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Wyoming's Law of Decedents' Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code - Part II

Lawrence H. Averill, Jr.

University of Wyoming
College of Law
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Part I of this multipart article compared the Wyoming law governing both intestate and testate succession and related concepts with the corresponding provisions of the Uniform Probate Code. Here, in Part II, Professor Averill examines the procedures for administration of a decedent's estate under Wyoming law and the Uniform Probate Code. The article provides a useful guide to present procedures and demonstrates the increased flexibility available under the Code.

WYOMING'S LAW OF DECEDENTS' ESTATES, GUARDIANSHIP AND TRUSTS: A COMPARISON WITH THE UNIFORM PROBATE CODE --- PART II

*Lawrence H. Averill, Jr.**

INTRODUCTION TO PART II

ALTHOUGH the subject matter discussed in Part I of this article was of such a nature that a section by section comparison was employed, the provisions dealing with the administration of a decedent's estates are so numerous that it is not feasible to make a section by section analysis in a law review article format. Consequently, Part II will concentrate on a comparison of the major concepts and procedures present under Wyoming law and proposed by the Uniform Probate Code. Two significant recent developments† which deserve mention are that Idaho and Alaska have enacted probate

*Associate Dean and Associate Professor of Law, University of Wyoming College of Law; A.B., Indiana University; J.D., The American University; LL.M., The George Washington University; Member of the District of Columbia, Maryland and Wyoming Bars.

†Idaho Code §§ 15-1-101 to -7-401 (Supp. 1972) (Effective July 1, 1972); Alaska Stat. §§ 13.06.005-.36.100 (1972). (Effective January 1, 1973).

codes which substantially adopt the Uniform Probate Code. These enactments will definitely increase interest in the Code in other jurisdictions.

IX. JURISDICTION, VENUE AND NOTICE

A. Jurisdiction of the Probate Court

The status of the probate court throughout the fifty states is varied and often confused. There are basically four different types of probate courts in the United States.[377] A very small number of states confer probate jurisdiction to their chancery court or jurisdiction. A larger number of states confer probate jurisdiction upon a separate probate court which has an equal status with their courts of general jurisdiction. The largest number of states have a similar system but the probate courts are definitely inferior to the courts of general jurisdiction. The fourth system imposes probate jurisdiction directly in the court of general jurisdiction. This system was adopted in California and subsequently in five other western states including Wyoming.[378]

Two jurisdictional doctrines have developed out of the latter system. The first one is called the Washington Doctrine, and briefly it provides that probate jurisdiction is not conferred in a separate court but is made a part of the court of general jurisdiction.[379] The distinction made between a court acting as a probate court and a court acting as a court of general jurisdiction, therefore, has effectively been abolished in the states recognizing this doctrine.[380]

Although California's constitutional and statutory provisions are very similar to Washington's comparable provisions, the California court determined that there is a distinction between a court acting on probate matters and a court

377. Simes & Basye, *The Organization of the Probate Court in America*, 42 MICH. L. REV. 965, 994 (1944), reprinted in PROBLEMS OF PROBATE LAW—A MODEL PROBATE CODE 385, 420 (1946). *See* Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453, 455-59 (1970). *See also* ATKINSON, WILLS § 4, at 29-30 (2d ed. 1953).

378. Simes & Basye, *supra* note 377, at 998.

379. 1 HILLYER, BANCROFT'S PROBATE PRACTICE § 24, at 61-65 (2d ed. 1950) [Hereinafter cited BANCROFT].

380. *Id.*

acting on other civil matters.[381] The Wyoming Supreme Court has followed the California doctrine.[382] The basic holding is that there are two courts which function in different capacities and which possess different powers within their separate jurisdiction.[383] The typical rationale is that probate jurisdiction may be acquired without actual notice upon the persons interested in the litigation, whereas general civil litigation requires actual notice of some form or other.[384] Unfortunately, the cases which have applied this distinction have not dealt with situations wherein the stated rationale has any relevance. Most of the cases have dismissed litigation which was brought in the general jurisdiction side of the court when that litigation should have been brought in the probate side.[385] Since notice is normally more stringent in the former than in the latter, prejudice to the parties would not appear to be present. These decisions, therefore, would appear to be extremely technical and arbitrary. The approach which the Washington courts have taken, under what must be considered similar constitutional[386] and legislative provisions,[387] would seem to be the preferred procedure.

With respect to jurisdiction, the Code is extremely flexible and is designed to work within the framework of the state in which it is adopted.[388] Only two concepts are said to be essential: (1) that the court be able to render binding adjudications on any civil litigation to which the fiduciary may be a party, and (2) that appeals go to the same court that appeals from courts of general jurisdiction go.[389] The rationale behind this flexibility is to permit proponents of the Code to

381. *E.g., In re* Davis' Estate, 136 Cal. 590, 69 P. 412 (1902); Fisher v. Superior Court, 23 Cal. App. 2d 528, 73 P.2d 893 (Dist. Ct. App. 1937). *See* 1 BANCROFT § 23, at 54-61.
382. *E.g.*, Gaunt v. Kansas Univ. Endowment Ass'n., 379 P.2d 825 (Wyo. 1963); Merrill v. District Court, 73 Wyo. 58, 272 P.2d 597 (1954). *See also* Note, 19 WYO. L.J. 241 (1965).
383. State *ex rel.* State Bd. of Charities & Reform v. Bower, 362 P.2d 214, 820 (Wyo. 1961).
384. Church v. Quiner, 31 Wyo. 222, 224 P. 1073, 1074 (1924). *See* 1 BANCROFT § 23, at 61. *But cf.* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).
385. *See* cases cited *supra* notes 381 and 382.
386. *Compare* WASH. CONST. art. IV, § 6 *with* WYO. CONST. art 5, § 10.
387. *Compare* WASH. REV. CODE ANN. § 2.08.010 (1961) [and] § 11.02.010 (1967) *with* WYO. STAT. § 2-3 (1957).
388. UNIFORM PROBATE CODE: OFFICIAL TEXT WITH COMMENTS §§ 1-302, 1-308, 3-105 (West 1970) [hereinafter cited as U.P.C.].
389. Wellman, *supra* note 377, at 476-77.

avoid needless discussions of a particular organization form of the court.[390] The Code, therefore, puts its emphasis on describing the functions to be performed by the various public officials leaving to each legislature the problem and responsibility of working the Code's court into present existing systems.[391]

With the addition of the concept of concurrent jurisdiction over relevant and related civil litigation, the Code's provisions with respect to jurisdiction of the probate court can easily be worked into the Wyoming system.[392] One additional provision which might be considered would be one which clearly holds that a ministerial error in docketing a case will not be found to be jurisdictional and may be corrected merely by removal or transfer to the appropriate docket.[393]

B. Venue

Wyoming's venue provision for probate matters is very specific.[394] Although five specific preferences are given, the section lists only three factors which, depending upon their location, will determine venue. These factors are (1) the place of the decedent's residence,[395] (2) the place of his death and (3) the location of his property. The following chart [No. 5] shows the order of priority using the above factors as the key.

[Chart No. 5]

Order of Preference	Residence	Place of Death	Location of Property
First	X		

390. *Id.* at 477.
391. U.P.C. § 3-105, Comment at 80-81.
392. Even the Code's new position or office of Registrar is easily worked into Wyoming's present system since the Court may designate the person to serve in this position by written, filed and recorded order. U.P.C. § 1-307. The clerk of court could easily be the designatee.
Idaho specifically made their magistrate or district judge the Registrar. IDAHO CODE § 15-1-307 Supp. 1972). For an explanation of this change see Peterson, *Idaho's Uniform Probate Code: A Bird's Eye View*, 8 IDAHO L. REV. 289, 308-12 (1972).
393. *See* Simes & Basye, *supra* note 377, 43 MICH. L. REV. 113, 150.
394. WYO. STAT. § 2-4 (1957).
395. The word "resident" which is used many times in the venue section probably means "domicile." *Cf.* Rice v. Tilton, 13 Wyo. 420, 80 P. 828 (1905); Hawks v. Creswell, 60 Wyo. 1, 144 P.2d 129 (1944).

Second	X (and)	X
Third		X [Died outside state]
Fourth		X [Died in County where no asset located]
Fifth	X	

A subsequent provision provides that if venue is based upon the third preference and if more than one county qualifies, the first county in which application is made has exclusive jurisdiction to settle the estate.[396]

The Code simplifies the venue factors and preferences by reducing them in number to two. The first is, of course, the county of the decedent's domicile.[397] Since this venue has significant importance in the Code,[398] the Code sets up a procedure for determining conflicting claims of domicile. Within the Code state's jurisdiction the first court, which has a proceeding instituted within it, has the exclusive right to determine domicile and its determination must be accepted in other Code states.[399] The rationale is to reduce the number of litigations over domicile by requiring courts to stay or dismiss actions which are duplicative of actions previously filed in another state court.[400] This reduction is presumably desired by the decedent who would not normally wish to have his estate consumed by litigation costs.[401] When the decedent is not domiciled within the state, the appropriate venue is in any county where the decedent left property.[402]

396. WYO. STAT. § 2-5 (1957).

397. U.P.C. § 3-201(a)(1).

398. *See* U.P.C. §§ 3-203, 3-309, 4-201, 4-205, 4-206.

399. U.P.C. § 3-202.

400. U.P.C. § 3-202, Comment at 88. *See also* U.P.C. § 3-408 (Final order by a court of another state conclusive).

401. U.P.C. § 3-202, Comment at 89.

402. U.P.C. § 3-201(a)(2). The proper location for intangibles is defined. U.P.C. § 3-201(d).

The Code meritoriously has a detailed set of provisions for determining the proper venue when it is questioned.[403] When two or more courts are appropriate venues, the court wherein the proceedings were first commenced has the exclusive right to continue its jurisdiction.[404] Furthermore, any issue concerning venue should be determined in this court and held in abeyance by the other courts.[405] When a court determines that venue should be in another court, it must transfer the proceedings to the other court of the same state.[406] No reinitiation of the proceedings need be made by the parties. Wyoming courts would probably not follow this transfer procedure.[407] Presumably under any transfer permitted by the Code, the parties would have to repeat their notice by publication requirements.[408]

C. Notice

Adequate notice to concerned individuals is a prerequisite of due process when those individuals' rights or property will be affected by court action.[409] It is obvious that in the administration and distribution of decedents' estates, there necessarily must be sufficient notice procedures[410] to overcome a due process objection.

The administration of decedents' estates is generally not like civil litigation. Although significant rights are determined during administration proceedings, it is not necessarily an advocacy procedure with a plaintiff and a defendant. Consequently, the jurisdiction of probate courts has been referred to as in rem or quasi in rem,[411] and it may be obtained

403. The possibility that numerous informal proceedings may be filed in different courts in the state is one of the reasons for these procedures. *See* U.P.C. §§ 3-301 to -311.

404. U.P.C. § 1-303(a). Wyoming has a similar provision. WYO. STAT. § 2-5 (1957).

405. U.P.C. § 1-303(b).

406. U.P.C. § 1-303(c).

407. *See* WYO. R. CIV. P. 12(b), 40.1, 41(b)(1), Form 19.

408. *See* U.P.C. §§ 3-705, 3-801.

409. Pennoyer v. Neff, 95 U.S. 714 (1878); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

410. Wuchter v. Pizzutti, 276 U.S. 13 (1928).

411. 1 BANCROFT § 40, at 107.

in a variety of manners. Whereas in personam jurisdiction is typically obtained by personal or substituted service, in rem jurisdiction may also frequently be obtained by publication or posting.[412]

The constitutional prerequisite is that the concerned individuals be notified in as reasonable a manner as practicable.[413] There are, however, no specific rules as to what is sufficient to satisfy this requirement. Each issue must be identified and the underlying facts determined to apply the generalized test.

Most states, including Wyoming, have specific language or sections dealing with notice for the various administration proceedings. Each issue is separated and may require different forms of notice. Some sections require a citation to the persons concerned; others require service by registered mail or other mailing procedure. Many of them, however, merely require notice by publication or posting or both. Some of the latter notice provisions may give rise to due process objections. Significantly, where the probate court has the substantive issues of jurisdiction satisfied, *i.e.*, death, domicile, or property, jurisdictional questions in decedents' estates matters center around the problem of notice.

Wyoming statutes conform to the above discussion. The following chart [No. 6] outlines the required statutory procedures:

[Chart No. 6]

NOTICES BY LETTER OR CITATION

	Purpose	Method	Intended Recipient	Timing
1)	Time appointed for hearing for proving will[414]	[Registered] Prepaid mail or personal service	State resident heirs, executor, co-executors	Before hearing

412. *Id.* § 46, at 118.
413. Mullane v. Central Hanover Bank & Trust Co., *supra* note 409.
414. WYO. STAT. § 2-63 (1957).

2)	Time appointed for hearing to sell real estate[415]	Personal service	County resident guardians, legatees, devisees, heirs and other interested persons	Ten days before hearing
3)	Time of filing final account and petition for distribution (final settlement)[416]	[Registered] Prepaid mail or personal service	Heirs and devisees	Ten days before filing
4)	Time appointed for hearing concerned with revocation of probate[417]	Citation	Executor, Administrator c.t.a., legatees, devisees, resident heirs, guardians	Reasonable time[418]

NOTICES BY PUBLICATION

	Purpose	Method	Timing
1)	Time appointed for hearing for proving will[419]	Publication in county newspaper	Once a week for four weeks
		or	
		Posting at three public places in county	Twenty days before the hearing

415. WYO. STAT. § 2-264 (1957).

416. WYO. STAT. § 2-304 (1957).

417. WYO. STAT. § 2-84 (1957).

418. Merrill v. District Court, 73 Wyo. 58, 272 P.2d 597 (1954).

419. WYO. STAT. § 2-62 (1957).

2)	Limitations for claims against the estate[420]	Publication in county newspaper or newspaper designated by court	(a) Within ten days after letters to the personal representative are issued, and (b) Not less than once a week for three weeks
3)	Time appointed for hearing of order to sell real estate[421]	Publication in county newspaper or newspaper designated by court	For four successive weeks
4)	Time of filing final account and petition for distribution (final settlement)[422]	Publication in county newspaper of general circulation	For four consecutive weeks

The method and time of giving notice appear in the Code in one all inclusive section.[423] When notice of a hearing of any petition is necessary, it is to be given by registered mail or by personal service within 14 days before the hearing.[424] If the address or identity of any person is unknown, notice may be made by publication in a county newspaper having general circulation once a week for three consecutive weeks; the last notice must appear at least ten days before the hearing.[425]

The circumstances for which the above procedure is to be employed has become one of the controversial parts of the

420. WYO. STAT. § 2-219 (Supp. 1971).
421. WYO. STAT. § 2-264 (1957).
422. WYO. STAT. § 2-304 (1957).
423. U.P.C. § 1-401. The Code also includes a broad well defined provision dealing with virtual representation. U.P.C. § 1-403.
424. U.P.C. § 1-401(a)(1), (2).
425. U.P.C. § 1-401(a)(3).

Code. Specifically, the Code includes procedures[426] called "Informal Probate" and "Informal Appointment." In relevant part these procedures permit the probating of a will or the appointment of a personal representative or both without prior notification of the hearing to all interested persons. Furthermore, no notice of closing need be given either.[427]

Advocates in favor of the Code argue that adequate protections are provided interested persons.[428] First, prior notice of any filing must be given to any person who has filed with the Court a demand for notice.[429] Second, notice of a filing for informal appointment must be given to any person who has a prior or equal right to be appointed personal representative.[430] Third, if an informal appointment is made, the personal representative must notify all heirs and devisees whose addresses are reasonably obtainable.[431] Fourth, if an informal probate is employed by itself, any heir or devisee may force formal probate[432] within a year after informal probate or three years after the death of the decedent, whichever is a longer period of time.[433] And, fifth, the personal representative who informally closes an estate, remains liable for six months after filing his closing statement.[434]

Notwithstanding the above protections, questions have been raised concerning the constitutionality of these procedures. The primary concern is that under the Code's informal procedures it could theoretically be possible for a sole devisee to completely settle the estate without ever notifying an heir and that the heir may not be adequately protected from such

426. U.P.C. §§ 3-301 to -311.

427. U.P.C. § 3-1003.

428. Wellman, *Methods of Probate: A Summary of Available Choices*, UNIFORM PROBATE CODE PRACTICE MANUAL § 6.13, at 83-84 (Assoc. of Continuing Legal Education Administrators 1972). *See also* ACLEA NAT'L CONFERENCE ON THE UNIFORM PROBATE CODE—STUDY MATERIALS 67-69 (1972).

429. U.P.C. § 3-204.

430. U.P.C. § 3-310. In addition, no informal proceeding may occur until five days after decedent's death. U.P.C. §§ 3-302, 3-307.

431. U.P.C. § 3-705.

432. U.P.C. §§ 3-401, -302.

433. U.P.C. § 3-108.

434. U.P.C. § 3-1005.

event.[435] The general opinion, however, is that the Code's approach would not violate due process.[436]

Formal procedures under the Code require more familiar notice procedures. For formal probate,[437] administation[438] and final closing,[439] notice by mailing, personal service and publication to interested persons[440] must be made before the hearing. In addition, similar notice must be given when a petition for supervised administration[441] is filed.

X. ADMINISTRATION AND PROBATE PROCEDURE

A. Wyoming Law

Administration and probate in Wyoming must, with a few exceptions, be generally defined as a formal proceeding requiring court or judge supervision. Under several circumstances, Wyoming statutes provide for abbreviated procedures. Although limited in scope and application, they do deserve mention.

In very small stabilized estates it is possible that one could own all or substantially all assets of significant value in a survivorship form of ownership, *i.e.*, joint tenancy or tenancy by the entireties. If one dies under such circum-

435. Mapp, *The 1969 Oregon Probate Code and Due Process*, 49 ORE. L. REV. 345 (1970). *See also* Manlin & Martens, *Informal Proceedings Under the Uniform Probate Code: Notice and Due Process*, 3 PROSPECTUS 39 (1969); Comment, 53 IOWA L. REV. 508 (1967).

436. *Id.* In response to this controversy the Joint Editorial Board for the Uniform Probate Code is considering the addition of a provision which would require prior notice of informal probate to heirs and interested persons. ACLEA NAT'L CONFERENCE ON THE UNIFORM PROBATE CODE—STUDY MATERIALS 191 (1972). Professor Richard V. Wellman, Educational Director of the Joint Editorial Board for the Uniform Probate Code, contends that such a notice requirement would severely reduce the advantages of the informal proceeding procedures. 2 U.P.C. NOTES 3 (October 1972). *Compare* WYO. STAT. § 2-97 (1957).

437. U.P.C. § 3-403(a).

438. U.P.C. § 3-414(b).

439. U.P.C. § 3-1001(a).

440. The term "interested person" is defined in U.P.C. § 1-201(20):

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

441. U.P.C. § 3-502.

stances and if he is survived by the other tenant, a short procedural form is available to transfer the property to the survivors. This procedure requires the recording in the county clerk's office of an affidavit which describes the property and the instrument of title and certifies death of the decedent and which is accompanied with a certified death certificate.[442] This affidavit constitutes prima facie evidence of the facts recited and thereby establishes title to the property.[443] This device is available only where the title to the property is evidenced by some form of written instrument.[444]

Another summary procedure, which may under restricted circumstance be used in conjunction with the above procedure or be employed separately, is the provision concerning the administration of estates valued at $500 or less.[445] Under this procedure the county attorney is responsible for administering the estate. His responsibilities are to have a complete and full inventory made, and to file a petition in the district court setting forth all of the facts. Upon their completion, all of the assets must be given over to the clerk of the court who thereafter distributes the assets to creditors and heirs. The clerk is given the powers of an ordinary personal representative under Wyoming law. The district court or judge is required to review the actions taken and to finalize distribution to the heirs. The judge may order that no notice to creditors be made.

Although the financial burdens caused by administration are eliminated by this procedure, its usefulness is far too limited. On the other hand, if this procedure were materially expanded in scope, it could become an extremely serious burden upon the county attorney.

442. WYO. STAT. § 34-99 (1957). An abbreviated court proceeding, requiring only a petition, notice by publication and a hearing, is also permitted under similar circumstances. WYO. STAT. § 34-97 (1957). This court proceeding would be preferred over the affidavit procedure in situations when the nature of the tenancy is in doubt.

443. WYO. STAT. § 34-99 (1957).

444. *See also* WYO. STAT. § 13-29.1 (Supp. 1971) (Bank may make payments to any joint depositor regardless whether the other depositor or depositors are alive). It is doubtful that this statute creates a survivorship interest in the surviving depositor. ATKINSON, WILLS § 41, at 175 (2d ed. 1953).

445. WYO. STAT. § 2-2 (1957). *See also* WYO. STAT. § 2-1 (Supp. 1971) (transfer of motor vehicle title without administration).

A third procedure available is equally restrictive. If a person named as executor is also the sole legatee under a valid will which disposes of all the decedent's property which would pass through probate, a shorter less formal procedure is available.[446] After the probate of the will, the issuance of letters testamentary, the filing of the inventory and appraisement, and the publication of notice to creditors, the estate vests absolutely in the legatee-executor. The debts of the decedent thereafter become the debts of the legatee. The legatee-executor is also required to file a special bond which is intended to secure the payment of claims against the estate.

Although this procedure has some advantageous applications, it is not an overriding informal probate. Meritoriously, it is not restricted by a monetary limitation and when applicable, it greatly diminishes the number of petitions, notices, hearings, affidavits and orders which are necessary under an ordinary administration. Unmeritoriously, the circumstances will not always be available and they cannot always be anticipated by planning. For example, the most likely situation, *i.e.,* a spouse giving all assets to surviving spouse and naming the latter executor, has definite limitations. The prospective surviving spouse may not survive and the alternative successors typically increase beyond the number one. In addition, it frequently is not desirable to appoint a spouse executor because of the inordinate and undesirable burdens which will be placed upon him, particulaly if the spouse does not possess adequate managerial abilities. The most obvious disadvantage of this procedure, however, is its unavailability in any situation where multiple beneficiaries are involved.

For heirs who merely wish to clear title to real estate, a fourth procedure is available.[447] After the passage of two years[448] from the death of a resident decedent,[449] heirs may petition the appropriate court[450] for a determination of heir-

446. WYO. STAT. § 2-52 (1957).
447. WYO. STAT. §§ 2-325 to -327 (1957).
448. Creditors' claims are barred if no administration occurs within two years of the decedent's death. WYO. STAT. § 2-104 (1957).
449. Heirs of non-residents need not wait two years. WYO. STAT. § 2-325 (1957).
450. The petition is filed either in the county in which the decedent was domiciled or if a non-resident in the county where the property is located. *Id.*

ship. Following notice by publication and a hearing, the court issues a recordable judicial order establishing the rights and interests of inheritance in the real property.[451] Deficiencies of this procedure are readily apparent. It only applies to real estate passing by way of intestacy and only after the passage of two years from a resident decedent's death. It certainly does not represent a quick, generally applicable device for avoiding the full administration procedures.

Unless the above procedures are available, a decedent's estate will be forced to proceed through a full administration. The following chart [Chart No. 7] illustrates that procedure by listing the principal documents which must be filed with and hearings held before the court for an estate which includes both real and personal property.

[Chart No. 7]

PROBATE AND ADMINISTRATION PROCEDURE UNDER WYOMING LAW

Testacy	Intestacy
Petition for probate of will[452]	Petition for letters of administration[453]
Order setting time for proving will[454]	[Notice of hearing for letters not specifically required but probably similarly accomplished]
Notice for publication of time appointed for proving will[455]	
Hearing on petition for probate of will[456]	Hearing on petition for letters of administration[457]

451. WYO. STAT. § 2-327 (1957).
452. WYO. STAT. §§ 2-58, -59 (1957).
453. WYO. STAT. § 2-97 (1957).
454. WYO. STAT. § 2-62 (1957).
455. *Id.*
456. *Id.*
457. WYO. STAT. §§ 2-97 to -100 (1957).

Affidavit citing publication of notice of probate hearing in newspaper (with copy of notice)[458]	Probably same as testacy
Affidavit by personal representative that publication and notice were properly made for notice of probate hearing[459]	Probably same as testacy
Affidavit of subscribing witness on probate of will[460]	Not Applicable (N/A)
Certificate of proof of will and facts found	N/A
Order admitting will to probate	N/A
Affidavit of trust by personal representative[461]	Same as testacy (Same)
Filing of bond[462]	Same
Order appointing executor or administrator with will attached	Order appointing administrator
Letters testamentary[463] *or* Letters of administration with will annexed[465]	Letters of administration[464]

458. WYO. STAT. § 2-65 (1957).
459. *Id.*
460. WYO. STAT. § 2-66 (1957).
461. WYO. STAT. § 2-121 (1957).
462. WYO. STAT. § 2-122 (1957).
463. WYO. STAT. § 2-90 (1957).
464. WYO. STAT. § 2-92 (1957).
465. WYO. STAT. § 2-91 (1957).

Petition for order appointing appraisers[466]	Same
Inventory and appraisement[467]	Same
Notice by publication to creditors of limitation for filing claims against estate[468]	Same
Affidavit citing publication of notice to creditors in newspaper (with copy of notice)[469]	Same
Affidavit by personal representative or attorney that publication and notice were properly made for notice to creditors[470]	Same
Petition for order to sell personal property[471]	Same
Hearing on petition for sale of personal property[472]	Same
Order for sale of personal property[473]	Same

466. WYO. STAT. § 2-154 (Supp. 1971).
467. WYO. STAT. § 2-153 (1957).
468. WYO. STAT. § 2-219 (Supp. 1971).
469. WYO. STAT. § 2-220 (1957).
470. *Id.*
471. WYO. STAT. § 2-250 (1957). *See generally* WYO. STAT. §§ 2-248 to -296 (1957).
472. WYO. STAT. § 2-250 (1957).
473. WYO. STAT. §§ 2-249, -253 (1957).

Notice of public auction[474]	Same
Public sale[475]	Same
Affidavit of sale[476]	Same
Order for confirmation of sale[477]	Same
Petition for order to sell real estate[478]	Same
Order to show cause why real estate should not be sold[479]	Same
Notice of hearing on order to show cause[480]	Same
Hearing on order to show cause[481]	Same
Order of sale[482]	Same
Notice of sale[483]	Same
Public sale[484]	Same
Affidavit of sale[485]	Same
Order for confirmation of sale[486]	Same
Conveyance of property by personal representative[487]	Same

474. WYO. STAT. § 2-255 (1957).
475. *Id.*
476. WYO. STAT. § 2-249 (1957).
477. *Id.*
478. WYO. STAT. § 2-262 (1957).
479. WYO. STAT. § 2-263 (1957).
480. WYO. STAT. 2-264 (1957). Notice may be waived if all interested persons join in petition for sale. *Id.*
481. WYO. STAT. § 2-266 (1957).
482. WYO. STAT. § 2-269 (1957).
483. WYO. STAT. § 2-270 (1957).
484. WYO. STAT. §§ 2-270, -273 (1957).
485. WYO. STAT. § 2-276 (1957). Interested persons may file objection to confirmation of sale. WYO. STAT. § 2-277 (1957).
486. WYO. STAT. § 2-278 (1957).
487. WYO. STAT. § 2-279 (1957).

Petition for final distribution[488]	Same
Notice of final settlement and accounting[489]	Same
Filing of final accounting by personal representative[490]	Same
Hearing on final settlement, distribution and discharge[491]	Same
Affidavit by personal representative on veracity of final account[492]	Same
Affidavit by personal representative or attorney that publication and notice were properly made for notice of final settlement and accounting[493]	Same
Order approving final accounting[494]	Same
Decree of final distribution[495]	Same
Report of proceedings regarding final distribution[496]	Same

488. WYO. STAT. § 2-304 (1957).
489. *Id.*
490. *Id.*
491. *Id.*
492. *Id.*
493. *Id.*
494. *Id.*
495. WYO. STAT. § 2-305 (1957).
496. WYO. STAT. § 2-304 (1957).

Receipts from creditors, legatees and devisees[497]	Receipts from creditors and heirs[498]
Decree of final discharge[499]	Same

Although a will can waive the bond requirement[500] and simplify the sale of property procedures,[501] the above outlined procedures are a necessity for all other estates administered through the probate court. There are no other realistic alternatives.

B. The Uniform Probate Code

The Code, by contrast, gives the persons interested in a decedent's estate a multitude of alternatives and combinations. Reduced to their basic characteristics, the three procedures available are informal, formal and supervised. Generally, informal proceedings are non-adjudicative, no notice filings to the registrar which permit certain processes to function.[502] Formal proceedings are initiated by a petition and become functional only after notice, hearing and an order by the court.[503] Supervised administration functions as the present system does, *i.e.*, a continuous proceeding requiring constant court supervision.[504] These three concepts form a total package in the Code. They are both self-sufficient and interdependent depending upon the desires of the persons involved. The end result is the creation of an imaginative, functional and extremely flexible system for the administration of decedents' estates.

In greater detail, the system is composed of the following procedural devices: informal probate,[505] formal probate,[506]

497. *Id.*
498. *Id.*
499. WYO. STAT. § 2-324 (1957).
500. WYO. STAT. § 2-131 (1957).
501. WYO. STAT. § 2-283 (1957). Although the sale may be made without order and at a public or private sale, the eventual sale must still be confirmed by the court. *Id.*
502. U.P.C. §§ 3-301, to -311, -1003.
503. U.P.C. §§ 3-401, to -414, -1001, -1002.
504. U.P.C. §§ 3-501 to -505.
505. U.P.C. §§ 3-301, -303.
506. U.P.C. §§ 3-401, -402.

informal appointment,[507] formal appointment,[508] informal closing,[509] formal closing,[510] and supervised administration.[511] Within this structure, the Code also includes additional procedural devices which greatly increase the flexibility and predictability. These include a comprehensive set of Statutes of Limitation,[512] the independent nature of each proceeding before the Court enabling interested persons to obtain judicial determinations without affecting the other procedures selected,[513] comprehensive provisions establishing the location of title to property,[514] and summary procedures for handling very small estates.[515]

A better understanding of the Code's operation can be acquired by taking a hypothetical situation through the Code procedures for intestacy and testacy. For this purpose presume that the decedent's probate estate is valued at $50,000; $40,000 of it are in stocks and bonds and $10,000 of it are in real estate; he is survived by his wife and two adult children; and, he has died domiciled in a Code state.

INTESTACY. It is obvious from the hypothetical that if the wife survives the decedent by 120 hours, she is entitled to the whole estate.[516] The Code gives her a variety of methods to claim it.

First, she could do nothing other than to take possession of the estate. According to the Code a decedent's estate passes to his heirs subject only to administration.[517] After the passage of three years from the date of the decedent's death, probate and administration are barred[518] and unsecured creditors

507. U.P.C. §§ 3-301, -308.
508. U.P.C. § 3-414.
509. U.P.C. §§ 3-1001, -1002.
510. U.P.C. § 3-1003.
511. U.P.C. §§ 3-501, -502.
512. U.P.C. §§ 3-108, -802, -803, -1005, -1006.
513. U.P.C. § 3-107. One exception to this independence is supervised administration. *Id.* This procedure includes formal testacy, formal appointment and formal closing. U.P.C. § 3-502.
514. U.P.C. §§ 3-101, -714, -908, -910.
515. U.P.C. § 3-1201 (Estates valued less than $5,000); U.P.C. § 3-1203 (Estates which do not exceed homestead, exemptions, allowances, and administration, funeral and last illness medical expenses).
516. U.P.C. § 2-102(3).
517. U.P.C. § 3-101.
518. U.P.C. § 3-108. *See also* U.P.C. §§ 3-102, -103.

are, consequently, barred since a personal representative can no longer be appointed.[519] The question of title is, therefore, answered by the passage of time.

Realistically, however, purchasers and transfer agents will demand proof of heirship and that no will was probated within the three year limitation in any county in the state. The first objection could be cured by some form of a proceeding to determine heirship even after the three year limitation period;[520] however, the second one is more difficult and curative measures would depend upon local practice.[521]

Notwithstanding that this passive approach to inheritance may be feasible, it is not realistic under this hypothetical because it is unlikely that the wife will desire to wait the full three years before transferring some of the assets.[522]

Another alternative is for the wife to file for an informal appointment of a personal representative[523] five days after decedent's death.[524] If nothing else is done, this procedure gives the personal representative full status.[525] Transfers can occur and purchasers would be fully protected even if later found to be invalid.[526] In addition, the personal representative is empowered to settle and distribute the estate without court order or supervision.[527] Within thirty days of appointment, however, the personal representative must give notice to all heirs of her appointment.[528]

Neither formal closing nor other filings are required to settle the estate. The personal representative may desire to obtain releases from the heirs in order to protect herself from later claims of breach of fiduciary duty.[529] The Code specifi-

519. U.P.C.§§ 3-108, -104. *See also* U.P.C. § 3-803(b).
520. Section 3-108 does not bar proceedings to determine heirs. U.P.C. § 3-108.
521. *See* ACLEA NAT'L CONFERENCE ON THE UNIFORM PROBATE CODE—STUDY MATERIALS 40-41 (1972).
522. Wellman, *Methods of Probate: A Summary of Available Choices*, UNIFORM PROBATE CODE PRACTICE MANUAL § 6.3, at 76 (Assoc. of Continuing Legal Education Administrators 1972).
523. U.P.C. § 3-203(4).
524. U.P.C. § 3-307(a).
525. U.P.C. § 3-307(b).
526. U.P.C. § 3-714. *But see* U.P.C. § 3-713 (Transfers involving conflicts of interest are voidable).
527. U.P.C. § 3-704.
528. U.P.C. § 3-705.
529. Wellman, *supra* note 522, § 6.10, at 82.

cally protects her as personal representative from persons who claim that distribution was erroneous because a will existed.[530]

Notice to creditors is not essential under the above procedure although their claims could be enforced up to three years from death[531] and the personal representative would be in breach of duty and subject to liability.[532]

The above discussion describes informal appointment in its most casual form. Since the Code provides for several additional devices which are very beneficial to interested persons, it is unlikely that these persons, including the wife, would want to exercise solely this approach. Although additional devices do not affect the general informality of the administration, they do add significant protections to the people involved.

First, as implied above, the personal representative will definitely publish notice to creditors. This is extremely advantageous because it reduces the statute of limitation from three years after death to four months from the date of first publication.[533]

Second, the personal representative may desire broader protection from claims after termination of the estate. The Code includes two basic procedures which may be followed. Anytime six months after the date of the original appointment the personal representative may file with the court a certified statement reciting that he has published notice to creditors more than six months before the date of this statement, that he has fully administered and settled the estate (he must note claims which remain unpaid), and that he has sent a copy of a full accounting of the administration to all distributees and creditors.[534] The consequences of this filing are that the appointment of the personal representative ter-

530. U.P.C. § 3-703.
531. U.P.C. § 3-803(a)(2).
532. U.P.C. § 3-801, Comment at 148. For failure to advertise for claims the personal representative would be liable for loss suffered by distributees. U.P.C. § 3-1004.
533. U.P.C. § 3-803(a)(1).
534. U.P.C. § 3-1003(a).

minates one year after the filing if no claims are pending[535] and that claimants have only six months from the filing to assert a claim.[536] Although this procedure would not protect the personal representative to any great extent more than the release approach would,[537] it does reduce the chance of claims of non-disclosure and it has the therapeutic effect of visibly terminating for third persons the personal representative's authority.[538]

A more comprehensive alternative would be for the personal representative to petition for a formal settlement proceeding.[539] This petition may be made at any time after the presentation of claims against the estate are barred. A hearing is to be held after notice to all interested persons and the court is authorized to issue orders which determine heirship, approve settlement and distribution and which discharge the personal representative from further claims by interested persons. Discharge under this procedure would be complete and obviously advantageous.

In this hypothetical there could be a question whether decedent died leaving a valid will. Under the procedures described above, such a question was not involved and therefore such a will could be probated within the three years from death limitation.[540] In order to preclude this or at least finally determine the issue, the Code again includes the necessary provisions.

Without disturbing the informal characteristics of the administration, the wife could file a petition for formal probate seeking a judicial determination whether decedent left a will.[541] This petition can be made in conjunction with a request for informal appointment[542] or at any other time during

535. U.P.C. § 3-1003(b).
536. U.P.C. § 3-1005.
537. The six month limitation period in section 3-1005 does not apply to non-disclosure, fraud or misrepresentation. U.P.C. § 3-1005.
538. U.P.C. § 3-610. It may also be useful when binding releases are not obtainable. Wellman, *supra* note 522.
539. U.P.C. § 3-1001(a).
540. U.P.C. § 3-108.
541. U.P.C. § 3-401. It may also determine who the heirs are. U.P.C. § 3-402(c) (This subsection was changed to (b) by the Joint Editorial Board). *See also* U.P.C. § 1-201(44).
542. U.P.C. §§ 3-401, -402(a).

administration. Prior notice to interested persons of the hearing is a prerequisite.[543] The order by the court that there is no will is determinative and binding except as reversed on appeal or by a vacation order.[544] The reasons for vacation are limited[545] and are available for a maximum of twelve months after the entry of the order.[546]

If a question of who should be the personal representative arises, the Code includes a formal appointment procedure.[547] This proceeding would be employed if there is a question of priority or of qualification of the one who is an applicant for appointment as the personal representative.[548] If it became essential to have such a proceeding, it would probably be combined with the above described formal testacy proceeding.[549]

Under the hypothetical it is unlikely that a formal appointment proceeding would be desired. In intestacy the surviving spouse[550] or her nominee[551] has priority. These provisions would under most circumstances cover the appointment question under the facts of this hypothetical. It is feasible, however, that a question of priority or particularly of qualification could arise, and if it did, the formal appointment procedure would become relevant. For example, the wife could renounce her right of priority and nomination,[552] and the two adult children, who are of equal priority,[553] could disagree on whom should be the personal representative. Formal appointment proceedings would be a necessity under this situation.[554]

One of the most imaginative possibilities under the Code for dealing with this hypothetical is the ability to combine a petition for formal settlement and closing with a petition for

543. U.P.C. § 3-403.
544. U.P.C. § 3-412.
545. U.P.C. § 3-412(1), (2).
546. U.P.C. § 3-412(3).
547. U.P.C. §§ 3-414, -402.
548. Wellman, *supra* note 522, § 6.11, at 82.
549. U.P.C. § 3-402, Comment at 103.
550. U.P.C. § 3-203(a)(4). *See* U.P.C. § 2-802(b).
551. U.P.C. § 3-203(c).
552. *Id.* It would have to be done by a writing filed with the court. *Id.*
553. U.P.C. § 3-203 (a)(5).
554. *See* Wellman, *supra* note 522, § 6.11, at 82.

formal testacy.[555] The result of this combination is that the estate under this procedure would be informally administered by a fully powered personal representative without the necessity of court proceedings. When the estate is ready for closing, the interested parties, in basically one proceeding, can have the protection of a court order on the issues of whether there was a valid will, heirship, settlement, distribution and discharge of the personal representative for the conduct of his administration, *e.g.,* the sale of some of the assets. Although the requirements of both procedures must be followed, the advantages are obvious. It is most likely that this approach to administration of an intestate's estate would gain rapid and wide use.

TESTACY. A few additional facts must be added to the hypothetical. Decedent is now presumed to have died with a valid will. This will devises three thousand to each adult child and the residue to his wife, if she survives him. If she does not survive him, then all of the estate would pass to his two adult children equally. The will appoints his brother executor.

Under the intestacy discussion it was determined that the heirs could take no action and title would eventually be secure in them. The same option is not as readily available, however, when property passes by will. With two exceptions, the Code provides that title to property passing by will cannot be proved unless the will is declared valid by informal or formal probate.[556] One exception is inapplicable to this hypothetical because it deals with the very small estate.[557] The other exception permits the will to be used in evidence in a case outside of the probate court concerned with a question of title. It permits the devisees to prove their devises if no proceedings concerning the estate had occurred and they had possessed or no one had possessed or claimed the property for three years after the death of the decedent.[558] Theoretically, therefore, the devisees under the hypothetical could proceed under this ex-

555. U.P.C. §§ 3-1001(a), -401.
556. U.P.C. § 3-102.
557. *See* U.P.C. § 3-1201.
558. U.P.C. § 3-102.

ception although the apparent intent of the Code is contrary.[559] The availability of better procedures and the practical problems of transferring property so held, however, should convince them not to employ it.

One alternative would be for the devisees to file for informal probate.[560] Following this procedure only, however, would subject them to many of the same objections as they would face if they did nothing but take possession. Title would not be secure for three years from death since the subsequent appointment of a personal representative[561] or the filing for a formal probate[562] or both within this period could materially affect the rights of possession.[563]

The use of the formal testacy procedure as the sole device suffers also from the problem that administration could take place within the three year period.[564] It would, however, have the beneficial effect of reducing the limitation period as far as questions of the validity of the will and heirship are concerned from three years to one year or less.[565] The questions of the homestead and the exemptions would not be cut off, however, even by the three year period.[566]

Another recourse would be for the devisees and the named executor to file five days after the death for both informal probate and informal appointment.[567] This can be accomplished simultaneously.[568] Although subject to formal proceedings within three years of death or one year of the informal probate, whichever is later, it does provide the devisee with proof of title so long as the contingency of a formal probate does not occur.[569]

Coupling informal probate with informal appointment obviously solves one of the objections mentioned above where

559. U.P.C. § 3-102. Comment at 77-78.
560. U.P.C. § 3-301.
561. U.P.C. §§ 3-703, -708.
562. U.P.C. § 3-302.
563. U.P.C. § 3-108. *See also* U.P.C §§ 2-401, -404; Wellman, *supra* note 522, § 6.4, at 76-78.
564. U.P.C. § 3-108.
565. U.P.C. § 3-412.
566. *See* U.P.C. §§ 3-108, 2-401 to -402.
567. U.P.C. §§ 3-301, -307.
568. *Id.*
569. U.P.C. §§ 3-108, -302.

informal probate is used alone. There would now be a personal representative who upon his appointment can administer the estate[570] and who can give marketable title to property sold.[571] He is, also, protected against other persons being appointed.[572] His distributions to persons he believes entitled thereto, enables the distributees to give good title to purchasers even though the distribution subsequently proves to be invalid.[573] In addition, if the personal representative publishes the notice to creditors, which he is required to do,[574] it initiates the shorter four month limitation period with respect to claims against the decedent.[575]

The options for settling the estate would be the same as mentioned above in the discussion of informal appointment under intestacy.[576] The decision of which to follow would depend upon the desires of the personal representative and the successors.

Other options available would include combining informal probate and informal appointment followed immediately by a formal probate proceeding.[577] This approach would get the administration processes operating and adjudicate the validity of the will question thereby shortening the limitation period within which such issues can be litigated.[578] If a question of validity is a serious problem, it litigates this issue at an early time thereby increasing the potential for early distribution.[579]

Combining informal appointment and informal probate at the beginning and then following it by petitioning for formal probate at the time of petitioning for formal proceedings terminating the estate is also a viable approach.[580] This en-

570. U.P.C. § 3-701.
571. U.P.C. §§ 3-711, -714.
572. U.P.C. §§ 3-307(b), -308(b), -702.
573. U.P.C. § 3-910.
574. U.P.C. § 3-801.
575. U.P.C. § 3-803(a)(1).
576. *See* notes 529-30, 534-39, *supra* and accompanying text.
577. Wellman, *Methods of Probate: A Summary of Available Choices*, UNIFORM PROBATE CODE PRACTICE MANUAL § 6.7, at 80-81 (Assoc. of Continuing Legal Education Administrators 1972).
578. U.P.C. § 3-412.
579. Wellman, *supra* note 577, at 81.
580. U.P.C. § 3-1001.

ables the interested parties to adjudicate all of the issues raised by probate and administration in one proceeding.[581] For example the principal questions of testacy, heirship, construction, accounting, settlement, and distribution can all be determined in this proceeding. The final order or orders rendered would fully protect the persons involved.

The final alternative involves informal probate and informal appointment concluded by a formal proceeding construing the will.[582] This proceeding adds nothing to the prior informal procedures except to produce an adjudicated interpretation of the will and to protect the personal representative from claimants under that will. It does not affect claimants who are heirs,[583] however.

From the above discussion of how the Code would deal with the hypothetical both in intestacy and in testacy, it is clearly apparent that it provides a great deal more flexibility for the parties interested in the estate than do Wyoming's present system or for that matter the systems which are present in most of the fifty states. These persons are given the option to formalize to the extent they desire. The court is not involved unless they desire it. If they do, the court is given the power and the procedure to deal with it. Those closest to the estate, therefore, have control; the court is there to assist, not to supervise.

Although control is primarily within the domain of those closest to the estate, the Code has significant and substantial provisions for protecting those who may be harmed by wrongful and devious activities of others. It was not conceived with any naive thoughts that all persons are honest and fair. No person concerned with a decedent's estate is dependent upon such thoughts for there are many ways he can protect himself from avarice and dishonesty. The point to note, however, is that each interested person must exercise affirmative action to fully protect himself. The court will not do it *sua sponte.*

581. Wellman, *supra* note 577, § 6.8, at 81.
582. U.P.C. § 3-1002.
583. Wellman, *supra* note 577, § 6.9, at 81. Notice is not even given to the heirs under this procedure. *Id.*

The philosophy of the Code, therefore, is that each individual's own self interest is a better guardian than is the court.

Using the hypothetical still as the guide, the following discussion will outline the most significant self interest affirmative action protections provided by the Code.

Any person who has a financial or property interest in the decedent's estates may file a demand for notice with the court anytime after death.[584] This affirmative procedure provides the person who files with the protection of receiving notice of all other filings or orders concerned with the estate, including filings for informal probate,[585] and informal appointment.[586]

An interested person[587] can defeat an informal appointment by petitioning for a formal appointment[588] and heirs or devisees under another will can force an informal probate into a formal probate proceeding.[589] In addition, any interested person may petition, at any time before the assets are distributed, for supervised administration.

Supervised administration[590] as conceived by the Code is a single continuous proceeding before the court concerned with the settling of one's estate.[591] Its protective features include formal testacy,[592] formal appointment[593] and formal closing[594] proceedings; distributions cannot be made without court order;[595] and the formal notice requirements must be fulfilled.[596] It also stays informal filings which are pending[597] and restricts an earlier appointed personal representative from making distributions.[598] Except for the restriction that he cannot make distributions without court order, the super-

584. U.P.C. § 3-204.
585. U.P.C. § 3-306.
586. U.P.C. § 3-310.
587. *See* note 440, *supra.*
588. U.P.C. § 3-414.
589. U.P.C. § 3-401.
590. U.P.C. § 3-501.
591. U.P.C. § 3-501, Comment at 114.
592. U.P.C. § 3-502.
593. *Id.*
594. U.P.C. § 3-505.
595. U.P.C. § 3-504.
596. U.P.C. §§ 3-502, -505.
597. U.P.C. § 3-503(a), (b).
598. U.P.C. § 3-503(c).

vised personal representative has the same authority or powers of other personal representatives under the Code.[599] Interested persons may, however, request that other restrictions be endorsed on his letters and thereby bind third parties to his illegal actions.[600] This protective device may represent the main reason persons would elect to require a supervised administration since all of its other benefits may be employed as needed through single proceedings.[601]

The basic consequence of petitioning for supervised administration is to cause the estate to pass through a procedure similar to that existing presently.[602] Some attorneys who are accustomed to such a cumbersome procedure may advise its use during the early years after the Code's adoption. As they become accustomed to the other procedures available under the Code, it is clear that the use of supervised administration will diminish rapidly. In fact, the courts may precipitate such a change in approach if they exercise their discretion to refuse such petitions.[603]

Less drastic protective devices provided to interested persons for acts of a personal representative would include a petition for an order restraining him from actions which unreasonably jeopardize the applicant's interests.[604] Another recourse, if circumstances warrant, would be a petition for removal for cause.[605] Cause is defined and ranges from mismanagement and breach of duty to incapacity and the best interest of the estate.[606]

Persons who have and retain an interest or a claim valued in excess of $1,000 may file with the registrar a demand that the personal representative give a bond.[607] The personal representative must then give bond or other suitable security in an

599. U.P.C. § 3-504
600. *Id.*
601. Wellman, *supra* 577, § 6.12, at 83.
602. O'Brien & Wright, *Supervised Administration*, UNIFORM PROBATE CODE PRACTICE MANUAL § 9.2, at 122 (Assoc. of Continuing Legal Education Administrators 1972).
603. U.P.C. § 3-502.
604. U.P.C. § 3-607. This petition can be combined with a petition for formal testacy. U.P.C. §§ 3-607, Comment at 124, -401.
605. U.P.C. § 3-611(a).
606. U.P.C. § 3-611(b).
607. U.P.C. § 3-605.

amount not less than the estimated value of the principal of the estate plus one year's income.[608] This estimate must also be filed with the registrar and must be under oath.[609]

Interested persons are also well protected from improper distribution under an informal closing. In addition to the facts that the personal representative must file a verified statement indicating a closing statement and a full account had been sent to all distributees and that he remains liable six months after the filing,[610] the distributees remain liable for one year after distribution or three years after death whichever is later to return the property and income or its date of distribution value.[611]

Furthermore, the Code includes broad protections against fraud, perjury and other wrongdoing. The limitation periods generally applicable to probate and administration do not apply when fraud has been involved. Instead, the perpetrator is liable for his fraud up to two years after its discovery.[612] Except for bona fide purchasers, even innocent persons who have benefitted by the fraud are liable under the same limitation; however, the period of liability for these persons can not exceed five years from the time of the commission of the fraud.[613] This provision applies to acts by the personal representative and to anyone else who participates in the administration of an estate.

In addition, the personal representative, once he accepts appointment, is considered to have submitted himself personally to the jurisdiction of the court and he remains subject to its jurisdiction until discharge,[614] provided notice of any subsequent proceeding is adequately provided.[615] This provision gives interested affected persons protection from a personal representative who is bent upon being difficult to find or who attempts to leave the state.

608. U.P.C. § 3-604.
609. *Id.*
610. U.P.C. § 3-1003.
611. U.P.C. § 3-1004.
612. U.P.C. § 1-106.
613. *Id.*
614. U.P.C. §§ 3-1001, -1002.
615. U.P.C. § 3-602.

The penalties of perjury are also applicable to any deliberate falsification of any document filed with the court.[616] The mere filing of an application, petition or demand for notice is deemed to include a verification of its veracity. Consequently, the perjury prosecution threat has a broad application.[617]

C. Contest of Wills

A related collateral issue which deserves discussion is the procedure for the contest of a will. Both Wyoming and the Code have relevant provisions on this matter.

In Wyoming, any interested[618] person is permitted to contest a will.[619] A will contest must be made in a written filing with the court and it must be filed either at the time of probate[620] or within three months after probate was granted.[621]

Both the petitioner and the contestant may on written demand request a jury trial.[622] If there is a jury, it is to return a special verdict on the issues of fact to the judge who is then required to render a judgment either admitting or rejecting the probate of the will.[623] Specific issues of fact which the jury must determine include the testator's competency, the testator's freedom from duress, menace, fraud and undue influence, the due execution and attestation of the will and any other question which might substantially affect the validity of the will.[624]

616. U.P.C. § 1-310.
617. For a general outline of protection devices available under the Code *see* ACLEA NAT'L CONFERENCE ON THE UNIFORM PROBATE CODE—STUDY MATERIALS 67-73 (1972).
618. The word "interested" is not defined by the provision. Generally, it means that the person would be directly and pecuniarily benefitted if the will were denied probate. ATKINSON, WILLS § 99, at 519 (2d ed. 1953); 1 BANCROFT, § 171, at 416-17.
619. WYO. STAT. §§ 2-76, -83 (1957 and Supp. 1971).
620. WYO. STAT. § 2-76 (1957).
621. WYO. STAT. § 2-83 (Supp. 1971). If contested after probate, contestants must personally serve the personal representative, all of the legatees and devisees in the will and all of the heirs residing in the state with notice of the court hearing on the wills revocation from probate. WYO. STAT. § 2-84 (1957).
622. WYO. STAT. §§ 2-77, -78, -86 (1957).
623. WYO. STAT. § 2-78 (1957).
624. WYO. STAT. § 2-77 (1957).

When a will is contested, the petitioners are required to produce all of the subscribing witnesses who are available in the county of probate and who are of sound mind.[625] If one or more cannot be produced, the petitioners must present to the court satisfactory reasons for the unavailability.[626] Other witnesses may testify as to the testator's capacity and to execution when none of the subscribing witnesses are available.[627] In addition, handwriting evidence may be admitted to prove execution.[628]

The burden of proof or risk of non-persuasion at the original probate hearing is on the petitioners with respect to the question of due execution.[629] Some states, including California, have held that if the contest occurs after the original probate, the burden is on the contestants.[630] Since Wyoming follows California law on these issues,[631] this rule would probably prevail in this state, too. The Supreme Court of Wyoming has directly held that the burden of proving a want of testamentary capacity is on the contestants.[632] The burden of proving undue influence, duress and fraud also rests on the contestants.[633]

Under the Code any interested person[634] may file a petition to determine whether a decedent left a valid will.[635] This petition must be filed within three years from death or twelve months from an earlier informal probate proceeding whichever is later.[636]

Many of the other Code provisions concerned with a will contest are basically similar to present rules. Jury trials may be demanded by any party to the formal testacy proceeding.[637] In addition, the burden of proving lack of testamen-

625. WYO. STAT. § 2-80 (1957).
626. *Id.*
627. *Id.*
628. *Id.*
629. ATKINSON, *supra* note 618, § 101, at 543-45; 1 BANCROFT § 206, at 498-99.
630. 1 BANCROFT § 206, at 498-99.
631. Wood v. Wood, 25 Wyo. 26, 164 P. 844 (1917).
632. *Id.*
633. 1 BANCROFT § 206, at 500-01.
634. U.P.C. § 1-201(20). *See* note 440, *supra.*
635. U.P.C. § 3-401.
636. U.P.C. § 3-108.
637. U.P.C. § 1-306.

tary capacity, undue influence, fraud and duress are on the contestants.[638] For ordinary wills, the Code provides that at least one subscribing witness testify if competent and within the state and that due execution may also be proved by other evidence.[639]

The primary differences appear in the mechanics of the procedure, itself. First, formal testacy proceedings may be initiated by heirs as well as devisees under a will.[640] In other words, this proceeding may determine that the decedent died intestate as well as testate. The heirs do not have to wait until a will is offered for probate in order to contest it, they may force the issue themselves.

Second, subject to appeal[641] and to limited reasons for vacation and modification,[642] the final order in a formal testacy is immediately conclusive as to all persons and all issues, which were considered or which might have been considered, involved in the decedent's estate.[643]

Third, although a subsequently discovered will may give cause for vacating a formal testacy order,[644] no such will may affect the order beyond twelve months from its entry.[645] This is significant, because it has frequently been held that the probate of a late-discovered will is not a contest of a previously probated will and is not affected by expiration of the contest limitation period.[646] Consequently, these wills can be probated at anytime. The Code meritoriously both restricts such a possibility and retains reasonable time and procedural protections.

The three above mentioned differences are definite improvements over present procedures and deserve careful consideration when probate reform is discussed.

638. U.P.C. § 3-407.
639. U.P.C. § 3-406(a). The Code has special presumptions applicable to its self-proved wills. U.P.C. §§ 2-504, 3-406(b).
640. U.P.C. § 3-401.
641. U.P.C. §§ 3-413, 1-304.
642. U.P.C. § 3-412(1), (2).
643. U.P.C. § 3-412.
644. U.P.C. § 3-412(1).
645. U.P.C. § 3-412(3)(iii). It may be a much shorter time. U.P.C. § 3-412(3)(i)(ii). *See* PROBLEMS OF PROBATE LAW—A MODEL PROBATE CODE § 81, at 104 1946).
646. 1 BANCROFT §§ 136, 165. California is cited as one of the jurisdictions which follow this rule. *Id.* § 136, at 335.

XI. THE PERSONAL REPRESENTATIVE

If a decedent's estate is made subject to some form of an official administration, it is essential that a personal representative or multiple personal representatives be appointed.[647] The office of personal representative, therefore, has significant responsibilities and status in the administration of a decedent's estate. Generally and briefly, these responsibilities include collection of assets, settling of claims, and final distribution of the estate; the status aspects include recognition as the estate's legal entity, as officer of the court, as a fiduciary and as title holder of the decedent's personal property.[648] The office, itself, is considered of such extreme importance that the selection of a specific person or entity to serve as personal representative is one of the most important reasons for having a will.[649]

Personal representatives have generally been referred to by specific names depending upon the status of the estate.[650] If the personal representative is named in the will, he is called an executor. If appointed under an intestate estate, the name is administrator. Several latin phrases are added after the name "administrator" to describe the personal representative who is appointed under other circumstances.[651] The particular characterization applicable is sometimes important in determining such questions as qualification and authority.[652] Wyoming statutes, for example, make distinctions between whether the personal representative is an executor or an administrator. Persons named in the will as executor have, (1) priority of appointment,[653] (2) less grounds for disquali-

647. 2 BANCROFT § 227 at 4.

648. ATKINSON, WILLS § 104, at 576 (2d ed. 1953).

649. *Id.* § 147, at 832.

650. *Id.* § 104, at 576.

651. *Id.* at 577:

> If the will names no executor, or if the one named dies, or is unable or unwilling to act, the court will appoint an administrator cum testamento annexo, c.t.a., or with the will annexed. If an executor ceases to act as such before completion of administration, the court appoints an administrator de bonis non cum testamento annexo, d.b.n.c.t.a., or, of goods not administered with the will annexed. Likewise if the original administrator ceases to act, his successor is called administrator de bonis non, d.b.n.

652. *Id.*

653. *Compare* WYO. STAT. § 2-106 (1957) *with* WYO. STAT. § 2-93 (1957).

fication,[654] (3) potential bond waiver,[655] and (4) potential additional powers during administration.[656] Except for priority of appointment,[657] the Code has abolished these distinctions between a person named in a will as executor and one appointed as an administrator.[658] In fact even the titles have been abolished since all such persons are referred to merely as the "Personal Representative."[659]

Every state has legislation dealing with the qualification and disqualification of executors[660] and administrators.[661] Qualification is typically phrased in the form of a priority list and disqualification is phrased with respect to a candidate's particular status. Both Wyoming and the Code have provisions concerned with these two concepts. The following chart [No. 8] illustrates the similarities and differences of priority between the two statutory patterns.

[Chart No. 8]

WYOMING'S PRIORITY ORDER[662]

1. Persons named in will (including named successors)[663]
2. Surviving spouse
3. Surviving spouse's selectee
4. Children
5. Father or mother
6. Brothers
7. Sisters[664]
8. Grandchildren

654. *Compare* WYO. STAT. § 2-95 (1957) *with* WYO. STAT. § 2-107 (1957).
655. *Compare* WYO. STAT § 2-122 (1957) *with* WYO. STAT. § 2-131 (1957).
656. *E.g.*, WYO. STAT. § 2-283 (1957).
657. U.P.C. § 3-203(a)(1).
658. McElroy, *Personal Representatives: Appointment, Control, Termination, Duties and Powers*, UNIFORM PROBATE CODE PRACTICE MANUAL § 10.1, at 129 (Assoc. of Continuing Legal Education and Administrators 1972).
659. U.P.C. § 1-201(30).
660. ATKINSON, *supra* note 648, § 108, at 602-05.
661. *Id.* § 109, at 606-11.
662. WYO. STAT. §§ 2-106, -93 (1957). When two or more persons share priority, the court may appoint one or more of them at its discretion. WYO. STAT. § 2-94 (1957).
663. This would also probably include a selectee of a person specifically empowered in the will to make such a selection.
664. Placing sisters after brothers in priority is probably unconstitutional. *See* Reed v. Reed, 404 U.S. 71 (1971).

9. Other heirs
10. Creditors[665]
11. Any other competent person[666]

CODE'S PRIORITY ORDER[667]

1. Persons named in will (including named successors)
2. Selectee of persons given power to nominate by the will.
3. Surviving spouse who is a devisee (or the surviving spouse's selectee)
4. Other devisees (or the devisees' selectee)
5. Surviving spouse
6. Other heirs
7. Any creditors forty-five days after death

Wyoming statutes specify three situations when a person would be disqualified or incompetent to serve both as an administrator[668] or as an executor.[669] These include persons who are minors, who were convicted of an infamous crime and who have been adjudged incompetent because of drunkeness, improvidence, mental incapacity or integrity. The additional status of being a non-resident will disqualify a person from becoming an administrator.

The Code, again, eliminates the distinction between administrators and executors and most of the specificity of situations. It merely provides[670] that persons under the age of 21[671] and those found unsuitable by a court in a formal proceeding are disqualified.[672]

665. Creditors must apply within two years of death. WYO. STAT. § 2-103 (1957).
666. *See* WYO. STAT. §§ 2-206 to -209 (1957).
667. U.P.C. § 3-203. When two or more persons share priority, all must concur in the nominee. U.P.C. § 3-203(c). If concurrence is not possible, the court is given discretion to appoint any suitable person. U.P.C. § 3-203(b)(2).
668. WYO. STAT. § 2-95 (1957). If a surviving partner's priority is derived only from being a creditor or an otherwise competent person, he must not be appointed administrator. WYO. STAT. § 2-93 (1957).
669. WYO. STAT. § 2-107 (1957).
670. U.P.C. § 3-203(f).
671. The age of qualification is optional with the Code. *Id. See also* U.P.C. § 3-203(c).
672. A non-resident may not be appointed as personal representative in an informal appointment proceeding until thirty days have elapsed from the date of the decedent's death. U.P.C. § 3-307(a).

As between the approach present under the Wyoming Law and that under the Code, the most important feature is that the Code places the primary control over qualification and disqualification with the most interested persons. Other than a preference shown the surviving spouse, there are no arbitrary classifications of specific relatives for purposes of determining priority. In addition the Code's approach of equalizing administration procedures under intestacy with testacy is carried out in the selection process. The best person to administer is more likely to be appointed under the Code than under Wyoming law.

Wyoming[673] and the Code[674] have provisions concerned with special administrators. Although similar in scope and application, the Code, apparently paradoxically, both increases the potential[675] and decreases the necessity[676] for their use. These two results are not inconsistent, however. They are clearly further example of the Code's main themes of flexibility and control in the interested persons.

With respect to termination, resignation and removal, Wyoming and the Code have many similarities. Both provide that death,[677] incapacity,[678] resignation,[679] and mal-administration[680] are causes for termination or removal or both. One important difference concerns the situation when an estate was origially administered as intestate and then a subsequent will is discovered which appoints a person as executor who is not serving as administrator. Under Wyoming law the administrator's letters must be revoked and a new person appointed.[681] Under the Code the original personal representative retains that office until another appointment procedure is instituted.[682] If none is instituted within thirty days after expiration of time for appeal from the order

673. WYO. STAT. §§ 2-114 to -120 (1957).
674. U.P.C. §§ 3-614 to -618.
675. U.P.C. § 3-614.
676. U.P.C. §§ 3-301 (informal appointment), -715(21) (power to delegate to agents).
677. WYO. STAT. § 2-198 (1957); U.P.C. § 3-609.
678. *Id.*
679. WYO. STAT. § 2-199 (1957); U.P.C. § 3-610.
680. WYO. STAT. § 2-201 (1957); U.P.C. § 3-611.
681. WYO. STAT. § 2-195 (1957).
682. U.P.C. § 3-612.

which changes the nature of the administration, the original personal representative may be appointed again to serve in that capacity.[683]

The office of personal representative carries with it certain duties which he must fulfill or be held liable for breach. Primarily, he is a fiduciary both to the estate and to the persons he represents.[684] The fiduciary relationship requires that his conduct toward these beneficiaries of his office be of the highest ethic.[685] He must never exercise his office in a manner which seeks or gains personal benefit.[686] These precepts exist under Wyoming[687] law and the Code.[688]

Wyoming law and the Code differ materially, however, with respect to how the personal representative is to carry out the functions of the office. Nearly every action a personal representative takes under Wyoming procedures requires some order by the court either when initiating the action or when getting approval for it. This court supervision is pervasive including, for example, the appointment of appraisers,[689] the compromise of claims,[690] and the sale of property.[691] Probably even more of a hinderance to efficient administration under Wyoming law is the lack of broad specified powers necessary to efficiently administer an estate. Significantly, such powers, typically, constitute a substantial and significant portion of well drafted wills.

The Code incorporates this good estate planning technique into all administered estates[692] unless specially reserved either by the testator or by proceedings brought by interested persons.[693] Except as so restricted the personal representative is to administer the estate as rapidly as possible without court supervision or intervention.[694] If court proceedings

683. *Id.*
684. 2 BANCROFT § 340, at 296-97.
685. *Id.*
686. SCOLES & HALBACH, PROBLEMS AND MATERIALS ON DECEDENT'S ESTATES AND TRUSTS 472 (1965).
687. *See* WYO. STAT. §§ 2-177, -296 (1957).
688. *See* U.P.C. § 3-703.
689. WYO. STAT. § 2-154 (Supp. 1971).
690. WYO. STAT. § 2-149 (1957).
691. WYO. STAT. § 2-248 (1957).
692. McElroy, *supra* note 658, § 10.27, at 142.
693. U.P.C. § 3-715. *See also* U.P.C. § 3-902.
694. U.P.C. § 3-704.

are desired, however, the personal representative has authority to invoke its jurisdiction.[695] In order to carry out an administration in this manner, the Code authorizes the personal representative and his successors[696] to perform twenty-seven[697] specified transactions including, for example, the power to make extraordinary repairs or alterations on estate structural assets,[698] to hold securities in the name of a nominee,[699] to borrow money,[700] to employ agents who may perform acts of administration whether or not discretionary,[701] and to set reasonable compensation for his own services.[702] All of these powers must be exercised "reasonably for the benefit of the interested persons."[703] The rationale is to treat the office of personal representative in a manner similar to that of a trustee under the Uniform Trustees' Powers Act.[704] The personal representative is, however, liable to interested persons for the improper exercise of a power.[705]

Because the Code confers upon the personal representative the authority to perform numerous transactions without court supervision, it was necessary to alter present rules and laws with regard to his other functions and responsibilities. Except when conflicts of interest are involved in transactions made by the personal representative,[706] or when limitations on his powers are endorsed on his letters, third persons who deal in good faith with the personal representative are protected from liability unless they had actual knowledge that he was improperly exercising his powers.[707] This protection for third persons is broader than exists under present Wyoming law.[708] It is in line, however, with the modern trend of easing third

695. *Id.*
696. U.P.C. § 3-716.
697. U.P.C. § 3-715.
698. U.P.C. § 3-715(7).
699. U.P.C. § 3-715(16).
700. U.P.C. § 3-715(14).
701. U.P.C. § 3-715(21).
702. U.P.C. § 3-715(18).
703. U.P.C. § 3-715.
704. U.P.C. § 3-715, Comment at 143.
705. U.P.C. § 3-712.
706. U.P.C. § 3-713.
707. U.P.C. § 3-714.
708. *See* WYO. STAT. §§ 4-8 to -12 (1957); WYO. STAT. §§ 4-15.1 to -.9 (Supp. 1971).

party responsibilities with respect to transactions with fiduciaries.[709]

Procedures for inventory and appraisement are also materially altered. Under Wyoming law, every personal representative, must make, verify[710] and return, within a reasonable time to the court an accurate inventory and appraisement of the decedent's estate.[711] Some court official is required to appoint three disinterested persons[712] who are to appraise the estate and file a verified account with the court.[713]

The Code continues the requirement for an inventory and appraisement but materially alters how it is to be accomplished and what is to be done with it when completed. The Code provides that the personal representative must prepare an inventory within three months after his appointment.[714] The Court, however, is not involved in this procedure: neither court supervision nor court appointed appraisers are required.[715] The personal representative may value the assets at fair market value himself or may employ other qualified and disinterested appraisers as is required under the circumstances.[716] Once prepared, the personal representative has one of two procedures to follow.[717] He may merely mail a copy of it to interested parties who have requested it[718] or he may file the original with the court. This filing with the court does not extend its role but merely makes it a public depository.[719] This procedure obviously adds a great deal of flexibility to present procedures. Under the Code the size and complexity[720] of the estate dictates to the personal representative the course of action he should take, not statutory provisions.

709. *See* WYO. STAT. § 4-42 (Supp. 1971) (Uniform Trustees' Powers Act).
710. WYO. STAT. § 2-158 (1957).
711. WYO. STAT. § 2-153 (1957).
712. WYO. STAT. § 2-154 (Supp. 1971).
713. WYO. STAT. § 2-155 (1957).
714. U.P.C. § 3-706.
715. *See* McElroy, *supra* note 658, § 10.24, at 141.
716. U.P.C. § 3-707.
717. U.P.C. § 3-706.
718. U.P.C. § 3-204.
719. U.P.C. § 3-706, Comment at 135.
720. *See* ACLEA NAT'L CONFERENCE ON THE UNIFORM PROBATE CODE—STUDY MATERIALS 151-52 (1972). The personal representative would be subject to removal (U.P.C. § 3-611) for failure to complete his inventory responsibility. U.P.C. § 3-706, Comment at 135.

There is also a very significant difference between Wyoming law and the Code with respect to the compensation of the personal representatives and of the attorney for the estate. Wyoming, by statutory provision, sets a regressive fee schedule for both the personal representative[721] and his attorney.[722] Regardless of the number of persons holding each position, the maximum fee is the same and must be divided among them.[723] The personal representative may increase his fee by fifty percent if the court decides that he has performed extraordinary services[724] and the attorney may receive additional non-scheduled compensation at the discretion of the court if the estate has been involved in actual litigation.[725]

The Code follows a less structured approach. The personal representative is simply entitled to reasonable compensation[726] and is permitted to determine the amount himself.[727] In addition, he is given the authority to set the compensation for all agents, including attorneys, employed for purposes of administering the estate.[728] Protection is provided for interested persons by a provision which permits them to bring a special proceeding for the purpose of reviewing the reasonableness of all fees paid the personal representative and his agents.[729] These Code provisions are meritorious in that compensation for those who perform tasks for the estate will be determined by the amount of work performed, not by some arbitrary statutory fee schedule which may or may not relate to the time and effort involved.

Another area of concern for personal representatives has been their liability to third persons on contracts and torts arising out of the administration of the estate. The general rule has been that the personal representative is not an agent for but is the owner of the property of the estate and is personally liable on such contracts and torts subject only to reimburse-

721. WYO. STAT. § 2-181 (1957).
722. WYO. STAT. § 2-182 (1957).
723. WYO. STAT. §§ 2-182, -183 (1957).
724. WYO. STAT. § 2-181 (1957).
725. WYO. STAT. § 2-182 (1957).
726. U.P.C. § 3-719.
727. U.P.C. § 3-715(18).
728. U.P.C. § 3-715(18), (21).
729. U.P.C. § 3-721.

ment.[730] Although elimination of liability provisions in contracts and potentially insurance for torts have been protection devices, severe hardship situations have occurred.[731] Wyoming's present law would probably follow this approach.[732]

The Code creates a totally different approach. The estate for these purposes is made into a "quasi-corporation."[733] The personal representative is thereby an agent of this entity and is liable not individually but only as an agent would be liable.[734] The contract or tort claimant must bring his action directly against the estate by proceeding against the personal representative in his fiduciary capacity.[735] The liability of the personal representative to the estate for these acts is to be determined in other proceedings.[736] Considering the hardship cases which have arisen in the past, these Code provisions are extremely meritorious.

Overall considerations of the Code's personal representative provisions reveal a well thought out, carefully drafted scheme. It possesses flexibility, freedom of action, and safeguards from misuse. It eliminates most of the outdated requirements and rules and substitutes ideas which better accord with our modern society. Reform of present procedures related to the personal representative is one of the most important tasks to be accomplished by probate reform.

XII. CREDITORS

Since the rights of creditors in decedents' estates are considered of great importance,[737] a comparison of the principal relevant provisions concerning creditors is essential. The primary issues include the time limitations on presenting claims, the procedures for presentation, allowance and enforcement and the classification of claims for priority in in-

730. SCOLES & HALBACH, *supra* note 686, at 504.
731. *See, e.g.*, Johnston v. Long, 30 Cal. 2d 54, 181 P.2d 645 (1947).
732. *Id.* 2 BANCROFT §§ 367, 368, at 361-64.
733. U.P.C. § 3-808, Comment at 154-55.
734. *Id.*
735. U.P.C. § 3-808(c).
736. U.P.C. § 3-808(d).
737. 1 BANCROFT § 4, at 9.

solvent estates. The following chart [No. 9] presents a visual comparison of Wyoming law and of the Code on these issues.

[Chart No. 9]

CREDITORS' CLAIMS

Code	Wyoming
NON-CLAIM LIMITATIONS	
Claims Arising Before Death	
Four months after date of first notice by publication[738]	Three months after date of first notice by publication[739]
or	*or*
[Three] years after decedents death if no notice by publication[740]	Two years and three months after decedent's death[741]
Claims Arising After Death	
Four months after performance is due on contract claims[742]	[No special statute of limitations][743]
or	
Four months after claim arises on any other claim[744]	
Exceptions	
Enforcement of mortgages pledges or liens on property[745]	Enforcement of mortgage or liens when deficiency is waived[746]

738. U.P.C. § 3-803(a)(1).
739. WYO. STAT. § 2-219 (Supp. 1971). Creditors, who had no notice and who were out of the state, may file their claims anytime before the decree of distribution. WYO. STAT. § 2-221 (1957).
740. U.P.C. § 3-803(a)(2).
741. Creditors must file for letters of administration within two years of death. WYO. STAT. §§ 2-103, -104 (1957).
742. U.P.C. § 3-803(b)(1).
743. *See* WYO. STAT. §§ 1-11 to -27 (1957).
744. U.P.C. § 3-803(b)(2).
745. U.P.C. §§ 3-803(c)(1), -809.
746. *See* WYO. STAT. § 2-227 (1957); Denver Joint Stock Land Bank v. Preston, 52 Wyo. 101, 70 P.2d 584 (1937). *See also* 3 BANCROFT § 790, at 554-57.

Claims protected by liability insurance up to its limits[747]	[No similar provision][748]

TYPES OF CLAIMS

All claims "whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal bases"[749]	All claims whether "due, not due, or contingent"[750]
Actions pending at decedent's death need not be presented[751]	Including actions pending at decedent's death[752]

PRESENTATION

Written statement of claims[753] delivered or mailed to personal representative[754]	Affidavit of claim presented to personal representative[755]
or	*or*
Written statement of claim filed with court[756]	Affidavit of claim filed with court[757]
[Above claims are deemed presented upon written receipt by the personal representatives or upon filing with the court][758]	[Above claims deemed presented upon personal representatives sealed or notarized endorsement or upon filing with the court][759]

747. U.P.C. § 3-803(c)(2).
748. *But see* Lo Sasso v. Braun, 386 P.2d 630 (Wyo. 1963).
749. U.P.C. § 3-803(a).
750. WYO. STAT. § 2-221 (1957). *See also* State *ex rel.* State Board of Charities and Reform v. Bower, 362 P.2d 814 (Wyo. 1961).
751. U.P.C. § 3-804(a).
752. WYO. STAT. § 2-229 (1957).
753. The statement must include the amount claimed, and the name and address of the claimant. U.P.C. § 3-804(1).
754. U.P.C. § 3-804(1).
755. WYO. STAT. § 2-223 (1957).
756. U.P.C. § 3-804(1).
757. WYO. STAT. § 2-223(1957).
758. U.P.C. § 3-804(1).
759. WYO. STAT. § 2-223 (1957).

or	*or*
Commencement within non-claim period of a court proceeding against personal representative[760]	This procedure is prohibited except for actions on mortgages and lien securities[761]

ALLOWANCE AND REJECTION

Personal representative may mail notice to claimant of allowance or rejection[762]	Personal representative may endorse on affidavit allowance or rejection or notify claimant of rejection by registered mail[763]
Failure to mail notice constitutes an allowance sixty days after the expiration of time for original presentation of the claim[764]	Failure to indicate allowance or rejection may be treated by the claimant as a rejection ten days after presentation or filing[765]
A judgment against the personal representative on claim against the estate is an allowance[766]	A judgment against the personal representative on claim against the estate is an allowance[767]
Claims barred by any statute of limitation must be rejected when the estate is insolvent or unless waived by all successors when the estate is solvent[768]	Claims barred by any statute of limitation must be rejected in all situations.[769] [Presumably the successors could pay the claim if they desire]
Proceedings on claims rejected must be commenced	Suit on claims rejected must be instituted within three

760. U.P.C. § 3-804(2).
761. WYO. STAT. § 2-227 (1957).
762. U.P.C. § 3-806(a).
763. WYO. STAT. § 2-223 (1957).
764. U.P.C. § 3-806(a).
765. WYO. STAT. § 2-223 (1957).
766. U.P.C. § 3-806(c).
767. WYO. STAT. § 2-231 (1957).
768. U.P.C. § 3-802.
769. WYO. STAT. § 2-226 (1957).

sixty days after notice of rejection[770]	months after notice of rejection[771]
Personal representative or court on petition may extend this period for an additional sixty days when claim is not presently due or is contingent or unliquidated[772]	If the claim is not due then suit must be instituted within two months after it becomes due[773]

CLASSIFICATION OF CLAIMS FOR PRIORITY OF PAYMENT

1) Costs and expenses of administration	1) Funeral and expenses of administration
2) Reasonable funeral expenses and medical expenses of last illness including compensation for services rendered	2) Expenses of last illness and compensation for services rendered within sixty days of death
3) Debts and taxes	3) Medical expenses of last illness
4) All other claims[774]	4) Judgments rendered during lifetime, mortgages by date and liens on real estate
	5) All other debts[775]
Claims within the same class share proportionately whether due or not due[776]	Claims within the same class share proportionately[777]

770. U.P.C. § 3-804(3).
771. WYO. STAT. § 2-225 (1957).
772. U.P.C. § 3-804(3). But this period may not be extended beyond the otherwise applicable statutes of limitation. *Id.*
773. WYO. STAT. § 2-225 (1957).
774. U.P.C. § 3-805(a). The Joint Editorial Board for the Uniform Probate Code is recommending a change to the National Conference which will place expenses of a decedent's last illness below claims due the federal government thereby conforming this section to federal law. 2 U.P.C. NOTES 1 (October 1972).
775. WYO. STAT. § 2-240 (1957).
776. U.P.C. § 3-805(b).
777. WYO. STAT. § 2-243 (1957).

PAYMENT

Personal representative must pay all claims allowed upon expiration of four month non-claim limitation[778]	Claims allowed by personal representative and approved by court are to be paid in the due course of administration[779]
But must make allowance for homestead, allowances, claims not yet allowed and unbarred claims[780]	Court procedure provided for setting off homestead and exemptions[781]
Claimant may obtain court order directing personal representative to pay allowed claim after above period has run[782]	Court must make an order for payment of claims upon settlement of the accounts of the personal representatives[783]
Personal representative may pay at any time any claim regardless of presentation but is subject to personal liability for improper payment[784]	
No execution to issue after death except for enforcement of mortgages, pledges or liens[785]	No execution to issue after death except for enforcement of liens or the recovery of property[786]

As the above chart indicates, Wyoming law and the Code are basically in accord. Several difference deserve special mention, however. The non-claim period after publication is three months in Wyoming and four months under the Code. This difference should not cause significant debate. If the Code is adopted in many states, the need for uniformity would favor adopting the Code's four month limitation.

778. U.P.C. § 3-807(a).
779. WYO. STAT. § 2-224 (1957).
780. U.P.C. § 3-807(a).
781. WYO. STAT. §§ 1-214, -215 (1957). *See also* WYO. STAT. § 2-246 (1957).
782. U.P.C. § 3-807 (a).
783. WYO. STAT. § 2-245 (1957).
784. U.P.C. § 3-807(b).
785. U.P.C. § 3-813.
786. WYO. STAT. § 2-232 (1957).

A controversial part of the Code is the part creating a short period of limitations for claims arising at or after death.[787] Idaho repealed these provisions[788] and the Joint Editorial Board will soon give it serious reconsideration.[789] Inclusion or exclusion of this provision is not worth a significant amount of controversy.

Otherwise the Code's provisions are specifically designed to fit into and work with its other procedures. Generally, they are comprehensive and relevant to modern estate problems and issues. They are not revolutionary.

SECOND INTERVAL

As with Part I, preliminary concluding remarks are appropriate.

Wyoming's administration procedures are far too inflexible, formalized and outmoded. If, for example, the primary reason for having a total court supervision system is to protect interested persons from fraud and other wrongdoings, it is illusory. It is not reasonable to believe that courts actually know the underlying facts of the documents presented to them for approval. When wrongdoings occur they are discovered and remedied by interested persons exercising their own self interests. Furthermore, even if it could be established that the present system is more protective, it would do so only in a very small number of situations. The great majority of estates do not require this protection because there are simply no controversies. The creditors and devisees or heirs do not disagree with the manner of administration and distributions to be accomplished. Present law, however, requires these estates to follow the over-formalized procedures as well as the small number of estates wherein the protection would be beneficial.

As discussed in Part II, the Code's procedures are adaptible to the needs of the particular estate. If the estate is un-

787. U.P.C. § 3-803(b).
788. Ch. 201 § 13 [1972] Idaho Sess. Laws 525-26; IDAHO CODE § 15-3-803 (Supp. 1972).
789. 2 U.P.C. NOTES 9 (October 1972).

complicated, the procedures may be informal and uncomplicated. If it is complicated, then the interested persons may force the procedures into the degree of formality necessary. This approach to administration, however, is definitely not revolutionary. Each device proposed has its tested counterpart in one or more of the fifty states.

Reform in administration procedures is essential and inevitable. Lawyers should, therefore, be in the forefront in this endeavor. The Code's procedures, having been drafted and approved by lawyers who deal with decedents' estates, deserves serious study and consideration when reforms are proposed.