentary laws.\(^8\) This Report was sent to a large number of lawyers and other interested parties,\(^9\) and the Commission received extensive comment on the Report, both oral and written. It conducted an all-day hearing on January 8, 1969, and presented the proposals to the Maryland State Bar Association during its Winter meeting later in the month. As a result of the comments received, the Commission made

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7. The other members of the Commission who served from the very beginning were Robert L. Karwacki, Joshua W. Miles, Roger D. Redden, John G. Rouse, Jr., Ruth R. Startt, Shale D. Stiller and G. Van Velsor Wolf. Those appointed after the Commission began its work are still on the Commission are Senator Thomas M. Anderson, Jr., Speaker of the House Thomas Hunter Lowe, Registers of Wills James M. Roby and Gertrude C. Wright, and C. M. Zacharski, Jr. Members of the original Commission who, for various reasons, were unable to continue to serve, are Judge C. Warren Colgan, Jr., Senator J. Albert Roney, Judge John P. Moore, and Walter Addison. The Commission also had the invaluable assistance of Melvin J. Sykes, the present editor of *P. SYKES, PROBATE LAW AND PRACTICE* (1956).

8. The First Report, published in December, 1966, dealt solely with recommendations for simplifying the death tax structure in Maryland. The statute recommended by the First Report was given an unfavorable report by the House Ways and Means Committee. The Commission was advised that this was due solely to concern that the new estate tax would not have generated enough revenue. It is anticipated that the Commission will submit another recommendation on this subject to the 1970 Session of the General Assembly.

9. The Report was sent not only to the Governor and all members of the General Assembly, but to every lawyer in good standing as a practitioner on the rolls of the Clients' Security Trust Fund, to every Register of Wills, to every judge, to every trust company, and to numerous other interested individuals.
a substantial number of changes in its proposed legislation prior to its introduction as an Administration measure, in the form of Senate Bill No. 316 by the President and House Bill No. 499 by the Speaker.\textsuperscript{10} The Senate Bill moved first. The Senate Judicial Proceedings Committee held hearings and reported the Bill favorably, with amendments. On the Senate floor, the Bill passed second and third readings unanimously. From there it went to the House, was referred to the Judiciary Committee, which also held hearings, was favorably reported without further amendment and was enacted without dissent on March 17, 1969. The Bill, as enacted, did not receive a single negative vote in committee or on the floor in either house.

The laws dealing with guardianships and committees were just as archaic, illogical and inconsistent as the testamentary law. In one sense the situation was even worse, because in the entire history of the Maryland Bar, no one seems to have had sufficient interest or practice in guardianship and committee law to make any specific proposal for the cleansing of this Augean stable.

The Governor's Commission recommended an entirely new Article 93 in its Second Report. However, part of old Article 93 consisted of some forty sections dealing with "guardians and wards." Since the Governor's Commission was not charged with the responsibility of rewriting the laws on guardians, it felt constrained only to collect all these sections from Article 93 and re-enact them as part of a new Article 93A.\textsuperscript{11} A committee of the Maryland State Bar Association's Section on Estates and Trusts\textsuperscript{12} was then studying the Maryland laws relating not only to guardianships but also to all devices for protecting the property of minors, incompetents, and other disabled persons. This committee made its report in December, 1968, almost concurrent with that of the Governor's Commission. This report, taking into account the recommendations of the Governor's Commission, recommended the enactment of a wholly new Article 93A. This proposal received the unanimous support of the Council of the Section of Estates and Trusts and of the Board of Governors of the State Bar Association. The Report was mailed to every Register of Wills and Circuit Court Clerk, from whom no comments were received. In the form of House Bill

\textsuperscript{10} These changes were explained in a document called "Summary of Changes Made in Second Report of Governor's Commission to Review and Revise the Testamentary Law of Maryland and Incorporated into Proposed Article 93, Decedents' Estates, S.B. No. 316 and H.B. 499." This document bears the date January 31, 1969.

\textsuperscript{11} When Senate Bill 316 was introduced, obviously no one could know whether House Bill 558 — whose provisions were entirely inconsistent with that part of Senate Bill 316 which created a new Article 93A out of the "guardian and ward" materials in Article 93 — would pass. Therefore, § 8 of Senate Bill 316 (Ch. 3, § 8, [1969] Md. Laws 105) provides that if any Act passed at the 1969 session changes the substance and wording of the Article 93A set forth in Chapter 3, the other Act "shall be deemed to supersede the provisions of said ... Article 93A." Even if this provision had not been included in Senate Bill 316, because House Bill 558 was signed after Senate Bill 316, the provisions of Senate Bill 316 which are inconsistent with House Bill 558 are automatically prevented from becoming law. See Md. ANN. CODE art. 1, § 17 (1968).

\textsuperscript{12} The Chairman of the Section on Estates and Trusts was J. Nicholas Shriver, Jr. The special committee consisted of Winston T. Brundige, Chairman, Shale D. Stiller, Robert M. Thomas, and C. M. Zacharski, Jr.
No. 558, sponsored by Delegate Martin A. Kircher, the committee's proposal, with very minor amendments, passed both houses without a dissenting vote.

GENERAL MATTERS IN NEW ARTICLE 93

Real Property in the Probate Estate

Real property has been made a part of the probate estate and, with one exception, there is now no distinction between real property and personal property in the administration of estates. This change will give the personal representative complete authority over and responsibility for real property and will require him to pay the taxes on the property, to insure it, and to collect its rents. The devolution of title to real property will necessarily become less complicated. Title will automatically pass to the personal representative. If he does not sell the real property during the course of administration, he will, in order to distribute the property to the appropriate beneficiary or beneficiaries, execute a deed as evidence of the distributee’s title. In addition to any other indexing, the deed must be indexed in the grantor index under the decedent’s name.

Abolition of Dower

The ancient estate of dower, so rarely used, has been completely abolished. The modern provisions for statutory shares consisting of outright interests in a deceased spouse's property have generally replaced the ancient concepts of dower and curtesy, which consisted only of a life estate in one-third of the decedent's fee simple real estate. In addition, the intended protection of the estate of dower has often been nullified as a practical matter if a husband takes title in the form of a life estate with unrestricted powers of disposition, or if he causes a one cent ground rent to be placed on the property before he takes title, or if he forms a corporation to take title to any real estate he may contract to buy. The major effect of the abolition of dower will not,
of course, be in the administration of estates, but will be in the elimination of the necessity of requiring a spouse to sign deeds to fee simple real estate owned by the other spouse.

Verifications Replace Affidavits

In recent years the General Assembly has done away with the requirement of taking an oath or affirmation before a notary as to the contents of various formal documents. For example, the requirement of affidavits on corporate papers filed with the State Department of Assessments and Taxation and in documents perfecting a security interest in personal property has been eliminated. Similarly, with respect to any paper required by new Article 93 to be verified, the following representation will be sufficient:

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct to the best of my knowledge, information and belief. 19

Orphans' Courts and Registers of Wills

No major changes have been made in the present statutory procedures and powers of the Orphans' Courts and the Registers of Wills. 20 Thus, new Article 93 continues the system of utilizing the three judge court (the members of which need not be and, with the exception of Baltimore City, usually are not members of the Bar), the varied methods of compensating the judges in different counties, the operation of the offices of the Registers of Wills on a fee basis, the fixing of the salaries of the Registers of Wills by the Board of Public Works, the provision for mandatory approval by the Comptroller of the employment and compensation of all employees in the offices of the Registers of Wills, and the like. The Report of the Governor's Commission specifically states that the continuation of these rules does not represent either approval or disapproval by the Commission.

Perhaps the major change from the viewpoint of the practicing lawyer is the provision for maintenance of permanent records in the Register's office. Wills, inventories, accounts, and reports of sale are generally recorded in separate books. Often, in trying to determine the facts concerning an estate, it is necessary to examine several separate books. Under Section 2-210, the Registers will record wills

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promptly after the probate. The other papers filed by the personal representative will be held in a file in the Register's office and will not be recorded until the estate has been closed. When the estate is closed, all the papers will be recorded in chronological order in an "Administration Proceedings" record book. This will greatly simplify the searching of estate records.

**Intestate Distribution, Family Allowances, and Widow's Election**

The order of intestate succession is substantially the same as the present law. Degrees of relationship will be computed in accordance with the civil law method instead of the common law method. Children conceived by artificial insemination with the consent of the husband shall be treated as the child of both the husband and wife. Rules relating to illegitimate children, adopted children, and half-bloods have also been included. A statutory definition of per stirpes, consistent with the rule of *Ballenger v. McMillan*, has been provided. The statute contains a provision dealing with advancements. Family allowances have been increased to the more realistic sums of $1,000.00 for the surviving spouse and $500.00 for each unmarried minor child.

The right of a surviving spouse to elect his or her statutory share must normally be exercised not later than thirty days after the expiration of the time for filing creditors' claims, which is six months after the date of first publication of notice to creditors, although the court does have the power to extend the time. If the election is made, all property or other benefits which would have passed to the surviving spouse under the will shall be treated as if the surviving spouse had died before the execution of the will. Section 3-208(b) contains a specific arrangement for the manner of contribution, on behalf of all other legatees, to

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21. §§ 3-102 to 3-105.
30. § 3-201.
31. § 3-206.
the share of the surviving spouse.32 One change from the prior law on this subject is that the spouse will no longer be entitled to a proportionate interest, in kind, of each item of property in the estate.33 The section now provides:

In lieu of contributing . . . an interest in specific property to such intestate share a legatee may pay to the surviving spouse, in cash, or other property acceptable to such spouse, an amount equal to the fair market value of such interest in specific property on the date the election to take an intestate share was made by the spouse.

No attempt has been made in the statute to change the judicially developed rules which protect a widow against inter vivos transfers made in fraud of her marital rights.34

**WILLS**

*In General*

Few changes were made in the formal requirements for the execution of wills.35 There are no changes in the standard procedures for execution.36 Two witnesses, with the same qualifications, are still required.37 Any credible witness, not excluding a beneficiary of the will, may serve. Holographic wills are still permitted where the testator is serving in the armed forces, but the permissible extent of holographic wills has been somewhat limited.38

32. *See Note, Salvaging a Will after the Widow Renounces, 61 Harv. L. Rev. 850 (1948).*
33. The former rule was enunciated in *Hall v. Elliott, 236 Md. 196, 202 A.2d 726 (1964).*
34. *See Sykes, Inter Vivos Transfers in Violation of the Rights of Surviving Spouses, 10 Md. L. Rev. 1 (1949); W. Macdonald, Fraud in the Widow’s Share (1960).*

> [The statute for execution of wills] is likewise obvious and familiar. It assumes that the more “safeguards against fraud” the better. It is likewise big-law-office philosophy: every testator must be forced to execute his will just as it would be done if the matter were being handled by a high-powered law firm. This overlooks one very important fact, namely, that the only persons the execution of whose wills are likely to come into question are precisely those persons who do not have the job supervised by a high-powered law firm, but which instead have the matter looked into by some very bad lawyer or by the local J.P. or the local banker or the local real estate man or on the advice of those who happen to be gathered at some lonely deathbed. These persons have the same right to make wills as their more prosperous or sophisticated brothers and sisters who employ good lawyers; the governing philosophy should be to design a wills act that as far as is consistent with safety adapts itself to the knowledge (or ignorance), psychology, and habits of such people so as to create the minimum risk that their testamentary attempts will be frustrated by failure to have the witnesses attest in the presence of the testator, or the like.

36. The rules for revocation of wills are substantially the same as in present Article 93. *See also Hoffman, Revocation of Wills and Related Subjects, 31 Brooklyn L. Rev. 220 (1965); Note, Wills: Revocation by Subsequent Instrument, 17 Okla. L. Rev. 361 (1964).*
37. A significant procedural change is that under most circumstances the witness will not have to appear at the probate. § 5-303. *See text discussion at note 82 infra.*
38. *See § 4-103.*
Nuncupative wills, on the other hand, have been abolished. Under prior law, nuncupative wills by soldiers in the military service or "any mariner being at sea" were permitted. Whatever need for such wills may have been formerly perceived, it has surely disappeared with the development of the military practice under which inductees are encouraged to execute wills on forms provided by the Department of Defense and with the technical advance and numerical decline of the American merchant marine.

During the course of the deliberations of the Commission, it was suggested that three witnesses should be required on wills. The theory behind the suggestion was that because some states require three witnesses, if a Maryland resident wants to dispose of real estate located in one of those states, the disposition might be invalid unless three witnesses were used. The Commission's research disclosed, however, that the six states which do require three witnesses also have statutes which expressly sanction the validity of a will validly made in another state. Therefore, if a will with two witnesses is valid in Maryland, it will be valid to dispose of real estate located in any other state even though that other state normally requires three witnesses. The similar Maryland statute, permitting a will executed out of Maryland to be valid in Maryland if executed in conformity with the law of the testator's domicile, or the place where the will is executed, has been retained in the new law.

Age

The age for making a testamentary disposition of personal property was changed to eighteen, to make it the same as the age for testamentary dispositions of real property. Maryland had always followed the common law rule that twelve year old females and fourteen year old males may dispose of personal property by will, whereas the age requirement for real estate had been eighteen, regardless of sex. The ages for testamentary disposition of personal property were among the lowest in the United States. On the basis that there was little justification for continuing the distinctions between males and females and between real and personal property, a uniform age was provided.

A major objection to increasing the age to eighteen is the reduction in opportunity for sophisticated estate planning for twelve year old females and fourteen year old males with substantial amounts of property. Because the intestate death of a twelve year old female will


41. See § 4-101.

42. The authors are grateful to George E. Thomsen, Esquire, of the Baltimore Bar, a specialist on this subject, for his views on the matter.
automatically result in all of her property passing to her parents, if they survive her, thereby increasing the size of the parents' estates, it has, in the past, occasionally been useful to permit some twelve year old females to execute wills leaving their property to brothers and sisters rather than to parents.

Article 93 will now permit a post-mortem solution of this estate planning problem. Under prior Maryland law, if the parents of an intestate minor would succeed to the minor's property, the parents probably could not, without making a taxable gift, renounce the testamentary disposition in order to cause the property to go automatically to the decedent's brothers and sisters. Section 9-101 specifically provides that any heir or legatee may renounce his share of a testate or intestate estate, whether realty or personalty, before title passes to the heir or legatee. The renunciation may be partial or total. In this way, the parents could renounce the legacy and do so without making a gift for federal gift tax purposes. Under Section 4-404, the renounced legacy would automatically pass to the other remaining intestate successors of the decedent. If the decedent had brothers and sisters, the estate would automatically pass to them. Thus, notwithstanding the increase in the age requirement for executing wills, the premature death of a wealthy minor will not necessarily increase the gross estate of either parent if they have other children and are willing to renounce the minor's estate in favor of their surviving children.

The statute makes no attempt to set forth the time within which the parents must renounce. Since the renunciation will almost necessarily be motivated by tax considerations, the renouncing parents will be forced to comply with the standards set forth in the Treasury Regulations: "[Renunciation] ... does not constitute the making of a gift if the refusal is made within a reasonable time after the transfer." The new legislation also eliminates one other problem in the situation of an intestate minor's death. Where the minor's property would

43. This order of intestate distribution is set forth in § 3-104 and is the same as the prior law.
44. "Heir" is defined in § 1-101(e) as a person entitled to the property of an intestate decedent. "Legatee" is defined in § 1-101(j) as a person entitled to any real or personal property under the terms of a will.
45. Where title passes directly to the person attempting to renounce, a taxable gift results. Hardenbergh v. Commissioner, 198 F.2d 63 (8th Cir.), cert. denied, 344 U.S. 836 (1952). § 1-301 provides that title to all property, whether real or personal, in testacy or intestacy, passes directly to the personal representative; it does not pass to the heir or legatee until a distribution is made.
46. See Brown v. Routzhan, 63 F.2d 914, 917 (6th Cir.), cert. denied, 290 U.S. 641 (1933). See also Kay, Renunciations, DISCLAIMERS AND RELEASES, 35 TAXES 767 (1957); Lauritzen, Only God Can Make an Heir, 48 NW. U.L. Rev. 568 (1953); Note, Disclaimer in Federal Taxation, 63 Harv. L. Rev. 1047 (1950); Disclaimer of Testamentary and Nontestamentary Dispositions — Suggestions for a Model Act, 3 REAL PROP., PROB. & TRUST J. 131 (1968).
47. Treas. Reg. 25.2511-1(c) (1961). See also Rev. Proc. 69-6, 1969 INT. Rev. Bull. No. 1, at 29, which states that the Internal Revenue Service will not issue rulings as to whether a proposed renunciation is unequivocal and made within a reasonable time.
devolve upon his brothers or sisters, the appointment of a guardian would have been required under prior law if the brothers or sisters were also minors. Under new Article 93, the personal representative has the power, with the approval of the court, to designate a custodian under the Uniform Gifts to Minors Act and to transfer to the custodian any property distributable to a minor. Although the Uniform Gifts to Minors Act was amended in 1967 to provide for testamentary dispositions to minors by use of the Act, the 1967 amendments required specific reference in the will to the Uniform Gifts to Minors Act for the custodial arrangement to be available. Section 9-109(c) affords the personal representative the opportunity to use the custodial arrangement of the Uniform Gifts to Minors Act even though the will does not mention that Act, if such an arrangement is appropriate under the circumstances, which it would normally be, and the court, accordingly, approves.

Incorporation by Reference

A major procedural innovation, which should appeal to many lawyers and laymen, is Section 4-107 of new Article 93. This section codifies the common law rule permitting wills or trust instruments to incorporate the terms of any writing which is in existence when the will or trust instrument is executed. As an example of such an incorporated writing, the statute refers to a statement of administrative provisions or fiduciary powers which may be recorded in any record office. The intent of the legislation is to afford lawyers the opportunity to eliminate long recitations of administrative provisions and fiduciary powers in wills, particularly those establishing trusts, and in inter vivos trust instruments. Under this provision, a lawyer with a standard set of administrative provisions and fiduciary powers may record those powers in any record office in Maryland and then simply insert in his wills and trust instruments the statement that the testator or grantor "gives to his executors and trustees all the powers set forth in the declaration of powers recorded among the Land Records of Caroline County, Maryland, in Liber JWS 1969, folio 1798." It would be appropriate for the lawyer to duplicate these powers so that copies can be delivered to the client when he reviews his proposed will or trust. Use of this system will avoid the necessity to retype "boiler-plate" clauses in each instance with the concomitant worries of proofreading, bulging files, and client irritation at the length of a will sometimes thought to have been padded to increase the size of the fee.

49. Even if this latest amendment had not been made, and a guardian were required to be appointed, the guardianship procedure set forth in new Article 93A will, as pointed out later in this article, be simpler than that under prior law and will not involve the peculiar technicalities and expense that have customarily been associated with guardianships.
50. See also Administrative Clauses: Incorporation by Reference, 2 Real Prop., Prob. & Trust J. 524 (1967); "Automated" Drafting Techniques, 3 Real Prop., Prob. & Trust J. 475 (1968); Evans, Non-Testamentary Acts and Incorporation by Reference, 16 U. Chi. L. Rev. 635 (1949).
With the ease of this device goes the added and quite serious responsibility of being certain that the incorporated powers fit the particular situation. This will be especially true where trusts require under federal tax law the availability of the marital deduction, the deductibility of a charitable remainder, or a gift of a present interest for the purposes of the annual gift tax exclusion. In these instances, it will be necessary to limit the scope of certain powers in the "boilerplate" and to substitute other powers.

**Exercise of Power of Appointment**

Section 359 of old Article 93 contains a presumption that a general power of appointment held by a testate decedent is exercised by the residuary clause of his will. The statute is limited to "general" powers of appointment. Section 4-407 changes the rule. It eliminates any reference to "general" power of appointment — a term which has been productive of an immense amount of controversy and litigation in Maryland. It also provides that a residuary clause will automatically exercise any power of appointment if an intent to exercise the power is expressly indicated in the will, or if the instrument creating the power fails to provide for the disposition of the property subject to the power if the power is not exercised. A residuary clause will be deemed "expressly" to exercise the power if it contains language such as "all the rest of my estate and property, including all property over which I may have any power of appointment, I give to..." It will not be necessary to mention the specific instrument which granted the power unless, of course, the donor of the power requires specific reference to that instrument.

**In Terrorem Clause**

New Article 93 contains the first Maryland statutory rule with respect to an in terrorem clause. The section reflects the common law rule of the old Maryland cases. It provides that "A provision in the will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is void if probable cause exists for instituting proceedings." The concept of probable cause in this type of proceeding is reflected in a substantial body of case law which has grown up throughout the country.

51. See Tax Traps in Administrative Powers of Trustees, 3 REAL PROP., PROB. & TRUST J. 305 (1968).

52. The most recent cases dealing with "general" powers are Guiney v. United States, 295 F. Supp. 789 (D. Md. 1969) and Frank v. Frank, No. 219, Sept. Term 1968 (Md. Ct. App., filed May 7, 1969). In the Guiney case "general" power of appointment is defined from a tax point of view, a definition not determinative of the relevance of the present Md. ANN. CODE art. 93, § 359 (1964).

53. § 4-413. See Jack, No-Contest or In Terrorem Clauses in Wills — Construction and Enforcement, 19 Sw. L.J. 722 (1965); Selvin, Comment: Terror in Probate, 16 Stan. L. Rev. 355 (1963).

54. See E. Miller, THE CONSTRUCTION OF WILLS IN MARYLAND § 310 (1927).

55. § 3-104.
Lapsed Legacies

An anti-lapse statute is contained in Section 4-403. The only change from the prior anti-lapse statute is that under the former statute, a lapsed legacy passed directly to the heirs of the deceased legatee, even though the legatee might himself have left a will. Thus, if A, a legatee under the will of B, died before B but after the execution of B's will, the property passed outright to A's heirs at law. This was true even though A's will left his estate in trust for the benefit of his heirs, or to his heirs but in different proportions than the statute of intestate succession provides, or even to other persons.

Section 4-403 expressly provides that the lapsed legacy shall pass directly to those persons who would have taken the property if the legatee had died owning the property. If the legatee dies testate, the legacy will pass under his will. As under prior law, the lapsed legacy will not be subject to administration in the estate of the deceased legatee.

Void, Inoperative, or Renounced Legacies

Section 4-404 contains the first Maryland statutory provision for the disposition of void, inoperative, and renounced legacies. Assume that A executes a will providing: "I give $10,000 to B." If B is dead when the will is executed, the legacy is considered to be void. If B is alive when the will is executed but dies before the testator, the legacy would be a lapsed legacy, to be saved by the anti-lapse statute. Assume, however, that A's will provides: "I give $10,000 to B, if B survives me." If B dies after the execution of the will but before the testator, the legacy would be an inoperative legacy and would not be saved under the anti-lapse statute because the testator expressly provided that the legacy would take effect only if B survived A.

The common law rule in Maryland was that real estate which was the subject of a void or inoperative legacy passed directly to the heirs of the testator, unless the will otherwise provided. On the other hand, personal property which was the subject of a void or inoperative legacy passed under the residuary clause in the will. This distinction, as artificial as most of the common law distinctions between real and personal property, has now been dropped. Under Section 4-404 any property which is the subject of a void or inoperative gift will automatically pass as part of the residue of the estate. The same rule is set forth in Section 4-404 with respect to the disposition of renounced gifts.

Requirement that Heirs and Legatees Survive for Thirty Days

Sections 3-110 and 4-401 of new Article 93 contain a presumption that certain heirs or legatees who fail to survive the testator by thirty days shall be deemed to have predeceased the testator, unless the will provides otherwise. In intestacy, the statutory provision

56. See E. Miller, The Construction of Wills in Maryland § 159 (1927).
57. Id. at § 160.
relates only to descendants, ancestors, brothers, sisters, or descendants of brothers or sisters. If any person in any of these categories fails to survive, his descendants will automatically take the share of the person who is presumed to have predeceased the intestate decedent. The effect of both of these provisions will be to eliminate double administration of the same property where the second decedent dies within thirty days of the first decedent.

Section 4-401, dealing with testate administration, is not applicable to a surviving spouse because of the possible loss of the federal estate tax marital deduction which might result if the statute presumed that a widow who did not survive for thirty days predeceased her husband. The Report of the Governor's Commission gives several examples of the operation of Section 4-401 on typical legacies contained in a will:

1. "To A, if A survives the testator." Under this type of bequest, A will have to survive the testator by at least thirty full days in order to take the legacy. If A fails to survive by at least thirty days he is presumed to have predeceased the testator, the condition of the legacy has not been met, the legacy becomes completely inoperative, and the anti-lapse statute does not apply.

2. "To A, if A survives the testator by five days or more." Under this type of provision, if A survives the testator by five days or more but not by thirty days, A will be entitled to the legacy.

3. "To A, if A survives the testator, but if it cannot be determined whether A survives the testator, A shall be presumed to have survived the testator." Under this provision, A would take the legacy if he survives the testator.

4. "To A." Under this provision, if A survives the testator by less than thirty days, A will be deemed to have predeceased the testator, but the provisions of the anti-lapse statute will save the legacy.

New Article 93 limits the applicability of the Uniform Simultaneous Death Act as it relates to the distribution of estates. The Uniform Act, which provides that in case of simultaneous deaths the legatee shall be presumed to have predeceased the testator unless the will contains a provision to the contrary, will continue to be important in the case of distributions to a decedent's spouse, to which the thirty day rule of Section 4-401 is not applicable. With this exception, if the will contains no contrary provision, the results in Examples 1 and 4 will apply.

**Miscellaneous Rules Involving Wills, Trusts and Future Interests**

Many familiar rules are continued in new Article 93: provisions with respect to depositing wills for safekeeping in the Registers' offices.

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58. § 3-104(b).
during the testator's lifetime, the rule against perpetuities, the construction of phrases such as "die without issue," statutory sanction for pour-overs to inter vivos trusts and testamentary trusts, the indestructibility of contingent remainders, the abolition of the Rule in Shelley's Case, the 1964 statute authorizing payment of death benefits (such as insurance proceeds) to inter vivos and testamentary trusts, the 1967 statute with respect to the non-tax effect of elections to deduct administration expenses on the fiduciary income tax return instead of on the estate tax return, a procedure, which has been simplified, for releasing powers of appointment, and the Uniform Estate Tax Apportionment Act.

One change in the rules for construction of wills which has not already been mentioned is contained in Section 11-107. Revenue Procedure 64-19 authorized one of two procedures acceptable to the Internal Revenue Service for use in satisfying a pecuniary marital deduction bequest where the personal representative could make distribution by valuing assets at their federal estate tax values. In 1965, the General Assembly enacted Section 392 of Article 93, which prescribed that one of the two permitted procedures would be applicable unless the will directed the use of the other procedure. Section 11-107 in new Article 93 adopts the other procedure as the norm. The report

60. § 4-201.
61. §§ 4-409, 11-102, 11-103. The statute does not deal with Professor Leach's musings on the suggestions for a sperm bank to recreate mankind after the atomic holocaust. Leach, Perpetuities in the Atomic Age: The Sperm Bank and the Fertile Decedent, 48 A.B.A.J. 942 (1962). Nor does the statute deal with ectogenesis (test tube birth and the artificial womb) and other medical insights. See Rorvik, Making Man and Woman Without Men and Women, ESQUIRE, April, 1969, at 108.

§ 11-102(b) repeals the present statutory exception in Md. Ann. Code art. 93, § 348 (1964) to the Maryland rule against perpetuities, which permitted shifting executory legacies from a charity to an individual. Maryland was apparently unique in permitting such a shifting legacy. See 6 American Law of Property § 24.39 (A. J. Casner ed. 1952).

The elimination of this exception was part of a consistent philosophy of the 1969 General Assembly which also seriously curtailed the exemption from the Rule Against Perpetuities which has always been enjoyed by possibilities of reverter and rights of entry. See Ch. 5, [1969] Md. Laws 135, which adds §§ 143-146 to Article 21 of the Maryland Code, and was the product of a special Legislative Council Committee on Possibilities of Reverter and Rights of Entry. See 2 Legislative Council of Maryland, Report to the General Assembly of 1969, Special Committee Reports 481.

62. § 4-410.
64. § 4-412.
65. § 11-101.
66. § 11-104.
67. § 11-105.
68. § 11-106.
69. § 11-108.
70. § 11-109.
71. An error of oversight may be observed in the effective date provision governing § 11-107, which is set forth in § 12-102(i), and which provides that it shall apply to the estates of all decedents dying on or after July 1, 1969. When the effective date of the entire statute was changed by Senate amendment to January 1, 1970, § 12-102(i) was inadvertently missed.
of the Governor’s Commission states that the newly adopted procedure is much less complicated. Basically, the distinction between the two procedures is this: under the former procedure, the executor was required to distribute in satisfaction of the marital bequest assets fairly representative of appreciation or depreciation in the value of all property available for distribution; under the new procedure, the executor must distribute assets having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the marital bequest as finally determined in the federal estate tax proceedings.

The former method was not only more difficult to administer, but in the situation where the value of the estate did increase during administration, its effect was to give the surviving spouse a share of the appreciation and thereby to increase her gross estate. Under the new procedure, the surviving spouse will not share in any such appreciation. If the estate had decreased in value, the former procedure would have been more satisfactory. Mr. Richard B. Covey, who has written the leading exposition of Revenue Procedure 64-19, concludes:

Obviously, there is no way of knowing with certainty what will happen to the value of a decedent’s estate during the period of administration. However, this is not to say that it is impossible to form a judgment as to which provision best achieves the desired result in the “average” case. . . . Thus, on balance, the [new] provision is preferable in attempting to minimize the estate taxes upon the widow’s death.

Opening the Estate

Subtitle V of the new Article 93 sets forth the procedures for opening an estate. Two new terms are used in this Subtitle, but the terms reflect traditional Maryland practices. The terms are “administrative probate” and “judicial probate.” In a general way, administrative probate refers to the granting of probate and the appointment of a personal representative by the Register of Wills, without the necessity of formal application to the Orphans’ Court. “Judicial probate” refers to a court action in probating the will or appointing the personal representative.

The Maryland probate procedure has not been consistent. In most of the jurisdictions, the Register admits the will to probate and causes the personal representative to be appointed without the necessity of any appearance before the Orphans’ Court, if the court is not then in session. This has led to a widespread practice of purposely offering wills for probate during those hours when the Orphans’ Courts are not in session. On the other hand, some Registers have refused to accept wills for probate except upon presentation to the Orphans’ Court whenever it goes into session.

75. § 5-301.
76. § 5-401.
The theory of the new legislation is that in most situations the Register should be responsible enough to admit wills to probate and to appoint personal representatives whether or not the Orphans' Court is in session. Nevertheless, there are several situations in which the court must assume jurisdiction: (a) at the request of any "interested person,"77 (b) at the request of a creditor in the event no one has applied for probate, (c) if it appears to the court or the Register that the petition for administrative probate is materially incomplete or incorrect in any respect, (d) if the will has been torn, mutilated, burned in part, or marked in any way so as to make a significant change in the meaning of the will, or (e) if it is alleged that the will is lost or destroyed.78

If administrative probate has been commenced, and the Register has granted probate and appointed the personal representative, any "interested person" may, within four months, insist on judicial probate.79 All actions taken pursuant to the administrative probate are valid until the determinations at the hearing for judicial probate have been made.80 The only exceptions to the four month rule deal with special circumstances. For example, if the proponent of a later offered will, in spite of the exercise of reasonable diligence and efforts to locate the will, was actually unaware of the will's existence at the time of the administrative probate, or if the notices to be sent by the Register of Wills to all interested persons were not given, or if there was fraud, a material mistake, or substantial irregularity in the administrative probate proceeding, any "interested person" may, within eighteen months of the decedent's death, institute a proceeding for judicial probate.81 In the ordinary situation, however, whether the Orphans' Court is in session or not, the Register will be able to handle the entire situation without judicial blessing.

Elimination of Examination of Witnesses to the Will

One procedural innovation relates to the examination of witnesses in administrative probate. It will no longer be necessary to bring witnesses to the Register's office, (1) if the will appears to have been duly executed and contains a recital by attesting witnesses of facts constituting due execution, or (2) upon the filing of a statement executed under penalty of perjury by a person with personal knowledge of the circumstances of execution, stating that the persons whose names appear on the will were, in fact, the attesting witnesses.82

However, if any "interested person" wants to have the witnesses produced and examined, he has the right, within four months after

77. § 5-402. The concept of "interested person" is discussed in the text at note 84 infra.
78. On the subject of lost or destroyed wills, see Note, Rebutting The Presumption of Revocation of Lost or Destroyed Wills, 24 Wash. U.L.Q. 105 (1938); Evans, The Probate of Lost Wills, 24 Neb. L. Rev. 283 (1945); Annot., 3 A.L.R.2d 949 (1949).
79. § 5-304(a).
80. § 6-307.
81. § 5-304(b).
82. § 5-303.
the grant of administrative probate, to insist upon judicial probate, in which event the court will summon the witnesses. All "interested persons" must necessarily receive notice of the administrative probate and be afforded those constitutionally required procedures enabling them to challenge the asserted execution of the will.

This provision is grounded on the assumption that often no controversy exists concerning the proper execution of the will and it is unfair to impose the frequently onerous burden of finding the witnesses and dragging them to the Register of Wills' office for an essentially perfunctory undertaking. Where there is going to be a controversy, one need only ask for examination of the witnesses and the request must be granted.

Petition for Probate

New Article 93 contains a statutory form of "Petition for Probate." The petition combines most of the information presently contained in the various petitions for letters testamentary and for letters of administration commonly used or deemed "official" in the different counties, and in the list of names and addresses of legatees under the will. The major changes are: (i) the names and addresses of all "interested persons" must now be set forth directly in the petition, and (ii) the petition need not contain any recitation of the approximate value of the estate or the debts of the estate.

"Interested person" is defined in Section 1-101(f) to include not only the beneficiaries named in a will, referred to in the statute as "legatees," but also the heirs of the decedent even if he died testate. The statute recognizes that the intestate successors, whether or not they are named in the will, should be given notice of all of the proceedings so that they can be afforded an opportunity to attack the validity of the will. Under current Maryland practice, there is no procedure for giving notice to disinherited heirs, and there is a distinct possibility that an heir who, under current practice, receives no notice may be entitled to attack for want of constitutional due process the validity of all proceedings taken without his knowledge.

The old requirement of stating in a petition for letters the approximate value of the estate presumably was initiated in order to enable the Registers to set the amount of the bond. As a practical

83. § 5-206. This is one of seven statutory forms, the use of which is intended to make probate procedure uniform throughout the state. The others are: Notice of Request for Judicial Probate [§ 5-403(b)]; Bond [§ 6-102(f)]; Letters of Administration [§ 6-104] — which is to be used for both testate and intestate administrations; Notice of Appointment of Personal Representative [§ 7-103] — which is a combined notice to creditors warning them to file their claims and a notice to those otherwise interested in the administration who have any objection to the probate or appointment proceeding to file their objections; Spouse's Election to Take Against Will [§ 3-207]; and Creditor's Claim against Decedent's Estates [§ 8-104(b)].

84. If there is a trust created under the will, the term "legatee" refers only to the trustees of the trust and not to the beneficiaries.

85. Bonds will continue to be required even where the will excuses bond. § 6-102(a). In this situation, the penal sum will only be an amount sufficient to secure the payment of debts, Maryland inheritance taxes payable by the personal representative, and taxes on commission. Id. Even where the will does not excuse bond, if all interested persons consent, the amount of the bond can be limited to the
matter, reliance on this figure has proved to most Registers to be no better placed than reliance on oral representations made by the personal representative as to the approximate value of the estate. In any event the Registers set bond based at best on an estimate and check its accuracy and adequacy when the inventories are filed, calling for an increase in the penalty if the original estimate was low. The new form, therefore, reflects the fact that the person applying for letters is often unable to value the estate at the commencement of the proceeding.

Since, even under the present law, petitions are filed under penalty of perjury, many personal representatives have been reluctant to set any meaningful value in the petition, resorting to a statement such as "over $50,000," even where it could reasonably be anticipated that the amount of the estate would reach $250,000. As is presently the case, when the inventory is filed, within ninety days after the appointment of the personal representative, the bond may be increased to reflect the inventoried values.

**Notice to Legatees and Heirs**

Although a major accomplishment of new Article 93 is the elimination of much unnecessary paperwork, particularly in uncomplicated and uncontested administrations, an important additional requirement which has been imposed is the strict procedure for notifying interested persons of various events during the course of administration.

At the outset of administration, the petitioner for letters must list in his petition the names and addresses of everyone he thinks may be an "interested person." As has been previously indicated, this requirement includes not only everyone named in the will then being offered for probate, but also any heirs not named in the will.

Then, as the first step after the grant of letters and probate of the will, if any, the personal representative must prepare and have published in a local newspaper a notice of his appointment. The publication of this notice is now mandatory, rather than discretionary, but the new statute requires only three insertions instead of four. This notice, the form of which is set forth in Section 7-103, combines both the traditional notice to creditors with notice to anyone who may object to the personal representative's appointment or to the probate of the will that he must make his objection within six months of the first insertion.

The next step in the giving of formal notice of the proceedings must be taken within fifteen days after the appointment of the personal representative, when he must deliver two things to the Register...
of Wills: (1) the text of the first published newspaper notice, which may be in the form of a reproduction of the printed newspaper item, the better choice, or may be in the form of a copy of the typewritten notice delivered to the paper for publication; and (2) a separate list containing the names and addresses of the legatees, and heirs who may not be legatees, which list must be furnished even though some or all of the names previously appeared as a part of the petition for probate. 89

When the Register receives the text of the newspaper notice and the list of heirs and legatees, he is required, within five days, to forward to each person on the list, by delivery or by certified mail, a copy of the text of the newspaper notice. 90 It is the personal representative's duty to supply the Register with enough copies of the text of the notice so that there is one copy for each person named on the list. Finally, after the notice has been published three times, the personal representative must file a certificate of publication. 91

The Governor's Commission concluded that these procedures were necessary to assure compliance with the due process requirements of the fourteenth amendment of the federal Constitution, as set forth in the Supreme Court decision in Mullane v. Central Hanover Bank & Trust Co. 92 When judicial probate has been requested, there are further requirements of publication and other notice. 93

Ancillary Administration

The requirement that a foreign personal representative take out ancillary letters has been eliminated. 94 The Maryland law has never been particularly clear with respect to the circumstances under which ancillary letters were required to be obtained. The requirement that a foreign personal representative take out letters in Maryland was generally based on four theories: (1) foreign personal representatives have no power to sue or otherwise to act in Maryland without first obtaining authority from a Maryland court; (2) local creditors will be protected by being afforded an opportunity to file claims against the Maryland estate when the Maryland letters are obtained; (3) letters should be obtained to enable the foreign personal representative to deal with Maryland real estate, and (4) letters should be obtained to afford the Maryland taxing authorities a better opportunity to collect Maryland death taxes due with respect to Maryland assets. 95

89. § 7–104.
90. § 2–209.
91. § 7–103.
93. § 5–403.
94. § 5–501.
95. See discussion in Foreign Executors and the Need for Ancillary Administration, 1 Md. Bar J., April, 1969, at 24. See also Currie, The Multiple Personality of the Dead: Executors, Administrators, and the Conflict of Laws, 33 U. Chi. L. Rev. 429 (1966); Alford, Collecting a Decedent's Assets Without Ancillary Administra-
As the report of the Governor’s Commission points out, the Maryland practice has not been notably successful in providing the protection these theories were originally supposed to afford. The rule prohibiting a foreign personal representative from instituting suit in Maryland has easily been avoided by equitable assignments of claims. The protection of local creditors worked imperfectly because local creditors were often unaware of an ancillary administration in Maryland or else the rules requiring ancillary administration in Maryland were so ambiguous that foreign personal representatives simply did not bother to take out letters, absent some compelling reason. The so-called “protection” for creditors also involved a hardship on Maryland debtors. Under the doctrine of Citizens National Bank v. Sharp, a Maryland debtor who paid the foreign personal representative of his deceased creditor did so at his peril because, if an ancillary administrator had been appointed in Maryland, the Maryland debtor might also be liable to pay the Maryland administrator. The sanctity of real estate titles was, in many instances, perverted because Article 21, Section 95 permitted foreign personal representatives to sell Maryland realty without obtaining Maryland letters. The tax situation was anomalous because the Maryland Code set forth no rules for determining whether the foreign personal representative was required to take out letters in Maryland.

The Governor’s Commission felt that the most desirable method of handling these problems would be the establishment of a simple statutory pattern duly protective of (1) Maryland creditors, including the tax authorities, if the decedent owned real or leasehold property in Maryland, and (2) Maryland debtors of non-resident decedents, and which would at the same time insure full disclosure in the land records. Section 5-501 of new Article 93 states that “a foreign personal representative shall not be required to take out letters in Maryland for any purpose.” Section 5-502 sets forth the rule that: “Any foreign personal representative may exercise in Maryland all powers of his office, and may sue and be sued in Maryland, subject to any statute or rule relating to non-residents.” Section 5-503 provides that a foreign personal representative owning real or leasehold property must publish a newspaper notice in every county in which the property is located setting forth certain information with respect to the estate, including the name of a Maryland agent for service of process on file with the Register and the location of the property. The creditors in Maryland may, within six months, file claims against the Maryland property in a special record book for claims against non-resident decedents.

Because there is no formal administration in Maryland, a procedure has been included in Section 5-504 for fixing the Maryland inheritance tax. If the inheritance tax is not paid in accordance with this procedure, the unpaid tax obligation constitutes a lien against the property. Similarly, an unpaid claim, evidence of which has been filed

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96. 53 Md. 521 (1880).
by the creditor, will also constitute a lien. If the property is sold, the lien of the creditor is transferred to the property even if it is sold, unless the taxes have been paid. The clarity of the lien provisions should force foreign personal representatives to pay Maryland taxes at the peril of being unable to pass clear title to property.

Persons Entitled to Be Personal Representatives

There are only two significant changes in this area. First, no judge of any state court or federal court and no Register of Wills or clerk of court may serve as a personal representative unless he is a surviving spouse or is related to the decedent within the third degree. A similar provision has been added to Article 16 with respect to judges, clerks, and registers serving as trustees.

Second, non-residents of Maryland can serve as personal representatives whether or not the domiciliary state of the non-resident has a statute providing for reciprocity with Maryland, so long as the non-resident files with the Register an irrevocable designation of a Maryland agent on whom service of process can be made. The present law generally thwarts a testator’s intentions. It does so with particular unfairness if his will was executed when the personal representative was eligible to serve but the personal representative later moved to another state before the testator’s death. Even though the personal representative might have been the only child of the decedent, he could not qualify if he lived in West Virginia or some other non-reciprocal state.

Miscellaneous Statutory Provisions with Respect to Personal Representatives

New Article 93 sets forth the rule that successor personal representatives and surviving co-personal representatives shall, unless otherwise provided in the will, have all the powers that the original personal representatives possessed. Section 6–203 states that where there are two or more personal representatives, the vote taken on any act must be unanimous except (i) where the act involved is receiving or receipting for property due the estate, (ii) where all personal representatives cannot readily be consulted in the time reasonably available for emergency action, (iii) where there has been a valid delegation to a co-personal representative, or (iv) where the will or any statute provides otherwise. An example of a statute that contains a contrary specific rule is Section 44 of Article 23 of the Maryland Code which provides for majority vote by fiduciary holders of stock in a Maryland corporation.

Subtitle VI of the new statute also sets forth detailed requirements for suspending the powers of a personal representative on the application of any interested person and for the termination of the

98. § 5–104(b) (5).
100. § 5–104(b) (6).
101. §§ 6–202, 6–204.
rights of a personal representative by death, disability, resignation or removal. Finally, Subtitle VI eliminates the need for the miscellany of the ecclesiastical latin special administrations that abound in Article 93, such as letters *ad colligendum*, letters *durante minoritate*, letters *de bonis non*, and letters *pendente lite*. Wherever there is a special circumstance that requires a special administrator, such as during an interim period when a personal representative has died, the court may appoint "a special administrator" to act until a new personal representative has been appointed.

**Administration of the Estate**

Subtitle VII of new Article 93 deals with the procedures which the personal representative must follow in administering the estate. One of the most important provisions, not only in Subtitle VII but in the entire statute, is contained in Section 7-401. The first sentence of this Section reads as follows: "The personal representative, in the performance of his duties pursuant to Section 7-101, may exercise any power or authority conferred upon him in the will, without application to, the approval of, or ratification by the Court." Thus, if the will confers sufficiently broad authority on the personal representative, he may go about the business of administering the estate without obtaining orders from the court. This eliminates the archaic law and practice of taking up the Orphans' Court's time with petitions and orders that do no more than recite and seek approval for actions which an executor has authority to do anyway — actions which even the court's approval cannot shield against subsequent attack by a beneficiary if the executor took them in violation of his basic fiduciary duties.

The theory of Section 7-401 is that so long as the will confers broad authority on the personal representative, he should be permitted to act in the same manner and with the same responsibility as the trustee of a Maryland trust — without application to, approval of, or ratification by any court, unless, of course, he or any interested person requests judicial review or sanction. The procedural rigmarole can presently be avoided by creating a revocable inter vivos trust, but such a trust is generally thought to be beyond the means or the understanding of persons of moderate or limited means. The new law gives to everyone the advantages of the revocable inter vivos trust without the necessity of creating such a trust.

Under the new law, if the personal representative is given the power of sale in the will, as he generally is, he may sell real estate or any other type of property without giving notice by publication and without obtaining any order of court or formal ratification of the sale. If the exercise of the power was in any way improper, the personal representative, pursuant to Section 7-403, will be liable for breach of his duty to interested persons in the amount of any resulting damage.

103. §§ 6-301, 6-304 to 6-306.
104. §§ 6-401 to 6-404.
105. See § 7-401.
Section 7-404 gives full protection to persons dealing with the personal representative, such as a purchaser of real estate. It provides:

In the absence of actual knowledge or of reasonable cause to inquire as to whether the personal representative is improperly exercising his power, a person dealing with the personal representative is not bound to inquire whether the personal representative is properly exercising his power, and is protected as if the personal representative properly exercised the power. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

This rule is substantially the same as the rule with respect to purchasers from a private trustee, and should cause no problems with respect to rights of purchasers, title insurance, and the other accoutrement of real estate transactions.

However, a personal representative may petition the court for permission to act in any manner relating to the administration of the estate. This provision is simply intended to allow the personal representative to initiate a proceeding whenever he deems it necessary to secure some formal resolution of a question relating to the administration. Likewise, any other interested person may petition the court with respect to any such question.

As has been previously indicated, obtaining a court order will not exculpate the personal representative from all liability for the action taken pursuant to that order. The order is not a professional liability insurance policy. An imprudent fiduciary investment, although authorized by the court, may still be subject to surcharge. Although this may surprise some lawyers, and, indeed, some judges, it has been the Maryland law for a long time and has not been changed by the new statute.

Even if a personal representative has obtained an order authorizing a particular action, that order will not insulate him from liability if he was negligent in choosing the course of action authorized by the order, or if he acted in bad faith in obtaining it. The key determination is whether such action was prudent at the time it was taken, and the fact that an executor has obtained an order from the Orphans' Court has no legal bearing on that determination. The fail-safe course for any executor to follow where, for example, he is selling property the value of which is seriously debatable, would be to notify all of the interested persons that he proposes to take such action and to get their consent to the price at which he is selling the property. In that way, he should be able to insulate himself from liability to those interested persons, as long as he has not withheld material information from them. Of course, regardless of whether or not the beneficiaries suc-

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106. § 7-402.
ceed in an action against the personal representative for selling the property at an inadequate price, a good faith purchaser of the property is protected under Section 7–404.109

While the bill containing new Article 93 was before the Senate Judicial Proceedings Committee, many Registers of Wills and some members of the Bar expressed great concern over the provisions of the proposed Section 7–402, relating to “extended powers.”110 This provision was deleted; the deletion will impose additional duties on personal representatives of intestate decedents or decedents whose wills do not include certain broad powers of administration. Unfortunately, it is the small-to-medium-sized estates that are most likely to be affected by this move. The heart of the concept of “extended powers” was to enable the testator by his will, or all persons interested in the estate, regardless of the will, to agree in writing, after the decedent’s death, to permit the personal representative to sell property or invest in property or do anything else necessary or appropriate to administer the estate without application to, approval of, or ratification by the court. Thus, if a man died intestate, survived by his wife and two children, the three of them could execute and file with the Register a written document authorizing the personal representative to buy or sell estate assets or do anything else without getting court approval. So too, if a decedent’s will contained no express prohibition but contained an abbreviated set of powers, all the beneficiaries could similarly agree. Since all interested persons would have to agree to this procedure, it is difficult to rationalize the elimination of this aspect of “extended powers” on any basis other than its novelty.

One other aspect of “extended powers” would have enabled inventories and accounts to be delivered by the personal representative to all interested persons in lieu of filing them with the court. If this procedure were adopted, the personal representative could, instead, file with the court a verified certificate stating that a copy of accounts and inventories had been mailed to each interested person. This provision was intended to enable a man’s financial affairs to be maintained in family privacy rather than spread upon the public records. All other financial affairs are private: income tax returns and estate tax returns must be kept confidential by both federal and state authorities. It seems anomalous that this one aspect of his affairs — the content and value of his probate property — must be laid out for the curious public to observe. The procedure suggested by the Governor’s Commission would, at the election of the decedent by will while he was alive, or, after his death at the election of all interested persons, have enabled these affairs to retain the confidential status previously allowed to other financial records.

If a will does not contain a long recital of authorized powers, or if there is an intestacy, Section 7–401 contains a general grant of powers which can be exercised without application to, approval of, or

110. The Governor’s Commission acceded to the request that these provisions, because of their novelty vis-à-vis the Maryland tradition, be given further study by the Legislative Council during 1969.
ratification by the court. This general grant includes the power to retain assets, perform the decedent's contracts, satisfy written charitable pledges of the decedent, deposit funds in interest-bearing accounts or short-term loan arrangements, vote stocks, hold securities in the name of a nominee, insure property of the estate, effect compromises with creditors, pay taxes, sell or exercise stock subscriptions or options, consent to reorganizations, dissolutions or liquidations, pay funeral expenses under certain circumstances, including the cost of burial space and a suitable tombstone or marker and the cost of perpetual care, employ auditors and investment advisors or other persons, prosecute, defend or submit to arbitration actions involving the estate, continue unincorporated businesses for stated periods of time, incorporate valid claims, discharge security interests, convey redeemable reversions to the owners of leasehold estates, and make partial distributions. This grant of powers will eliminate a substantial amount of meaningless paper-shuffling in the administration of estates.

Where a particular power is not contained in the will or enumerated in Section 7-401, an order of court must be obtained. Thus, in intestate administrations, a court order must be obtained before any property can be sold; the procedure should not be cumbersome, however, because all statutory requirements of orders nisi and published notices of orders have been repealed.

Inventories and Accounts

The basic requirement that the assets of the estate be inventoried and that the inventory be filed within three months after the appointment of the personal representative has not been changed. The new law has done away with a number of separate documents, the contents of which can now be included in one inventory. For example, since real property will be part of the probate estate, there will be no separate real inventory. The list of debts owed to the decedent, with requirements that they be categorized as separate or desperate, has been eliminated. The new, general inventory must include all debts owed to the decedent and the valuation on the inventory will necessarily reflect whether they are separate or desperate. The list of debts due from the decedent, which is required under Sections 13 and 14 of present Article 93, has also been eliminated. If a creditor has a claim, he should file it.

A significant procedural change has been made with respect to the appraisal of corporate stocks listed on any national or regional exchange, debts owed to the decedent, including bonds and notes, bank accounts, building, savings, and loan association shares, and money. The personal representative will be able to value these items himself, without obtaining any independent appraisal. It will therefore no

111. See also § 8-106 dealing with payment of funeral expenses without any order of court, and discussion in the text at note 138 infra.
112. § 7-201.
114. §§ 7-201 (a) (4) to 7-201 (a) (5).
115. § 7-202.
longer be necessary to pay a fee to a court-appointed or other "official" appraiser to appraise cash items, a fee that has been especially difficult to justify to members of a decedent's family.

With respect to all other types of property, the personal representative must secure an independent appraisal. However, with respect to one or more assets the value of which he deems fairly debatable, he may request an appraisal by appraisers appointed by the Register^116 or he may engage other independent appraisers to assist him in ascertaining the fair market value of these other assets. With respect to stock of closely held corporations, real estate, or other similar assets, especially where a federal estate tax return will be required and the services of experts specially qualified in appraising such items must be obtained, the personal representative will undoubtedly wish to rely solely upon their valuation and not wish to pay an additional fee to appraisers appointed by the Register of Wills. If he retains special appraisers, he need not use appraisers designated by the Register. If the personal representative uses a charlatan for an appraiser and the inventoried values are unreasonably low, there is no requirement that the Register accept them for accounting and inheritance tax purposes; he then has the opportunity to challenge them and, if the situation is aggravated enough, to force a reappraisal.

Since the state is interested in correct valuations primarily for inheritance tax purposes, when the personal representative presents an account showing distributions on which inheritance taxes are payable, and the Register has reason to believe that the original, inventoried value, on which the inheritance tax is then to be calculated, is too low in relation to fair market values at the date of distribution, he may request the court to increase the inventory values. Similarly, if the values have decreased, the personal representative or any other interested person may petition the court for a downward revision of values. The time limitation on reappraisals for inheritance tax purposes, contained in Sections 153 and 154 of Article 81, has been repealed; the only time limit under the new law is that the revision must be accomplished before the estate is closed.

Another procedural change regarding inventories is the requirement that when the inventory is filed, the personal representative must also file a certificate stating that, within the preceding fifteen days, he has mailed or delivered to all interested persons a notice that the inventory is being filed. This will insure, for the first time, that the

116. § 7-202(a). § 2-301 gives all Registers the power to appoint standing appraisers. This is presently the system in Baltimore City and would appear to be a desirable state-wide option, depending upon the volume in the office, the availability of qualified personnel and other considerations. The "standing" appraisers need not stand on a full-time basis. They may stand "on call." In some counties this may be a better arrangement than the present system under which the personal representative picks his appraisers. In some jurisdictions, the Orphans' Court is the current appointing authority. This is completely inappropriate since it is the Register, not the court, who is charged with the duty of collecting taxes on appraised values.

117. §§ 7-202(b).

118. § 7-204.


120. §§ 7-201(b), 7-501.
interested persons will receive either a copy of the inventory or a notice that it is being filed. Such persons will no longer be subject to the practical tyranny of “record notice” which, under the old law, bound them to know whatever was filed during administration whenever it was filed.

With respect to accounts, the substance of the Maryland practice has been continued. However, the time for filing the first account has been accelerated to eight months after the first publication of the notice of appointment and notice to creditors. The account will contain not only the information customarily contained in accounts, but also information with respect to purchases, sales and other transactions involving assets in the estate which have changed since the filing of inventory or the last previous account. Since the necessity for separate reports of sale has been eliminated, the account must provide this information, as it now does with respect to stock splits and similar non-sale changes in asset composition. Accounts, like inventories, when filed, must be accompanied by a certificate indicating that the personal representative has mailed or delivered a notice of the filing of the account to all interested persons within the preceding fifteen days.

The new requirement that the first account be filed within eight months after publication of the notice to creditors is part of the statutory policy of encouraging the prompt administration of estates. Section 7-101(b) provides that “unless the time of distribution shall be extended by order of Court for good cause shown, the personal representative shall distribute all the assets of the estate... within the time... for rendering his first account.” Of course, extensions may be obtained for filing an account for good cause shown, but, in the absence of federal estate tax or other significant tax problems, open claims, unresolved questions which make distribution impossible, or other reasons for perpetuating the estate beyond the eight month period, the personal representative should complete the administration of the estate within that time. Only in very unusual circumstances should distribution of specific legacies be deferred to a later date.

A good deal of the criticism of probate practice here and in other states has been directed to the administration of relatively small estates where, even though there are no appreciable tax problems, the personal representative keeps the estate open for over a year for no particular reason. As the report of the Governor’s Commission states, it is expected that the court will grant extensions as a matter of course when there are federal tax problems, but in the absence of other problems which present a valid reason for withholding distribution, this should not provide any excuse for delaying distribution of specific legacies.

122. § 7-301.
123. § 7-305(a)(1).
124. § 7-203.
125. §§ 7-301, 7-501.
126. “Eight” months was selected to give one month after the surviving spouse had decided whether to elect her statutory share, which she must do within seven months. § 3-206.
One other way in which prompt administration of estates has been encouraged is that the definition of "interested person" does not include anyone whose legacy has been satisfied in full. Thus, a notice that the account has been filed must be given to all "interested persons" within fifteen days before the filing of the account. If there are forty pecuniary legatees, this notice must be sent to each of the forty who has not been paid in full. Those legatees who have been paid in full are no longer "interested persons" and will not be entitled to receive this notice. Therefore, the personal representative can eliminate some of his paper work by making prompt distributions.127

Commissions and Attorneys’ Fees

Unfortunate as some may view it, the new statute continues the present law governing compensation of personal representatives. The commissions have not been changed. Although real property has been included in the probate estate, real property, the income therefrom, and the expenses attributable thereto, will be excluded in computing the size of the estate for purposes of determining commissions.128 This will necessarily be somewhat awkward because a separate calculation will have to be made on the administration account in order to enable the computation of the personal representative’s commissions. Also perpetuated is the ten per cent commission on the sale of real property by the personal representative.129

With respect to attorneys’ fees, it is expressly stated that the court, in setting a counsel fee for attorneys, must also take into consideration the aggregate commissions allowed to personal representatives so that the overall charge for administering the estate will not be unfair or unreasonable.130

Section 7–502 also provides that the personal representative must give written notice to each unpaid creditor and to all interested persons of the amount to be requested by the personal representative for commissions or by the attorney for the estate for counsel fees, along with the basis in arriving at the requested amount. The court action with respect to the petition for commissions and attorneys’ fees will be final unless any person who receives the notice requests a hearing within twenty days of the sending of the notice.131 This will insure the beneficiaries of the estate and any unpaid creditors the opportunity to present their views with respect to the allowances for commissions and attorneys’ fees. Unfortunately, too often in the past the beneficiaries of the estate have not learned about the commissions or attorneys’ fees until long after it is too late for them to voice any objection.

127. Other notices to “interested persons” which can be reduced are the notices that an inventory is being filed (§§ 7–201, 7–501) and that the personal representative or attorney for the estate is seeking compensation (§ 7–502).
128. § 7–601(b).
129. § 7–601(c).
130. § 7–602(c).
131. § 7–502.
Creditors' Claims

Claims may be filed either with the personal representative or with the Register. The personal representative may pay any just claim even if the claim has not been formally filed. The new statute includes specific provisions with respect to secured claims, contingent claims, the order of priority of claims where an estate is insolvent, the form in which a claim should be filed, and similar procedural matters. Although in general the amount of funeral expenses to be allowed is fixed by the court, Section 8–106 specifically provides that if the estate is solvent and if the will expressly authorizes the personal representative to pay funeral expenses without an order of court, no such order is required.

There is one major change with respect to the rules of creditors' claims, in addition to simplification and clarification. The doctrine of Zollickoffer v. Seth, that a creditor may proceed against the heirs or legatees even if he has not filed his claim against the estate, has been substantially abolished by Section 8–103(a). In many instances, the assertion of a claim against the heirs or legatees, after the final distribution of the estate, has resulted in considerable and quite unexpected hardship. The theory of the new legislation is that at some point after decedent has died, the heirs and legatees ought to be able to receive the property with the assurance that no further claims can be made against them. Creditors must now either commence suit or file a claim within six months. The six months' filing period allowed for creditors' claims will give creditors sufficient time to file their claims; if they fail to do so, they should not be entitled to proceed against the distributees of the estate. Unless a claim is filed within six months, it will also be barred against the personal representative even if the personal representative has not made distribution.

The present statutory exception from the six month limitations period with respect to any action covered by an insurance policy or claims made against the Unsatisfied Claim and Judgment Fund has been retained in Section 8–104(c).

132. § 8–104.
133. § 8–108.
134. § 8–111.
135. § 8–112.
136. § 8–105.
137. § 8–104(b).
138. See also § 7–401(l).
139. 44 Md. 359 (1876).
140. §§ 8–103(a), 8–104(c).
141. There is one question with respect to creditors' claims not explicitly answered in the statute or the Commission's report. If the decedent's obligation was expressly made binding not only on the decedent and his personal representative, but also on his heirs and legatees, does the reversal of Zollickoffer v. Seth still apply? Thus if the creditor fails to file his claim within six months, can he still present his claim against the heirs and legatees if the decedent's contractual obligation expressly mentioned heirs and legatees? See Comment, Right of Creditors of a Decedent to Recover from Distributees after the Estate is Closed, 41 Mich. L. Rev. 920 (1943).
Distribution

A number of new statutory provisions have been included with respect to distribution. For example, Section 9–103 deals specifically with the order of abatement. The manner of valuing and distributing assets in kind has been set forth in Section 9–104.

Perhaps the most important sections in Subtitle IX, which deals generally with distribution, are Sections 9–109 and 9–111. Section 9–109 affords the personal representative a galaxy of options with respect to distributions to a minor. If money is distributable to a minor and there is no guardian, the cash may be deposited in any financial institution, subject to the further order of court. The account book must be delivered to such person as the personal representative deems responsible and appropriate. There has been retained in the law the provision that if the amount is $300.00 or less the personal representative may, with the approval of the court, pay the amount to anyone the personal representative deems responsible and appropriate, for the minor's support.

Alternatively, with the approval of the court, the personal representative may, even without specific authorization in the will, appoint a custodian under the Uniform Gifts to Minors Act to hold the property pursuant to the provisions of that Act. With respect to tangible personal property, the personal representative is given the additional option to make distributions to anyone the court deems responsible and appropriate. If a guardian has been appointed the personal representative may distribute any property to the guardian.

Section 9–111 eliminates the necessity of obtaining releases from each distributee. If the personal representative desires a release, he may get one, but he is not obligated to do so.

Closing the Estate

For the first time in Maryland there will be a procedure that will enable the personal representative formally to close an estate and terminate his appointment. After the expiration of six months from the date of the published notice required under Section 7–103, the personal representative may petition the court for an order to close the estate and terminate his appointment. After twenty days notice to all interested persons and a hearing, if requested, the court may enter an appropriate order. If no action or proceeding is pending against him one year after the date of the order closing the estate and termi-
nating his appointment, the personal representative is automatically discharged from ordinary liability to interested persons.\(^\text{150}\)

A creditor who has filed a claim and not been paid or an heir or legatee who has not received his proper share may also have a claim against the distributees of the estate. Subtitle X of new Article 93 sets alternative statutes of limitations with respect to such claims against the heirs or legatees.\(^\text{161}\) Even though the personal representative has been discharged and the estate closed, the statute provides that if property is later discovered, the court, upon petition of an interested person, may appoint the same personal representative or name a successor.\(^\text{162}\) If the only act which needs to be performed after the estate has been closed is a ministerial act, such as executing a release to a mortgage which has already been discharged in full, the personal representative whose authority has been terminated still has the authority to perform such ministerial or confirmatory acts.\(^\text{153}\)

**ARTICLE 93A**

Article 93A contains a comprehensive revision of the Maryland law relating to guardianships and other devices, such as committees and conservatorships, for the protection of the property of persons under disability. It collects into one article all the diverse Maryland rules with respect to the protection of property of minors and other disabled persons. It also contains a significant revision of the common law rule with respect to the disability of a principal who has executed a power of attorney.

The adoption of Article 93A reflects the displeasure and dissatisfaction of both the bar and the public with the current law and practice dealing with guardianships and committees. The appointment of a guardian for a minor, or a committee for an incompetent, has generally been looked upon with extreme displeasure because of the archaic and unnecessarily expensive procedures which the appointment inevitably sets in motion. For the past twelve years, the General Assembly has reacted to this situation by creating many new techniques for avoiding the appointment of a guardian or a committee. In 1957, for example, the Uniform Gifts to Minors Act authorized inter vivos gifts to a custodian for the benefit of a minor.\(^\text{154}\) The custodianship proved to be such a sensible device for avoiding the expense of unnecessary guardianships that the General Assembly, on three subsequent occasions,\(^\text{165}\) broadened the scope of the Act beyond inter vivos gifts of securities and cash to include gifts of life insurance policies, testamentary bequests to a custodian, and transfers to a custodian upon the termination of trusts, either inter vivos or testamentary.

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150. § 10-103(a).
151. § 10-103(b).
152. § 10-104.
153. § 10-105.
In 1963, the General Assembly passed a statute authorizing a minor's recovery in tort to be paid to a statutory trustee, who need not be bonded and need not file annual reports. The purpose of this procedure was simply to avoid the cumbersome and expensive guardianship proceeding in those situations.

A reaction to the procedures for committees for incompetents was the 1957 statute authorizing the appointment of "conservators" for persons who were not mentally incompetent but who needed a statutory agent to handle their property. The Maryland Rules have also reflected the disenchantment with the existing law respecting guardians and committees. For example, although the ancient practice had been to require every guardian and committee to be bonded, the Rules have been amended to exempt estates having a value of less than $10,000.

Notwithstanding the excellence of these recent amendments to the statutes and rules, no frontal attack had been made on the main body of law relating to guardians and committees until the introduction of House Bill No. 558, which proposed new Article 93A.

Subtitle I of the new law contains general provisions, such as definitions, requirements for verification of documents which eliminate the necessity of taking an oath before a notary, jurisdictional provisions, and other details relating to the powers of the courts and Registers of Wills. The term "guardian" is a generic term used to describe anyone appointed by a court to manage the property of a minor or "disabled person." It will replace terms such as "committee," which always had

158. Md. R.P. V73.
159. Ch. 4, [1969] Md. Laws 105. Most of these laws were enacted in the eighteenth century. Guardians and committees were given no authority to perform even mere ministerial acts without the formal approval of a court. A partial explanation of the desire to straight-jacket guardians and committees may lie in the fact that in the eighteenth century, doctrines of fiduciary responsibility which are now familiar were practically unknown. Today, in Maryland, there are thousands of trusts, both inter vivos and testamentary for minors as well as adults, by the terms of which the trustees may exercise quite broad powers without judicial approval. The trustees are not bonded, and the trustees need not file any accountings in court. A guardian or committee is nothing more than a trustee. The purpose of Article 93A is to enable the guardian or committee to perform his acts in much the same manner that the trustee of a private trust performs his duties, unless court supervision is, because of special circumstances, equitable. Under present Maryland practice, both guardianships and committees can be avoided through the use of trusts and custodialships, which are simple and inexpensive to administer. Those persons who are knowledgeable enough to avoid guardianships and committees, by means of a properly drawn trust instrument or custodial designation, can save the expense of these proceedings. To impose these expenses on those who did not plan for the contingencies of a minor's ownership of property or of incompetency is an unfair result. New Article 93A, entitled "Protection of Persons under Disability and their Property" is therefore intended to simplify and standardize the laws of Maryland on that subject.

160. Ch. 4, § 1, [1969] Md. Laws 107 (§ 102 of new Article 93A) [hereinafter cited as Art. 93A, § ____].
163. Art. 93A, § 101(d).
an unpleasant connotation, and "conservator." "Disabled person"\textsuperscript{164} is a generic term used to describe a person who, for reasons other than minority, cannot manage his property effectively. The reasons include physical and mental disability, senility, habitual drunkenness, addiction to drugs, imprisonment, and detention by a foreign power.\textsuperscript{165} Basically, the jurisdiction of the courts has not been changed. The Orphans' Courts and the Circuit Courts will continue to have concurrent jurisdiction over proceedings involving the property of minors and over the guardians of the person of any minor. The Circuit Courts will have exclusive jurisdiction over proceedings involving disabled persons other than minors, such as incompetents.

Subtitle II of new Article 93A contains the heart of the new statutory scheme. Section 213 provides a broad spectrum of powers which may be exercised by the guardian without application to, approval of, or ratification by the court, except as may be otherwise provided in the instrument which appointed the guardian or as may be limited by court order. Thus, a guardian may now invest in, sell, mortgage, exchange or lease any property, borrow money, enter compromises, and perform all of the acts which are set forth in Section 7-401 of new Article 93 with respect to the automatic powers of personal representatives of estates of decedents.\textsuperscript{166}

A guardian may sell any type of property, including real estate, without getting a court order, and purchasers from the guardian or other persons dealing with the guardian are protected in much the same way as a purchaser from a trustee of a private trust is protected in dealing with the trustee.\textsuperscript{167} Section 214 gives the guardian the power to disburse property for the support, care, protection, welfare, education and clothing of a minor without court authorization or confirmation. With respect to other disabled persons, the guardian may, again without court authorization or confirmation, apply sums from the income and principal of the estate for the clothing, care, protection, welfare, and rehabilitation of the disabled person. The present practice of permitting income and principal to be applied for the benefit of persons legally dependent upon the minor or disabled person or whom the disabled person had been maintaining or supporting before the appointment of the guardian has been continued.

The statute sets forth procedures for appointing the guardian\textsuperscript{168} and for terminating his appointment,\textsuperscript{169} including termination by death, disability, resignation, or removal. It permits a foreign guardian to act in Maryland without filing any formal documents or being appointed by a Maryland court.\textsuperscript{170}

\textsuperscript{164} Art. 93A, § 101(a). The term "disability" is broader than the terms "mental disorder," "mental illness," and "mental retardation," contained in § 3 of new Article 59. See note 184 infra.

\textsuperscript{165} Art. 93A, § 201(b).

\textsuperscript{166} See pp. 109-10 supra for a brief listing of these powers.

\textsuperscript{167} See Art. 93A, § 219 and p. 108 supra with respect to identical protection for purchasers from personal representatives.

\textsuperscript{168} Art. 93A, § 201.

\textsuperscript{169} Art. 93A, § 220.

\textsuperscript{170} Art. 93A, § 222. This provision is not unlike the procedures of §§ 5-501 to 5-506 of new Article 93, which abolish ancillary administration. Art. 93A, § 222.
One of the major criticisms of all the procedures relating to guardians and committees relates to the bonding requirements. Section 208(a) specifically states that: "No bond or other security shall be required of (i) a corporate guardian, (ii) a guardian named in a will or inter vivos instrument where the instrument excuses the guardian from giving bond, (iii) a guardian where the estate is less than $10,000, or (iv) in any other case which the court deems appropriate." Section 208(b) also states that even if a bond is not excused pursuant to 208(a), the amount of the estate upon which the penal sum of a bond is computed may be reduced if securities or money held by the guardian are deposited with a financial institution under arrangements requiring an order of court for their removal. The fee of the financial institution for this service should be less than the corresponding bond premium.

An inventory must be filed within sixty days after the appointment of a guardian, and accounts must be prepared annually. The accounts must be filed either with the court or with every interested person. If the account is not filed with the court, the guardian must file with the court a written verification that the account has been sent to every interested person. If it is not filed with the court, the guardian gets no protection with respect to matters disclosed in the account. If, on the other hand, the guardian does file his accounts annually, after notice and hearing, the allowance by the court of the account will be conclusive as to the guardian's liabilities concerning any matters disclosed in the account. Because the term "guardian" is used as a generic term to replace all separate forms of arrangements under court order, such as committees and conservators, all of these procedures will be the same whether the person whose estate is being administered is under twenty-one, incompetent, senile, or suffering from other mental weakness, from addiction to drugs or from alcoholism.

Section 207, which sets forth the priority for the appointment of guardians, states the first priority, in the event no guardian has been appointed by a court in a foreign jurisdiction: "a person or corporation nominated by the minor or disabled person if such designation was signed by the minor or disabled person after his sixteenth (16th) birthday and, in the opinion of the court, he had sufficient mental capacity to make an intelligent choice at the time he executed such designation." This will enable competent persons to execute an instrument designating the person whom they desire to be their guardian if they do become incompetent. The same instrument can excuse the guardian, when appointed, from giving bond.

would appear to make unnecessary the more cumbersome procedure of § 9-110 of new Article 93, which is a recodification of the present procedures for distributing the assets from a Maryland decedent's estate to the guardian of a foreign incompetent.

172. Art. 93A, § 209(b).
173. Art. 93A, § 209(c).
174. Art. 93A, § 207(b).
175. Art. 93A, § 208(a) (ii).
Gifts to Minors Act

Subtitle III of Article 93A contains the Uniform Gifts to Minors Act as revised in Maryland. The major changes are these:

1. Any type of property may be the subject of a custodial gift, including real property, tangible personal property, and interests in partnerships.\(^{178}\)

2. A custodian may be designated as the beneficiary of a life insurance policy or an annuity contract.\(^{177}\) Although the Uniform Act had previously permitted custodians to own life insurance policies, it contained no specific authorization for a custodian to be designated as a beneficiary. This omission has been corrected.

3. The choice of successor custodians has been broadened.\(^{178}\) Any adult or trust company eligible to become an original custodian is also eligible under the new law to become a successor custodian.

Miscellaneous Provisions Relating to Minors

Subtitle IV simply recodifies the provisions relating to the payment of minor’s recoveries in tort to a trustee who need not be bonded or file accounts.

Subtitle V contains a number of other miscellaneous provisions relating to minors which had been strewn throughout the Maryland Code. Section 501 permits, without the appointment of a guardian, limited amounts of money to be paid directly to minors who have attained the age of eighteen. This provision was derived from Section 383 of Article 48A,\(^{179}\) which had authorized insurance companies to make payments not in excess of $3,000 per year directly to a minor who had attained the age of fifteen. In the new law, the amount has been increased to $5,000 per year, the age has been increased to eighteen, and the identity of the payor has been broadened to include "any person," not just insurance companies. If the minor is under eighteen, and there is no guardian, or the payor has no actual knowledge that there is a guardian, the sums so paid, again not in excess of $5,000 per year, may be paid to the parent or grandparent of the minor with whom the minor resides, and if there be none, to a financial institution which will hold the funds pursuant to further court order. Section 501(b) authorizes the Circuit Court to order any money distributable to a minor from any trust or estate or any other source to be deposited in a financial institution subject to the further order of court.

Section 502(a) recodifies the provision of Article 21, which enabled married females over the age of sixteen who hold title to property with their husbands as tenants by the entireties to execute deeds or mortgages. Section 502(b) continues the provision enabling any

\(^{176}\) Art. 93A, § 301(e) (1).
\(^{177}\) Art. 93A, § 302(d).
\(^{178}\) Art. 93A, § 307(a).
veteran or member of the armed forces who is a minor to buy, sell, and mortgage real estate. Section 502(c) continues certain provisions heretofore found in Article 48A with respect to the purchase of insurance by minors. Section 503 contains provisions relating to shares in building and loan associations held by minors or minors and adults jointly.\(^{180}\)

**Powers of Attorney**

Subtitle VI contains an important modification of common law rules relating to powers of attorney. At common law a power of attorney was automatically terminated upon the disability of the principal. Section 601 now provides that if the power of attorney specifically states that the power shall not be affected by the disability of the principal, or that the power of attorney shall become effective only upon the disability of the principal, the authority of the attorney or agent shall be exercisable notwithstanding the later disability or incapacity of the principal.

The general impression among laymen is that a power of attorney should be executed, whenever a person is becoming ill or thinks he is, so as to enable someone else to handle his affairs when he does become seriously ill. Unfortunately, the common law rules prevent the power from becoming operative when the illness renders the principal incapacitated. This new statutory provision will enable the attorney-in-fact to act notwithstanding the disability. When the provision is combined with the provisions of Section 207(b) of Article 93A, it is expected that many people will execute documents which will: (1) appoint an attorney-in-fact to act for the principal if the principal becomes disabled, and (2) appoint a guardian if the principal becomes disabled and any interested person wants formal guardianship proceedings instituted.

As a practical matter there will, in most instances, be no guardianship proceeding where there is a power of attorney which survives disability. Only in the event of a family controversy, where some interested person wants a guardian formally appointed, will there be any necessity for a guardianship proceeding where a power of attorney that would survive disability is already in existence. If a guardianship proceeding is commenced, however, a guardian designated by the disabled person when he was still competent will be entitled to be appointed by the court. If the same instrument excused him from giving bond, he will not be required to post a bond. If the person appointed guardian is not the same person designated in the power of attorney, the guardian will have the power to revoke, suspend or terminate the power of attorney. Section 602 gives protection to any person who acts without actual knowledge of the termination of a power of attorney.\(^{181}\)

\(^{180}\) This provision was included in the statute by mistake. It was derived from Md. Ann. Code art. 23, § 148 (1966), which was repealed by ch. 422, [1968] Md. Laws 611, and supplanted by another provision dealing with minors' accounts in building and loan associations.

\(^{181}\) Similar, though not as comprehensive, provisions had been included in Md. Ann. Code art. 10, § 42 (1968).
Guardian of the Person

Subtitle VII of Article 93A deals with guardians of the person. Section 701 continues the Maryland law whereby the surviving parent of a minor may, by will, appoint one or more guardians and successor guardians of the person of an unmarried minor.\textsuperscript{182} This type of guardian need not be approved by, or qualify in, any court. If there is no testamentary appointment, any person interested in the welfare of the minor may petition the court to appoint a guardian of the person.\textsuperscript{183} The minor, if he is fourteen or older, has the power to designate a guardian of the person unless this decision is not in his best interests. The statute specifically provides, however, that it is not to be construed to require court appointment of a guardian of the person for a minor where there is no good reason, such as a dispute, for a court appointment. In many instances there will be immediate agreement among the members of the family as to who the guardian of the person should be, and there will be no necessity for court proceedings. In addition, the guardian of the person need not post any bond or file any accounts.

Section 704 gives the court the power to superintend and direct the care of the person of a disabled person who is suffering from a disability other than minority. This provision is not intended to abrogate or affect in any way the extensive procedures set forth in Article 59 for commitment to mental institutions.\textsuperscript{184}

CONCLUSION

The major significance of Chapters 3 and 4 of the Laws of 1969 is not the overdue substantive revisions of the Maryland laws relating to the estates of decedents, minors, and incompetents. Rather, it is the apparent recognition by the General Assembly that the entire Maryland Code needs a complete reorganization and recodification. Chapters 3 and 4 represent the first step.

Such a comprehensive reorganization of the Code should accomplish several things:

1. \textit{The collection into one Article of material on the same subject which is presently scattered throughout the Code.} This aim has been accomplished by new Articles 93 and 93A with respect to the subjects of the estates of decedents, minors, and disabled persons. The bench, the bar, and the General Assembly would all benefit from the destruction of the jig-saw pattern of Maryland statutes presently in force. The juxtaposition of all the statutes dealing with one subject would automatically reveal the inconsistencies and the

\textsuperscript{182} See also Note, Appointment of a Guardian by Will, 34 \textit{Rocky Mt. L. Rev.} 200 (1961). The old Maryland law was contained in Md. Ann. Code art. 72A, § 4 (1967), and Md. Ann. Code art. 93, § 164 (1964). By oversight only § 164 of Article 93 was repealed. The Report of the Committee of the State Bar Association that drafted Article 93A also recommended the repeal of § 4 of Article 72A. The omission of the additional repealer was solely a drafting error and was not intentional.

\textsuperscript{183} Art. 93A, § 702(a).

overlappings of our present laws and may be expected to result in many improvements.

For example, there should be one Article dealing with Procedure and the Courts which could serve as a convenient companion volume to the Maryland Rules. It could include such matters as Appeals (Article 5), Arbitration (Article 7), Attachment (Article 9), Execution (Article 83, Sections 1–14), Mandamus (Article 60), the Administrative Procedure Act (Article 41, Sections 244–256), Abatement and Revivor (Article 16, Section 1 and Article 75, Sections 15, 15A, and 15B), Pleadings, Practice and Process at Law (Article 75), Equity practice, including auditors, injunctions, general jurisdiction, and specific performance (Article 16, Sections 6–10, 91, 93, 96, 99, 107, 114–118, 131, and 169), Prohibited Actions (Article 75C), Slander of Females (Article 88), Limitations of Actions (Article 57), Uniform Declaratory Judgment Act (Article 31A), Uniform Absent Persons Act (Article 16, Sections 200–212), Evidence (Article 35), Notaries Public (Article 68), Acknowledgments (Article 18), Juries (Article 51), Costs (Article 24), Fines and Forfeitures (Article 38), Fees of Officers (Article 36), Justices of the Peace (Article 52), Clerks of Court (Article 11), Constables (Article 20), and Sheriffs (Article 87).

In the Commercial Law area, a single Article could include not only the Uniform Commercial Code (Article 95B), but also such matters as Bills of Exchange and Protest (Article 13), Bills of Lading (Article 14), Warehouse Receipts (Article 14A), the Uniform Fiduciaries Act (Article 37A, Sections 1–15), the Uniform Act for the Simplification of Fiduciary Security Transfers (Article 37, Sections 16–25), the Fair Trade Act, Unfair Sales Act, Unfair Cigarette Sales Act, Consumer Protection Act, Retail Installment Sales Act, the Retail Credit Accounts Law, and Finance Company laws (all in Article 83), Consumer Loans (Article 58A), Interest and Usury (Article 49), Currency (Article 29), Agents and Factors (Article 2), and Assignments of Choses in Action (Article 8).

An Article on Family Law would include not only the material on alimony, divorce, annulment, paternity, adoption, and changes of name found in Article 16, but also Husband and Wife (Article 45), Marriages (Article 62), Parent and Child (Article 72A), and Support of Dependents (Article 89C).

A Property Article would include Conveyancing, Land Installment Sales Contracts, and the Horizontal Property Act (Article 21), Landlord-Tenant (Article 53), Mechanics’ Liens (Article 63), Mortgages (Article 66), Zoning and Planning (Article 66B), Regional Planning Council (Article 78D), Eminent Domain (Article 33A), Land Patents (Article 54, Sections 12–53), Bounding Lands (Article 15), miscellaneous provisions dealing with deeds, burial grounds, quiet title proceedings, partition, judicial sales, and ground rents contained in Article 16, Merger (Article 64), Aliens (Article 3), and Estrays, Vessels Adrift, and Drift Logs (Article 34).

An article on State Government would deal with the General Assembly (Article 40), Governor-Executive and Administrative De-
portments (Article 41), Comptroller (Article 19), Public Debt (Article 31), Treasurer (Article 95), Budget Procurement (Article 15A), Public Works (Article 78A), Merit System (Article 64A), Pensions (Article 73B), Department of Law (Article 32A), Officers (Article 69), Official Oaths (Article 70), Publication of Laws (Article 76), State Reporter (Article 80), Hall of Records (Article 54), Militia (Article 65), State Police (Article 88B), Civil Defense (Article 16A), State Roads (Article 88C), and Elections (Article 33).

A Criminal Law Article would include not only the materials presently found in Article 27, but also Habeas Corpus (Article 42), Criminal Injuries Compensation Act (Article 26A), and Defective Delinquents (Article 31B).

A brief Article on Creditors’ and Debtors’ Proceedings would encompass the Uniform Fraudulent Conveyances Act (Article 39B), Insolvents (Article 47), and various provisions of Article 16 dealing with trusts for the benefit of creditors (Article 16, Sections 175, 177, and 183).

A “Welfare” Article would include the State Department of Social Services (Article 88A), Unemployment Insurance (Article 95A), Commission on the Aging (Article 70B), Almshouses and Trustees of the Poor (Article 4), Deaf, Mute or Blind (Article 30), Mental Health (Article 59), the Interstate Compact on Mental Health (Article 41, Sections 319–338), and Juvenile Services (Article 52A).

The Water Resources Article (96A) could be expanded to include the State Boat Act (Article 14B), Ferries (Article 37), Pilots (Article 74), Seamen (Article 84), and the Maryland Port Authority (Article 62B).

The various rules regulating the professions, law (Article 10), dentistry (Article 32), engineering and land surveying (Article 75½), public accountants (Article 75A), the enormous range of doctors (Article 43), architects (Article 43), and real estate brokers (Article 56), could conveniently be collected in one Article.

2. The elimination of archaic\footnote{185} and purely local\footnote{186} materials from the Code.

3. The review by the General Assembly of British Statutes in Force in Maryland. There should be a statutory codification of those British statutes which are still relevant and an express statutory repeal of all those British statutes which, regardless of their former importance, are no longer relevant. It seems incredible that substantial questions of landlord-tenant relationships and of criminal law often turn on the interpretation of statutes which are sometimes five hundred years old, which are not found in the libraries of most Maryland lawyers, and which, if the opinion of Julian J. Alexander, Esquire,\footnote{187} was incorrect, may


\footnote{186} There can be little justification in a statewide Code for a separate Article on laundries in Baltimore City and Baltimore County. See Md. Ann. Code art. 55 (1964).

\footnote{187} J. Alexander, A COLLECTION OF THE BRITISH STATUTES IN FORCE IN MARYLAND (1870).
not even be the law of Maryland. There must be more fruitful ways for lawyers to spend their time than speculating on the accuracy of Mr. Alexander's 1870 opinion as to the state of the Maryland law in 1776.

The lack of statutory revision exists at the federal level, as well. Consider the Robinson-Patman Act,\textsuperscript{188} "a singularly opaque and elusive statute,"\textsuperscript{189} which has not been amended once in thirty-three years notwithstanding the unanimity of scholarly opinion that the Act is very badly drafted.\textsuperscript{190} Congressional failure to correct such obviously inadequate statutes as the Limitation of Liability Act or the Copyright Act of 1909 are additional examples. Judge Friendly's brilliant essay, \textit{The Gap in Lawmaking — Judges Who Can't and Legislators Who Won't},\textsuperscript{191} details many other examples.

Judge Friendly concludes that legislators simply do not have the time to deal with the technical legal matters of the kind that necessarily would be involved in a broad-scale revision of the Maryland Code or even a wide-scale revision of several major areas of substantive law. Dean Pound pointed out to the American Bar Association that: "Our legislative organization and legislative methods are devised for appropriations and political legislation, not for legislation on legal matters."\textsuperscript{192} Dean Pound and Chief Judge Cardozo both called for a "ministry of justice" to do the work that the legislators generally dislike. Urgings of this kind resulted in the creation of the New York Law Revision Commission.

To be sure this idea is not new even in Maryland. In 1901, Mr. Alexander Armstrong urged the Maryland State Bar Association to create a Permanent Law Reform Commission to be appointed by the Governor.\textsuperscript{193} Nothing was done. The suggestion reappeared as a recommendation at the Association's 1968 Annual Meeting.\textsuperscript{194}

If a permanent law revision commission is not established in Maryland, perhaps the General Assembly would recommend the appointment of a special commission to reorganize the Maryland Code in the manner suggested. Thus, the spirit which prompted the enactment of Chapters 3 and 4 of the Laws of 1969 would not wane.

\textsuperscript{188} 15 U.S.C. § 13(a), (b) (1964).
\textsuperscript{189} FTC v. Sun Oil Co., 371 U.S. 505, 530 (1963) (Mr. Justice Harlan).
\textsuperscript{191} 63 \textit{Columbia L. Rev.} 787, 793 (1963).
\textsuperscript{193} 6 \textit{Transactions Md. State Bar Ass'n} 158 (1901).